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1/14/21

RECOMMENDATION APPROVED;
RESOLUTION 21-9747 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS



THE PORT
OF LOS ANGELES
Executive Director's
Report to the
Board of Harbor Commissioners

January 14, 2021

Amber M. Klesges
AMBER M. KLESGES
Board Secretary

DATE: DECEMBER 15, 2020

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 21-9747 - APPROVE SECOND AMENDMENT TO PERMIT NO. 899 WITH PACIFIC BATTLESHIP CENTER

SUMMARY:

Staff requests approval of the Second Amendment to Permit No. 899 (P899) with Pacific Battleship Center (Pacific Battleship), a museum and educational facility. P899 has a ten-year term that commenced May 25, 2012, and two, five-year options to extend the term.

Due to the current COVID-19 pandemic, Pacific Battleship has temporarily closed or has been operating on a minimal basis as a result of state and local government orders, which has impacted their ability to pay compensation. The Second Amendment will include required revisions to P899's compensation requirements, including compensation deferral terms, a compensation deferral period, and repayment period.

Under the Second Amendment, Pacific Battleship's fixed minimum compensation would be deferred for up to 12 months, while four percent of gross receipts would continue to be paid. The actual amount deferred each month would be the difference between that month's four percent of gross receipts and Pacific Battleship's contractually-guaranteed monthly minimum compensation. The total deferred amount would be paid back over a period in equal monthly payments. Approval of the Second Amendment will result in a total minimum compensation deferral amount estimated at between \$66,000 and \$96,000, which would be repaid over an 11-month period from July 1, 2021 to May 25, 2022.

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Find that it is in the best interest of the City of Los Angeles to grant deferral of minimum rent under the Second Amendment to Permit No. 899, as the City of Los Angeles Harbor Department derives substantial long-term economic benefits from the operation of a successful museum and educational facility;

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3. Approve the Second Amendment to Permit No.899 with Pacific Battleship Center;
4. Direct the Board Secretary to transmit the Second Amendment to Permit No. 899 to the City Council for approval pursuant to Section 606 of the City Charter;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Permit No. 899 upon approval by the City Council; and
6. Adopt Resolution No. 21-9747.

DISCUSSION:

Background – P899 between the City of Los Angeles Harbor Department (Harbor Department) and Pacific Battleship grants use of approximately 4.43 acres of property at Berths 88-89 for the berthing, maintenance, and operation of the USS Iowa as a museum and educational facility; venue for maritime and military-related events; special events that promote the LA Waterfront; sleepover programs; filming; special events with prior Harbor Department approval; and storage of associated equipment, material, and supplies.

Pacific Battleship's operations and resulting cash flow have been severely impacted by the COVID-19 pandemic. Despite utilizing all COVID-related assistance programs available to them, Pacific Battleship continues to be hobbled by the pandemic directives and significant tourism decline, which has limited Pacific Battleship's ability to pay compensation. With the pandemic continuing, Pacific Battleship is bracing for an extended period of extremely low economic activity prior to recovery and submitted a request for compensation deferral on May 4, 2020. Based on financial data reviewed by staff, it is estimated that Pacific Battleship has lost a minimum of 63 percent in revenue due to state and local government mandated closures and limited operation guidelines.

Rent Deferral Evaluation Criteria – Due to the potential financial impacts caused by the COVID-19 pandemic, the Harbor Department has developed criteria for evaluating potential rent relief requests received from Waterfront/Commercial tenants. The criteria include the following evaluation factors:

Tenant History

- Type of Business – Visitor Serving; Outdoor Museum
- Tenant in Good Standing Prior to COVID-19 – Yes. Prior to the pandemic, Pacific Battleship was a tenant in good standing and their compensation is paid through June 2020.
- Time Left on Permit Term – 12 Years (including options at tenant discretion)

COVID -19 Impact on Business

- Business Impacted by Government Directives – Yes
 - Federal/State/Local – Local, State, and Federal Government Orders, including COVID-19 City Guidelines published on March 12, 2020 have negatively affected the Pacific Battleship business. Pacific Battleship was closed for a total of 114 days.
 - Dates of Impact – March 12, 2020 and ongoing. Because of mandated social distancing requirements, Pacific Battleship has been faced with spacing challenges and is currently operating with limited outside tours permitted to six people per tour.

- Did they apply for Federal Assistance – Yes
 - If yes, what did they apply for and what did they receive? Paycheck Protection Program (PPP) Loan for \$254,225 and SBA Economic Injury Disaster Loan for \$150,000
 - Impact on Jobs - Pacific Battleship has furloughed 30 of its 53 staff members and the remainder of the staff has taken pay cuts

- Proof of Business Lost – Yes
 - Pacific Battleship has provided detailed operating statements and attendance information verifying the COVID-19 impact on revenues. Below is a chart detailing Pacific Battleship's actual year-to-date attendance numbers and estimates for calendar year 2020.

PACIFIC BATTLESHIP ACTUAL/FORECAST 2020												
	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
	Actual	Forecast	Forecast									
Volunteers	218	211	134	49	110	111	106	98	101	106	189	54
Paid Visitors	10,215	8308	2536	0	54	1500	1674	2331	2539	2203	2641	2554
Guest Visitors	348	576	310	20	0	46	65	110	130	43	374	240
Total Visitors	10781	9095	2980	69	164	1657	1845	2539	2770	2352	3204	2848

- Monthly Minimum Compensation Compared to Total Percentage Compensation Paid (January 2019 through October 2020)
 - January 2019 – October 2019 Percentage Compensation - \$10,163.03
 - January 2020 – October 2020 Percentage Compensation - \$0
 - As illustrated in the chart below, Pacific Battleship's total gross sales year-to-date through October are \$762,241.50 which represents a 67.5 percent decrease when compared with the January through October 2019 period.

