

**PORT OF GALVESTON
REQUEST FOR DISCUSSION AND
TRUSTEES ACTION**

**BUSINESS
ITEM**

PREPARED BY: Anthony Brown Port Attorney May 5, 2023

SUBJECT: Discuss and Consider Approval of Agreed Termination of Economic Development Agreement with Carnival Corporation

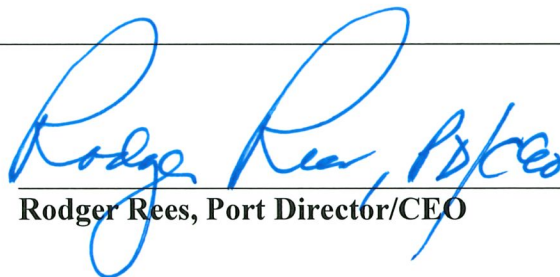
BACKGROUND: The Board of Trustees previously entered into an Amended and Restated Economic Development Agreement with Carnival Corporation (“Carnival”) in October 2015. Under this Agreement, the Galveston Wharves is required to pay Carnival a portion of Wharves’ annual parking revenues, when certain requirements were met.

As part of the negotiations concerning the Second Amendment to the Amended and Restated Operating Agreement (Business Item C.1.), the Wharves and Carnival have agreed to terminate this Agreement, subject to Board Approval.

ADDITIONAL INFORMATION ATTACHED: No _____ Yes x _____

RECOMMENDATIONS: The Board of Trustees is respectfully requested to approve the Agreed Termination of the Amended and Restated Economic Development Agreement with Carnival Corporation, as presented.

Respectfully Submitted By:



Rodger Rees, Port Director/CEO

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 APPROVAL OF AGREED TERMINATION OF ECONOMIC DEVELOPMENT AGREEMENT WITH CARNIVAL CORPORATION

Background

The Board of Trustees previously entered into an Amended and Restated Economic Development Agreement with Carnival Corporation (“Carnival”), effective as of October 1, 2015. This Agreement required the Wharves to pay Carnival a “marketing fee” equal to a percentage of the Wharves’ parking revenues in excess of certain threshold amounts, which varied based on the number of Carnival’s cruise ships operating out of the Port of Galveston. As an example, if Carnival operated three cruise ships at the Port, it would receive 37.5% of the Wharves’ annual parking revenues in excess of \$4.25 million. (This “marketing fee” is in addition to, and separate from, the “market incentive fee” payable under the Amended and Restated Operating Agreement.)

Current Situation

During negotiations concerning the proposed Second Amendment to the Amended and Restated Operating Agreement, Carnival agreed to Wharves’ request to terminate this Agreement. Carnival has executed the proposed Agreed Termination document.

Fiscal Impact

Staff will provide information to Trustees during the meeting.

Staff Recommendation

Staff recommends that the Board of Trustees approved the Agreed Termination of the Amended and Restated Economic Development Agreement with Carnival Corporation, as presented.

Attachments

5-5-2023

Agreed Termination of Amended and Restated Economic Development Agreement

This Agreed Termination of the to the Amended and Restated Operating Agreement (“Agreed Termination Agreement”) is effective as of December 31, 2022 (the “Agreed Termination Date”), terminating that certain Amended and Restated Economic Development Agreement entered into by and between Carnival Corporation, a Panamanian corporation (“Operator”) and the Board of Trustees of the Galveston Wharves (“Wharves”), a party thereto and also as Assignee and successor of the Galveston Port Facilities Corporation, a Texas nonprofit corporation (“Corporation”) (Operator and Wharves each being a “**Party**” and together the “**Parties**”).

RECITALS

WHEREAS, Operator and Corporation are parties to that certain Amended and Restated Economic Development Agreement dated and effective as of October 1, 2015 (the “Agreement”); and

WHEREAS, Corporation assigned its rights and obligations under the Agreement to Wharves pursuant to that Assignment effective as of March 1, 2020, under which Corporation assigned all of its rights and interest in the Agreement to Wharves, and Wharves agreed to assume all of Corporation’s obligations under the Agreement; and

WHEREAS, Operator and Wharves have agreed that the Agreement shall be terminated as of the Agreed Termination Date; and

WHEREAS, capitalized terms utilized herein, and not defined, shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, Wharves and Operator agree, pursuant to Section 5.06 of the Agreement, as follows:

1. **Agreed Termination**. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Wharves and Operator agree that the Agreement shall be terminated as of the Agreed Termination Date, and that neither Wharves, Corporation nor Operator shall have any further rights, duties or obligations thereunder to the other Parties, and the Agreement shall be null and void.
2. **Counterparts**. This Amendment, including a facsimile or photocopy hereof, may be signed in counterpart, each of which shall be an original, with the same effect as if the signature thereto and hereto were upon the same instrument.

In Witness Whereof, the Parties have executed this Agreed Termination Agreement as of the date first set forth above.

WHARVES

**BOARD OF TRUSTEES OF THE GALVESTON
WHARVES**

By: _____
Rodger E. Rees
Port Director/CEO

OPERATOR

CARNIVAL CORPORATION

By: _____ *Renata Ribeiro* _____
Name: _____ Renata Ribeiro _____
Title: _____ SVP of Strategic Operations _____