



**THE PORT  
OF LOS ANGELES**  
Executive Director's  
Report to the

Board of Harbor Commissioners

**DATE: SEPTEMBER 21, 2011**

**FROM: REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - PROPOSED OPERATING AGREEMENT  
WITH PACIFIC CRUISE SHIP TERMINALS, LLC**

**SUMMARY:**

The Board of Harbor Commissioners (Board) granted Operating Agreement No. 2264 (Agreement No. 2264) to Pacific Cruise Ship Terminals, LLC (PCST) for a term of 18 months, effective January 1, 2003. Agreement No. 2264 is for the management and operation of the cruise terminal, located at Berths 91-93, and for related purposes. The 18-month term of Agreement No. 2264 provided a one-year option to extend. This option was exercised, and Agreement No. 2264 has been on holdover status since July 1, 2005.

Staff recommends approval of the proposed interim Operating Agreement with PCST. The Operating Agreement will have a 21-month term, retroactively commencing on January 1, 2011 and ending on September 30, 2012. The interim Operating Agreement will require PCST to furnish all services, materials, equipment, and items necessary to manage and operate the cruise terminal based upon a defined Scope of Work (SOW). The SOW outlines the duties to be performed by PCST under this Operating Agreement. For the services provided, the City of Los Angeles Harbor Department (Harbor Department) will pay PCST \$9,655 per vessel call, payable on a monthly basis through 2011. Beginning January 1, 2012, the payment per vessel call will be adjusted by the Consumer Price Index (CPI).

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that in accordance with the Los Angeles City Charter Section 1022, the services required can be performed more feasibly by an outside contractor than by City employees;
2. Find, consistent with City Charter Section 371(e)(10), that the competitive bidding process for the short-term operation of the cruise terminal is impractical and would not be in the Harbor Department's best interest in consideration of the temporary nature of the services required and the relationship of Pacific Cruise Ship Terminals, LLC with cruise lines and the United States Coast Guard in managing and operating the cruise terminal;
3. Approve the new interim Operating Agreement with Pacific Cruise Ship Terminals, LLC;

SUBJECT: NEW SHORT-TERM OPERATING AGREEMENT WITH PACIFIC CRUISE SHIP TERMINALS, LLC

4. Authorize the Executive Director to execute and the Board Secretary to attest to the Operating Agreement; and
5. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background – The Harbor Department entered into Agreement No. 2264 with PCST for a term of 18 months, effective January 1, 2003, for the management and operation of the cruise terminal. The term was extended for an additional 12 months and expired on June 30, 2005. Agreement No. 2264 was put on a month-to-month holdover at the same rate of compensation and upon the same terms and conditions. Although the original Board report stated that the Harbor Department would issue a Request for Proposal (RFP), the issuance of a RFP did not materialize and PCST continues to operate the cruise terminal to date.

The cruise terminal operational costs are funded through certain defined cruise terminal revenues collected by PCST, including lay day fees collected from all cruise ships calling at the facility and various other charges, including but not limited to, water, trash, and telephone. Any shortfall from that funding is paid by the Harbor Department through its annual operating expense budget for PCST's contract costs. Any surplus from this budget is paid back to the Harbor Department.

Agreement No. 2264 also provides for periodic review and reporting of financial data as it pertains to collection of revenue from lay day fees and terminal operating expenses. Most of the reporting and reconciliation for the period of 2006 through 2009 did not occur due to a dispute over several of PCST's expenditures. To resolve these issues, Management Audit staff conducted a full audit of PCST's expenditures. The audit identified several problems and concluded that both parties contributed to poor communication and a lack of clarity. Subsequently, after discussions with PCST and given the long period of time that has passed with the inability to substantiate the sequence and occurrence of past events, Harbor Department management is recommending a negotiated settlement between the parties to address the costs associated with all operations for calendar years 2003 through 2010. Calendar year 2010 is included, as the expenses incurred last year were not in dispute and were on hold pending resolution of costs associated with calendar years 2003-2009.

While this requested Board action will seek to end the holdover status through the establishment of an interim Operation Agreement with PCST, a separate Board action will resolve the disputes related to the operating expenses incurred by PCST. In addition, it will allow the Harbor Department time to undertake the RFP process.

Concurrent Agenda Item – The proposed interim Operating Agreement (Transmittal 1) is concurrently being presented to the Board with a proposed Settlement Agreement to Agreement No. 2264. The proposed Settlement Agreement addresses all past expenses and compensation issues through 2010.

**DATE: SEPTEMBER 21, 2011**

**PAGE 3 OF 5**

**SUBJECT: NEW SHORT-TERM OPERATING AGREEMENT WITH PACIFIC CRUISE SHIP TERMINALS, LLC**

Proposed Short-Term Operating Agreement – The Harbor Department requires a cruise terminal operator to facilitate management and operation of the cruise terminal (Transmittal 2). In order to meet the Harbor Department's operations needs, pending issuance of a RFP and subsequent hiring of a long-term operator, a sole source contract with PCST to act as the Harbor Department's short-term cruise terminal operator is recommended. This will ensure continuity and smooth operation of the cruise terminal.

