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**PARKS, RECREATION & FACILITIES COMMISSION MEETING AGENDA**

March 19, 2026

6:00 p.m. – Regularly Scheduled Meeting

Notice is hereby given that the Parks, Recreation & Facilities Commission will meet on Thursday, March 19, 2026, starting at 6:00 PM in the City Council Chambers in City Hall located at 321 E. 5th Street, Port Angeles, WA. This meeting will be conducted as a hybrid meeting. In hybrid meetings, members of the public, Committee members, and City staff have the option to attend the meeting in person, at City Hall, or remotely via telephone or video link. The meeting is open to the public.

**Audio only:** 1-844-992-4726**Access code:** 2553 397 2167**Webinar password:** reFFmA8su35 (73336287 when dialing from a phone or video system)

Once connected, press \*3 to raise your virtual hand if you wish to make a comment. You will be notified when it is your turn to speak. This access code is good for the March 19, 2026 meeting only.

**Webex link:** <https://cityofpa.webex.com/cityofpa/j.php?MTID=m7ec1c9bcfc71ac662750d1cfaa850c41>

*To make a public comment, please use the “raise your hand” feature in Webex. You will be notified when it is your turn to speak.*

**A. Call to Order: Regular Meeting at 6:00 p.m.****B. Roll Call-** Administrative Coordinator, Ireland Judge**C. Approval of Minutes:** February 19, 2025, Regularly Scheduled Meeting Minutes**D. Late Items:****E. Public Comment****F. Finance/Packet Items:** 2026 Expenditure and Revenue Report- Not Available**G. Legislation:**

1. Laurel Street Stairs- Discussion Only
2. Preferential Lease Agreement- American Cruise Line

**H. Guest Speaker:** None**I. Director’s Report – Information Only**

1. Laurel Street Stairs – Next Steps
2. Ediz Hook Floats Installation
3. Seasonals/Spring Sports
4. Turf Tank



**PORT ANGELES**  
WASHINGTON, U.S.

**PARKS, RECREATION &  
FACILITIES COMMISSION**

5. Diamond Dust
6. Waterfront Trail Update
7. Big Spruce Up- Waterfront District
8. State of the City- City Manager West Presentation

**J. Discussion**

**A. Adjournment**



**PARKS, RECREATION & FACILITIES COMMISSION  
REGULAR MEETING**

Port Angeles, WA  
February 19, 2026

*The meeting was conducted as a hybrid meeting.*

**CALL TO ORDER:** The meeting was called to order by Chairperson Kiedrowski at 6:08 p.m.

**Members present:** Commissioner Andrews, Vice-Chairperson Collins, Chairperson Kiedrowski, Commissioner McCaughan, and Student Representative Garcelon. Commissioner Houck attended virtually. Commissioner Hilory was present virtually at 6:11pm.

**Members absent:** Commissioner Fischbein

**Staff present:** Director Corey Delikat, Parks Manager Timothy Tucker, Project Manager David Wegener, Clerk Ireland Judge.

**APPROVAL OF MINUTES:**

**It was moved by McCaughan and seconded by Collins to:**  
Approve the January 15, 2026 Regular Meeting minutes.  
**Motion carried 5-0**

**LATE ITEMS:** None.

**PUBLIC COMMENT:** None.

**FINANCE & PACKET ITEMS:** There are no updated financials at this time.

**LEGISLATION:** None.

**GUEST SPEAKER:** Scott Olson and Philip VanDevanter of RWD Landscape Architects were in attendance virtually to present during the Director's Report.

**DIRECTOR'S REPORT:**



- 1. Laurel Street Stairs:** Director Delikat began by explaining the purpose and expectations of the current meeting. Members of City staff, Sargent Engineering, and RWD Landscape Architects were present to share two conceptual designs for the Laurel Street Stairs.

Director Delikat opened the presentation by reviewing a brief history of the stairs. Notably, plaza improvements that were completed in 1983. The fountain was renamed after Conrad Dyar, to honor the Parks Commissioner who passed away unexpectedly. Other additional improvements over the years included painting, additional seating, improved planting areas, and pump replacements. Director Delikat noted that caring for the pumps in the fountain has become increasingly difficult.

In 2001, City Council approved the Laurel Street Stairs Replacement Project (TR-101). Funding falls under the category of transportation project because of additional grant opportunities. In 2022 funding for the design project was approved and is currently \$750,000. This funding will cover either of the designs that is chosen.

Director Delikat shared images of construction and other elements on the Laurel Street Stairs which have been updated throughout the years.

