

**PORT OF GALVESTON
REQUEST FOR DISCUSSION**

BUSINESS ITEM E-7

PREPARED BY: John G. Peterlin Sr. Dir. of Marketing and Administration September 21, 2017

SUBJECT: Discuss and Consider First Amendment to the Operating Agreement Between the Galveston Port Facilities Corporation and Magical Cruise Company, Limited, doing business as Disney Cruise Line to Provide an Additional 1-Year Renewal Term and to Amend Section 3.09 – Method of Payment of Fees to Conform to Schedule 3.04 - Guaranteed Minimum Annual Passenger Fee as Amended per Section 3.07 of the Operating Agreement

BACKGROUND: Disney Cruise Line commenced a series of Home Port cruises from the Port of Galveston in September 2012. The cruises called at Grand Cayman and Mexico's Costa Maya and Cozumel for two years under an Operating Agreement that was negotiated between the Galveston Port Facilities Corporation (GPFC) and Magical Cruise Company, Limited d/b/a Disney Cruise Line and approved by the Board of Directors of the GPFC. That Operating Agreement expired in September 2014. Disney Cruise Line resumed cruises from the Port of Galveston beginning in November 2015 under the terms of a new Operating Agreement that was approved in October 2015 by the Board of Directors of the Galveston Port Facilities Corporation and Board of Trustees of the Galveston Wharves. The new Operating Agreement provides for a Primary Term of two years from the Effective Date of November 6, 2015 and one additional 1-year period as a Renewal Term. The original agreement does not provide for any renewal terms after November 5, 2018. The Operating Agreement stipulates that the Guaranteed Minimum Annual Passenger Fee shown on Schedule 3.04 will be renegotiated each year starting in the Second Operating Year of the agreement. A new Passenger Fee has been negotiated with and agreed to by Disney Cruise Line. The effective date of the amended Guaranteed Minimum Annual Passenger Fee will be November 6, 2017. In order for Disney Cruise Line to be able to confirm any cruise schedules after November 5, 2018, it is necessary to amend the Operating Agreement to provide for an additional Renewal Term.

RECOMMENDATIONS: The Board of Trustees is respectfully requested to review the attached information, to listen to the briefing of the Interim Port Director and Port staff and to ratify and approve the First Amendment to the Operating Agreement between the Galveston Port Facilities Corporation and Magical Cruise Company, Limited d/b/a Disney Cruise Line for Cruise Operations at the Port of Galveston, which provides for an amended Guaranteed Minimum Annual Passenger Fee and one additional 1-year Renewal Term.

Respectfully Submitted By:



Peter S. Simons, Interim Port Director

DATE ACTION TAKEN: _____

Approved: _____

Disapproved: _____

Deferred To: _____

Incorporated into Minutes: _____

Motion By: _____

Seconded By: _____

Unanimous: Yes _____ No _____

By: _____

**PORT OF GALVESTON
BRIEFING
DISCUSS AND CONSIDER FIRST AMENDMENT TO THE OPERATING AGREEMENT
BETWEEN THE GALVESTON PORT FACILITIES CORPORATION AND MAGICAL
CRUISE COMPANY, LIMITED, DOING BUSINESS AS DISNEY CRUISE LINE TO
PROVIDE AN ADDITIONAL 1-YEAR RENEWAL TERM AND TO AMEND
SECTION 3.09 – METHOD OF PAYMENT OF FEES TO CONFORM
TO SCHEDULE 3.04 - GUARANTEED MINIMUM ANNUAL PASSENGER FEE AS
AMENDED PER SECTION 3.07 OF THE OPERATING AGREEMENT**

Background

Disney Cruise Line commenced a series of Home Port cruises from the Port of Galveston starting on September 22, 2012. The cruises called at Grand Cayman and Mexico's Costa Maya and Cozumel for two years under an Operating Agreement that was negotiated between the Galveston Port Facilities Corporation (GPFC) and Magical Cruise Company, Limited d/b/a Disney Cruise Line and approved by the Board of Directors of the GPFC at the August 2012 Board meeting. That Operating Agreement expired in September 2014. Disney Cruise Line resumed cruises from the Port of Galveston beginning November 6, 2015 under the terms of a new Operating Agreement that was approved in October 2015 by the Board of Directors of the Galveston Port Facilities Corporation and Board of Trustees of the Galveston Wharves. The new Operating Agreement provides for a Primary Term of two years from the Effective Date of November 6, 2015 and one additional 1-year period as a Renewal Term. Disney Cruise Line has properly exercised its option to renew the Operating Agreement for the 1-year Renewal Term, which expires on November 5, 2018. The renewal of the agreement is under the same terms and conditions as provided for the Primary Term, except that the original agreement does not provide for any renewal terms after November 5, 2018.