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2019	Gross Sales	Min. Rent	% Rent Only	% Rent > Min. Rent	2020	Gross Sales	Change from 2019	Min. Rent	% Rent Only	% Rent > Min. Rent
January	\$208,886.44	\$8,583.33	\$8,355.46	---	January	\$216,183.91	3.50%	\$8,840.83	\$8,647.76	---
February	\$193,406.13	\$8,583.33	\$7,736.25	---	February	\$198,847.71	1.00%	\$8,840.83	\$7,953.91	---
March	\$258,665.32	\$8,583.33	\$10,346.61	\$1,763.28	March	\$94,187.94	-63.59%	\$8,840.83	\$3,767.52	---
April	\$212,480.27	\$8,583.33	\$8,499.21	---	April	\$23,124.70	-89.12%	\$8,840.83	\$924.99	---
May	\$225,599.20	\$8,583.33	\$9,023.97	\$440.64	May	\$10,426.91	-95.38%	\$8,840.83	\$417.08	---
June	\$277,602.76	\$8,583.33	\$11,104.11	\$2,520.78	June	\$34,431.47	-87.60%	\$8,840.83	\$1,377.26	---
July	\$276,032.59	\$8,583.33	\$11,041.30	\$2,457.97	July	\$42,086.78	-84.75%	\$8,840.83	\$1,683.47	---
August	\$265,753.86	\$8,583.33	\$10,630.15	\$2,046.82	August	\$42,572.29	-83.98%	\$8,840.83	\$1,702.88	---
September	\$244,359.14	\$8,840.83	\$9,774.37	\$933.54	September	\$50,421.33	-79.37%	\$9,081.81	\$2,016.85	---
October	\$185,952.36	\$8,840.83	\$7,438.09	---	October	\$49,948.45	-73.14%	\$9,081.81	\$1,997.94	---
November	\$189,836.23	\$8,840.83	\$7,593.45	---						
December	\$188,763.25	\$8,840.83	\$7,550.53	---						
	\$2,727,337.55	\$104,029.96		\$10,163.03	y-t-d	\$762,241.50	-67.540%	\$88,744.26	\$30,489.66	
Total Rent 2019				\$114,192.99						

Proposed Second Amendment - The proposed Second Amendment (Transmittal 1) will include required adjustments to help Pacific Battleship recover from the significant and prolonged loss of business by providing minimum compensation deferral as described below.

Summary of Significant Amendment Terms:

Provisions	Description
Compensation Deferral Period	July 1, 2020 through June 30, 2021 (12 months)
Compensation Deferral Terms	<ul style="list-style-type: none"> Tenant to pay four percent of gross receipts through deferment period If four percent of gross receipts is less than minimum compensation due each month, the deficit may be deferred Late fees shall apply to compensation received after the due date Compensation deferral amount shall not incur late fees or other finance charges
Repayment Period	<ul style="list-style-type: none"> July 1, 2021 through May 25, 2022
Repayment Calculation	<ul style="list-style-type: none"> Total compensation deferred shall be paid back in equal monthly installation payments
Recalculation Period	Within 30 days after deferment period ends

As only fixed minimum compensation is deferred, Pacific Battleship will continue to pay four percent of gross receipts on the calendar year gross receipts to-date, as follows:

- Compensation of four percent of monthly Gross Receipts as defined P899
 - Example: In March 2021, gross receipts are \$30,000. Based on the current four percent threshold, Pacific Battleship would pay \$1,200.00 and defer \$7,808.81 of the \$9,008.81 compensation obligation.

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Deferment is not a “gift of public funds” as all compensation will be recovered during the repayment period and it does not confer benefits to a private party in ways that might disadvantage public interests. Furthermore, the proposed deferment is an expenditure for a public purpose which is permissible as the proposed deferment protects the local economy and promotes compliance with public COVID-19 health guidelines, which are fundamental purposes of the government.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Second Amendment to P899 with Pacific Battleship that would amend P899’s compensation requirements, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the Second Amendment would revise P899 to allow Pacific Battleship to defer up to 12 months of compensation obligations which would have been otherwise due through June 2021. Under the proposed Amendment, Pacific Battleship would continue to pay four percent of gross receipts. However, to the extent that monthly percentage rent falls below Pacific Battleship’s contractually-guaranteed monthly minimum compensation, the difference will be deferred.

Through four months from July 1 – October 31, 2020, Pacific Battleship percentage compensation of \$7,401.15 fell \$28,298.13 (\$7,074.53 per month on average) below the \$35,699.28 minimum compensation obligation over that four-month period. Under the proposed Amendment, the \$28,298.13 difference between percentage compensation and minimum compensation would be deferred to a later date. Assuming that this four-month differential persists over the 12-month deferral period, Pacific Battleship would likely defer payment of approximately \$85,000 until May 25, 2022.

Given the high degree of uncertainty regarding Pacific Battleship’s business prospects and ability to generate percentage compensation through June 2021, staff estimates that, based on monthly deferrals of between \$5,500 and \$8,000 over a 12-month period, ultimately anywhere from \$66,000 - \$96,000 could be deferred for repayment through May 25, 2022 if the proposed Amendment is approved.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Second Amendment to Permit No. 899 as to form and legality.

TRANSMITTAL:

1. Second Amendment

FIS Approval: 

CA Approval: 

Michael J. Galvin

MICHAEL J. GALVIN

Director of Waterfront & Commercial Real Estate

Michael DiBernardo

MICHAEL DIBERNARDO

Deputy Executive Director

APPROVED:



EUGENE D. SEROKA

Executive Director

ES:MG:HP:KK:MS:raw

Author: Meagan Sestich

BL865raw Pacific Battleship Amendment