Parks Manager, Timothy Tucker, reviewed the timeline of the stair's renovation project from 2021 on. Tucker shared information related to various presentations, workshops, surveys, and other public input that has been considered in creating the current stair designs, including 700 total individual inputs collected from the community. Tucker also highlighted the involvement and feedback of Elevate Port Angeles and the Welcoming Design Advisory Group to identify safety and maintenance needs as well as community desires.

Capital Project Manager, David Wegener, discussed maintenance and safety code concerns that are addressed in the new stair designs. Wegner shared that the current stair measurements are out of code and the wood stairs is failing, making them unusable at times during winter months. The new designs will use galvanized steel open grates which will alleviate maintenance issues.

Philip VanDevanter of RWD Landscape Architects presented an overview of the two design options. The first option, titled "Monumental Stairs" was first shared with the public in 2023. This option restructures the stairs to be centered on Laurel Street and would relocate the existing mural, allowing for new opportunity for public art.

Option two, titled "Community Plaza" is the lower cost option, and is similar to the design of the current stairs, lifted higher to reduce the number of hiding spots which addresses public concern. In this option the existing mural could stay, and the fountain would be removed which opens the plaza for community events.



Scott Olson, also of RWD Landscape Architects joined to discuss design cost and underscored the importance of safety features, maintainability, and integrity of structure throughout both designs.

The 2028 cost estimate which includes design and construction for the high-cost option, “Monumental Stairs” is \$3.6 million dollars. Cost drivers for this project include volume of work and material, as recentering the stairs will include geotechnical and structural considerations.

The 2028 cost estimate which includes design and construction for the low-cost option, “Community Plaza” is \$1.8 million. This estimate is a result of the design requiring less modifications and a smaller volume of work, as the design maintains the existing alignment of stairs but does reduce the slope of the stairs to meet code.

Director Delikat thanked community members who have participated in the project since 2021 and reiterated that funding for this project is contingent upon grants. Director Delikat closed by reviewing the next steps: Commissioners will make a recommendation at the March 19<sup>th</sup> regular meeting, that recommendation will be taken to a future City Council Meeting, if approved, the City will move forward with the final design.

**DISCUSSION:** Director Delikat and RWD Landscape Architects took questions from commissioners. Director Delikat invited those present in person to participate in a survey to share feedback on their design preference and emphasized that the survey would be posted online for the community to participate in over the next two weeks.

**ADJOURNMENT:** Chairperson Kiedrowski adjourned the meeting at 6:46 p.m.

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Dallas Kiedrowski, Chairperson

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Ireland Judge, Clerk



**Date:** March 19, 2026  
**To:** Parks, Recreation, & Facilities Commission  
**From:** Corey Delikat, *Parks & Recreation Director*  
**Subject:** American Cruise Line- Preferential Lease Agreement

**Summary:** In 2017 the City of Port Angeles started working with American Cruise Line (ACL) on yearly docking at the City Pier for weekly rentals. In 2025, the two entities started working on a draft Preferential Lease Agreement. This agreement would allow ACL use to the Preferential Use Area (the northern portion of the City Pier dock) for the limited purposes of docking, loading and unloading of cargo and passengers, and vessel operations for their scheduled use over the next seven year period. The City and general public will still be able to use the area for recreational and maintenance purposes.

**Strategic Plan:** This Preferential Lease Agreement directly aligns with Strategic Plan Reference: Area #2 – Citywide Resource Optimization Goal “A”- Maintain Fiscal Health by adding additional revenue to the General Fund.

**Funding:** General Fund revenue for this Preferential Lease Agreement consists of \$35,000 per year plus WA CPI% and 1% per year. This agreement will increase revenue with ACL by a minimum of 68% on average.

**Recommendation:** Provide a favorable recommendation of the proposed seven (7) year Preferential Lease Agreement with American Cruise Line which will then be taken to City Council for approval at the April 7, 2026 meeting.

**Relationship to the Strategic Plan:** This Preferential Lease Agreement directly aligns with Strategic Plan Reference: Area #2 – Citywide Resource Optimization Goal “A”- Maintain Fiscal Health by adding additional revenue to the General Fund.

**Background / Analysis:** Since 2017 the City of Port Angeles has worked with American Cruise Line on weekly docking throughout the year at the Port Angeles City Pier. Since 2019 to 2025 (no 2020 due to pandemic) these rentals have accumulated \$124,950 in revenue, averaging \$20,825 per year.

In 2025, the City started working with American Cruise Lines (ACL) on a draft Preferential Lease Agreement. This would allow ACL use on a non-continuous, ship-by-ship basis to the Preferential Use Area (the northern portion of the City Pier dock) for the limited purposes of docking, loading and unloading of cargo and passengers, and vessel operations for their scheduled use.