Current Situation

Section 3.07 and Section 3.09 of the Operating Agreement both stipulate that the Galveston Port Facilities Corporation and Disney Cruise Line will negotiate the Guaranteed Minimum Annual Passenger Fee shown on Schedule 3.04 starting in the Second Operating Year of the agreement, which amended Passenger Fee would be effective at the start of each subsequent Operating Year. A new Passenger Fee has been negotiated with and agreed to by Disney Cruise Line. The effective date of the amended Guaranteed Minimum Annual Passenger Fee will be November 6, 2017.

Disney Cruise Line has indicated to the Galveston Port Facilities Corporation and the Port of Galveston that it is interested in returning to the Port of Galveston for additional sailings during the 2018-2019 winter cruise season. In order for Disney Cruise Line to be able to confirm and implement a 2018-2019 cruise schedule, it is necessary to amend the Operating Agreement to provide for an additional 1-year Renewal Term that would extend from November 6, 2018 to November 5, 2019.

Fiscal Impact

The amendments to Schedule 3.04 of the Operating Agreement will increase the Passenger Fee from \$37.54 to \$40.22 per passenger per voyage. The Guaranteed Minimum Annual Passenger Fee will increase in the Third Operating Year from \$742,391.04 to \$795,390.72, which is a year-over-year increase of approximately \$53,000. The Third Operating Year starts on November 6, 2017 and includes the upcoming winter 2017-2018 Disney Cruise Line sailing schedule from the Port of Galveston.

Staff Recommendation

The Board of Trustees is respectfully requested to review the attached information, to listen to the briefing of the Interim Port Director and Port staff and to ratify and approve the First Amendment to the Operating Agreement between the Galveston Port Facilities Corporation and Magical Cruise Company, Limited d/b/a Disney Cruise Line for Cruise Operations at the Port of Galveston, which provides for an amended Guaranteed Minimum Annual Passenger Fee and one additional 1-year Renewal Term.

FIRST AMENDMENT TO OPERATING AGREEMENT

This agreement (the "Agreement") is effective as of September 30, 2017 by and between the **GALVESTON PORT FACILITIES CORPORATION**, a Texas nonprofit corporation ("Corporation"), and **MAGICAL CRUISE COMPANY, LIMITED, DOING BUSINESS AS DISNEY CRUISE LINE**, a U.K. Company ("Operator").

WHEREAS, Corporation and Operator entered into an Operating Agreement dated as of November 6, 2015 (the "Operating Agreement"), under the terms of which Operator conducts passenger cruise vessel operations from the Port of Galveston as described in the Operating Agreement; and

WHEREAS, Corporation and Operator would like to amend the Operating Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the sum of \$10 and other valuable consideration, the parties mutually agree as follows (any capitalized word not otherwise defined in this Agreement has the meaning given to it in the Operating Agreement):

1. Section 2.02 of the Operating Agreement is deleted in its entirety and the following language is substituted in its place:

Section 2.02 - Renewal Terms. As long as all fees, charges and other sums payable by Operator under this Agreement (collectively, "Fees") are current and Operator is not in default in the performance of its covenants under this Agreement, Operator has the option to renew this Agreement for two additional 1-year periods ("Renewal Terms"), to commence at the expiration of the Primary Term. Operator must exercise this option to renew by delivering written notice of such election to Corporation at least 6 months prior to the expiration of the Primary Term or the preceding renewal term, whichever is applicable. The renewal of this Agreement is upon the same terms and conditions contained in this Agreement, except as is otherwise herein provided, but without any additional option to renew. As used herein, the word "Term" means the Primary Term and any properly exercised Renewal Term.