An interim Operating Agreement is recommended with PCST, as opposed to amending Agreement No. 2264 or issuing a Revocable Permit, to provide flexibility while undertaking the RFP process for the long-term operator.

Terms – The Operating Agreement will have a term of 21 months, retroactively commencing on January 1, 2011. Due to ongoing negotiations that were completed in September 2011, the term of this Operating Agreement is backdated, as this action will terminate Agreement No. 2264 effective December 31, 2010. The termination date for the interim Operating Agreement is September 30, 2012, with neither party having the option of termination prior to this date. This is a deviation from the standard practice of providing the Board with termination rights after providing written notice to the contractor. This deviation was proposed to ensure that the Harbor Department has continuity for the operation of the cruise terminal while going through the RFP process.

The interim Operating Agreement requires PCST to manage and oversee all cruise terminal operations. The Harbor Department will pay PCST a flat fee (a fee paid by the Harbor Department to PCST on a per-vessel basis to operate the cruise terminal) of \$9,655 per vessel call, payable on a monthly basis during the first year. The fee is inclusive of all charges. Should a vessel on a single call remain at berth at the cruise terminal in excess of the number of days scheduled by the vessel owner, PCST shall receive a daily fee of \$3,186 for each such excess day for up to ten days. If such vessel remains at berth at the cruise terminal beyond ten days, PCST shall receive no compensation from the Harbor Department.

Beginning January 1, 2012, the flat fee for vessel calls will be adjusted by the CPI. The total amount of the contract for the first year, based on an estimated 151 cruise vessel calls from January 1, 2011 through December 31, 2011, is approximately \$1,457,905. In addition to the change in the fee structure, the Harbor Department will also be responsible for all utility services under this Operating Agreement and PCST will be responsible for collecting all applicable revenues for utilities for the Harbor Department.

Under this Operating Agreement, PCST is also obligated to maintain insurance requirements that include general liability, fire legal liability, automobile liability, workers compensation, and employer liability, as detailed in the attached agreement.

**DATE: SEPTEMBER 21, 2011**

**PAGE 4 OF 5**

**SUBJECT: NEW SHORT-TERM OPERATING AGREEMENT WITH PACIFIC CRUISE SHIP TERMINALS, LLC**

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an interim Operating Agreement with PCST for the continued management and operation of the cruise terminal. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no direct employment effect.

**FINANCIAL IMPACT:**

The proposed 21-month Operating Agreement with PCST memorializes the framework under which the Harbor Department will compensate PCST for managing and overseeing cruise terminal operations through the end of the term of the Operating Agreement, at which time the Harbor Department's pending RFP process for a cruise terminal operator is expected to be completed. During the term of the Operating Agreement, PCST will submit documentation to the Harbor Department evidencing the number of cruise ship calls, for which the Harbor Department will remit to PCST a flat fee of \$9,655 per call (indexed to CPI beginning calendar year 2012) to compensate PCST for its terminal operating services.

In the current fiscal year, \$2,000,000 has been budgeted for cruise line activity in Account 54290, Center 0424, Project 000. However, at the rate of \$9,655 per call through the end of calendar year 2011, and with a project CPI escalator beginning in January 2012 when the per call cost is expected to be \$9,944.55, the current fiscal year's expenses are expected to be \$2,183,864.45. When the costs of the tents are considered, the costs may escalate to \$2,483,864.45, close to half a million dollars more than budgeted. Although it would appear that the \$2,000,000 in budgeted funds may not be sufficient for the full fiscal year, no action is being requested from the Board for additional funds at this time, as the Real Estate Division will continue to monitor expenditures and activities and look to fund shortfalls from under-used accounts. Funds for the first three months of Fiscal Year 2012/2013 will be sought in the budget process for the upcoming fiscal year.

During Fiscal Year 2009/2010, the Harbor Department's cruise operations business (including parking operations) generated approximately \$10 million in revenues with associated expenses of \$4 million, resulting in net revenues of \$6 million. Going forward under the proposed Operating Agreement, although cruise operations in the current and future years are expected to experience a slowdown, it is expected that the cruise operations will still generate sufficient revenues to cover anticipated expenses. In a concurrent Board action reporting on the proposed Settlement Agreement between the Harbor Department and PCST, the financial impacts pertaining to that action are also presented.

DATE: SEPTEMBER 21, 2011

PAGE 5 OF 5

SUBJECT: NEW SHORT-TERM OPERATING AGREEMENT WITH PACIFIC  
CRUISE SHIP TERMINALS, LLC

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the Operating Agreement as to form and legality.

**TRANSMITTALS:**

1. Operating Agreement
2. Site Map

FIS Approval: WP (Initials)

CA Approval: mm (Initials)

  
KARL K.Y. PAN  
Interim Director of Real Estate

  
KATHRYN McDERMOTT  
Deputy Executive Director

APPROVED:

  
GERALDINE KNATZ, Ph.D.  
Executive Director

KP:ST:AA:raw  
Author: S. Thappa  
BL392raw PCST Operating Agreement