As part of the Preferential Lease Agreement, the City agrees to accept and honor all of ACL’s docking reservations that are submitted to the City on or before January 31st for that calendar year. The City will manage and schedule all third-party passenger vessel operators’ docking requests at the Preferential Use Area until after ACL’s Preferential Use deadline has passed. For example, ACL shall submit its docking

reservations by January 31, 2026, and the City will not accept any third-party request for the 2026 calendar year until February 1, 2026. The City and general public will still be able to use the area for recreational and maintenance purposes.

**Funding Overview:** General Fund revenue for this Preferential Lease Agreement consists of \$35,000 per year plus WA CPI% and 1% per year. This agreement will increase revenue with ACL by a minimum of 68% on average.

## PREFERENTIAL USE AGREEMENT

**THIS PREFERENTIAL USE AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_, 2026, by the City of Port Angeles, Washington, a municipality of the State of Washington (the “City”), and American Cruise Lines, Inc., a Delaware corporation (“American”).

The following exhibits are attached hereto and incorporated herein by reference:  
Exhibit “A” Depiction of the Preferential Use Area

NOW, THEREFORE, in consideration of the agreements, promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and American hereby agree as follows:

1. **PREFERENTIAL USE AREA:** (a) The City grants American a non-exclusive license on and across, and for the purpose of utilizing, that certain docking structure located at 368 North Lincoln Street, Port Angeles, Washington 98362 which is commonly referred to as “City Pier” and which extends from the shoreline into the Port Angeles Harbor, and which is depicted in Exhibit “A” as the “Preferential Use Area” together with any and all improvements, benefits, rights of way, means of egress and ingress, and easements benefiting the Preferential Use Area now existing and hereafter erected thereon or for the benefit thereof and all rights, privileges and appurtenances belonging thereto (the “Preferential Use Area”).

2. **PREFERENTIAL USE:** (a) The City grants American (the “Preferential User”) a right of preferential use on a non-continuous, ship-by-ship basis to the Preferential Use Area for the limited purposes of docking, loading and unloading of cargo and passengers, and vessel operations (“Preferential Uses”). The City and general public shall have the right to enter and use the Preferential Use Area for docking at all times; PROVIDED, when scheduled, the Preferential User shall have primary right to dock along the northern portion of the City Pier dock per section 4 below..

(b) American’s use of the Preferential Use Area and operation of its business on the Preferential Use Area shall at all times be in accordance with all applicable laws, rules, regulations, statutes, and ordinances.

3. **PAYMENT:** In consideration for American’s use of the Preferential Use Area, American shall pay the City a fixed annual fee in the amount of \$35,000 with an annual increase each year as per the Consumer Price Index (CPI) for Washington State, plus an additional 1% (WA CPI % + 1%). (the “Preferential Use Fee”). The Preferential Use Fee shall be due on April 1st of each agreement year. In addition to the annual Preferential Use Fee, American shall pay the City an additional fee of \$300 per vessel utilizing the Preferential Use Area (the “Additional Use Fee”). The City shall invoice American monthly for the Additional Use Fee, which shall be due within 30 days of receipt of the invoice from the City. The Preferential Use Fee and the Additional Use Fee are herein collectively referred to as the “Usage Fee.” American’s Usage Fee secures American with the Preferential Use Rights as described in Paragraph 2 and 4 for each calendar year during the Term.

4. **TAXES:** In addition to the Usage Fee provided in this Agreement, American shall pay when due all taxes and other charges which are levied at any time during the term of the Agreement upon the leasehold interest and any improvements on the Premises, including leasehold excise tax pursuant to chapter 82.29A RCW. If the City receives a notice of assessment from any taxing jurisdiction claiming that the City or American is liable for any tax or charge for which American has agreed to make payment under this paragraph, the City shall notify American in writing no later than thirty (30) days after receipt of the claim.

4. **PREFERENTIAL USE RIGHTS AND SCHEDULING OF DOCKING RESERVATIONS:** In consideration of American’s Usage Fee, the City agrees to grant American preferential docking reservation rights for American’s use of the Preferential Use Area for each year during the Term (“Preferential Use Rights”). Pursuant to American’s Preferential Use Rights, the City agrees to accept and honor all of American’s docking reservations that American submits to the City on or before January 31st for that calendar year. The City shall manage and schedule all third-party passenger vessel operators’ docking requests at the Preferential Use Area. The City shall not accept any third-party request until after American’s Preferential Use deadline has passed. For example, American shall submit its docking reservations by January 31, 2026, and the City shall not accept any third-party request for the 2026 calendar year until February 1, 2026. This

example shall remain applicable throughout the term and any extensions of this Agreement. All third-party passenger vessel operators' docking reservations shall be subject to American's right, as Preferential User, to modify its docking schedule in the unlikely event that an unforeseen circumstance, i.e. a mechanical failure or unforeseen weather events, or any unforeseen circumstance similar that requires American to modify or adjust its schedule, or a Force Majeure event, as defined in paragraph 14, requires a revision to American's schedule.