2. Section 3.09 of the Operating Agreement is deleted in its entirety and the following language is substituted in its place:

Section 3.09 - Method of Payment of Fees. The Passenger Fee is payable in the following manner: Corporation will register in Operator's Finance and Accounting System as a vendor and will be issued a Vendor ID number by Operator. Corporation will invoice Operator directly for the Fees, which will be referenced to the Vendor ID number, and be paid directly by Operator. Commencing in the 3rd Operating Year Operator will pay the Passenger Fee to Corporation by paying the following amounts:

1. \$14.75 plus \$5.36 per passenger for embarkation at the Port and \$14.75 plus

\$5.36 per passenger for disembarkation at the Port when passengers are both embarked and disembarked in the same Vessel call;

2. \$34.86 per passenger when passengers are either exclusively embarked or disembarked at the Port in the same Vessel call; or

3. \$22.91 per passenger with respect to any passenger who arrives on and leaves with a Vessel docking at the Berth without embarking or disembarking at the Port (In Transit), if stevedoring services are not required.

Beginning on the first day of the 2nd Operating Year, Corporation and Operator shall negotiate the amount of the Passenger Fee to be paid during each subsequent year of this Agreement on or before July 1 of each such year. The Method of Payment of Fees described herein will be amended in each such year to conform with agreed changes to the charges and Passenger Fee Grand Total shown in Schedule 3.04. Except as otherwise provided in this Section 3.09, and unless otherwise specified herein, all charges and fees are payable to Corporation in the same manner as would apply to Wharves per the regulations contained in Section 100 of the Tariff.

3. Schedule 3.04 is deleted in its entirety, and Amended Schedule 3.04, attached to this Agreement and incorporated herein is substituted in its place.

4. Except as herein amended, which amendment is effective as of the effective date of this Agreement, the terms of the Phone Service Agreement and the Internet Service Agreement attached hereto as Exhibit "A" remain in full force and effect and are hereby ratified and confirmed.

EFFECTIVE as of September 30, 2017.

CORPORATION:

**GALVESTON PORT FACILITIES
CORPORATION**

By: _____
Peter S. Simons, President

OPERATOR:

MAGICAL CRUISE COMPANY, LIMITED

By: _____
Name: _____
Title: _____

Approved as to form:

Counsel to the Board of Trustees
of the Galveston Wharves

Amended Schedule 3.04 – Example of Calculation of Guaranteed Minimum Annual Passenger Fee for Third Operating Year [Section 3.08] - DRAFT

Disney Cruise Lines - Galveston Port Facilities Corporation

November 6, 2017

Item	First Year Rate
Ship Agent (to be handled by DCL directly)	0.00
Passenger Wharfage (Total Invoiced to DCL on Per Voyage Basis) (Guaranteed Minimum Passenger Count per Voyage = 2,472 Passengers) (Invoiced as \$5.36 per actual passenger disembarked and embarked.)	10.72
Vessel Dockage (\$13,297.70 per port call / 2,472 passengers)	5.38
Water (DCL to handle directly.)	
Water hook up (DCL to handle directly.)	
Stevedoring (Quote from Metro Cruise Services based on actual average passenger cost from 2016-2017 season)	11.95
Line Handling Services (\$825.00 per voyage)	0.33
Pilot Services (Actual Average Passenger Cost from 2016-2017 season updated to reflect increase in the 2017 Gal-Tex Pilot Tariff)	2.75
Trash Collection (DCL to handle directly.)	0.00
Terminal Security Services (Basis USSA Quote \$15,212.88)	6.15
Terminal Security Services - Add K9 (Average cost \$3,785)	1.53
Sub Total:	\$ 38.81
Administrative Fee Charge	0.41
Sub Total:	\$ 39.22
Port Security Surcharge (Total to be Invoiced to DCL on Per Voyage Basis) (\$1.00 per passenger embarked per port call)	1.00
Sub Total:	\$ 40.22
Tonnage Tax (Invoiced to DCL separately, if GPFC is invoiced.)	\$ -
Sub Total:	\$ 40.22
Customs Clearance (Invoiced to DCL separately, if GPFC is invoiced.) (Including APHIS and User Fees.)	\$ -
Sub Total:	\$ 40.22
Passenger Fee Grand Total:	\$ 40.22

Calculation of Guaranteed Annual Passenger Fee:

Minimum Passenger Count (2,472) x Minimum Homeport Operations (8) x \$40.22 = \$795,390.72