5. **TERM OF AGREEMENT:** The term of this Agreement (the "Term") shall be for a period of seven (7) years, which shall commence on \_\_\_\_\_ (the "Commencement Date") and shall end on the last day of the month following the seven (7) years after the Commencement Date, unless sooner terminated or extended as herein provided. During the Term of the Agreement, American's Preferential Use Rights shall remain in full force and effect.

6. **OPTIONS TO EXTEND:** The City hereby grants to American an option to extend the Term for two (2) consecutive additional periods (the "Extension Periods") of five (5) years each on the same terms and conditions as for the Term, except as otherwise provided for herein. The option shall be exercised automatically unless either Party gives notice of its desire not to renew this Agreement to the other Party at least six (6) months before the expiration of the Term, and upon any such automatic extension, the Extension Period shall become part of the Term. Upon such automatic extension, American's Preferential Use Rights and Scheduling Rights shall automatically extend subject to the following terms and conditions as are provided herein.

7. **MAINTENANCE AND OPERATION OF THE PREFERENTIAL USE AREA:** (a) American shall have preferential use of the Preferential Use Area pursuant to its Preferential Use Right as set forth herein. However, the City retains ultimate control over the Preferential Use Area and surrounding facilities and intends for the Preferential Use Area and those surrounding facilities to be used and enjoyed by others. Accordingly, the City shall be responsible for maintaining the Preferential Use Area and surrounding facilities in a good, safe, and workmanlike manner and agrees to make any and all repairs to the Preferential Use Area and surrounding facilities necessary for American's Intended Use as well as for the public's enjoyment as permitted by the City. The City shall make all necessary repairs and/or remediate any deficient or deteriorated conditions in the Preferential Use Area and surrounding facilities within a reasonable amount of time of notice of the same. Furthermore, the City shall monitor, control, and supervise the public or other operator's access to and use of the Preferential Use Area and surrounding facilities such that the use of the Preferential Use Area and surrounding facilities is done in a safe and responsible manner and that it does not interfere with American's Intended Use of the Preferential Use Area. As a part of the City's responsibility, the City shall set forth hours of operation during which time the public may safely access the Preferential Use Area and surrounding facilities. The City shall bear all responsibility for insuring against all risk of loss associated with the public or other operator's use of the Preferential Use Area and surrounding facilities. The City shall provide potable water and trash or refuse collection ("Utility Costs"). American agrees to be responsible for and shall pay for its metered use of the water at the Preferential Use Area. American also agrees to be responsible for the costs associated with trash or refuse collection when its vessels utilize the Preferential Use Area. The City shall invoice American for American's Utility Costs on a monthly basis. These invoices shall be paid by American within thirty (30) days of receipt.

(a) The preceding paragraph notwithstanding, nothing in this Agreement shall obligate the City to undertake maintenance and/or operation activities, beyond the usual wear and tear, which arise from the acts, errors or omissions of American in the performance of this Agreement.

8. **THE CITY'S USE AND MAINTENANCE OF ADJACENT PROPERTY:** The City, as owner of the pier and property adjacent to the Preferential Use Area and surrounding facilities ("Adjacent Property"), shall allow American to cross over the Adjacent Property and the City shall maintain the Adjacent Property. The Adjacent Property is depicted in Exhibit A as the "Adjacent Property" area. The City's maintenance responsibilities include, but are not limited to, maintaining the sidewalks and parking areas in an operable, clean, and well-lit manner and providing for repairs and/or remediation to any part of the Adjacent Property requiring them. The City shall also bear all attendant costs including, but not limited to all utility expenses incurred for the maintenance and/or use of the Adjacent Property; snow, trash, rubbish, garbage, and other refuse and debris removal; licenses, permits, and other governmental fees and charges for operating the Adjacent Property, if any; signage; painting and striping, and landscaping services and supplies. The City grants American

a non-exclusive license on and across the Adjacent Property during the Term or any subsequent Extension Period for access to sidewalks, parking lots, and parking spaces. The City shall provide adequate space, at a location mutually agreeable to the City and American, for a dumpster for American's use. The Adjacent Property may be utilized by American for vehicular access for onshore passenger excursions in and around the City of Port Angeles, Washington to local attractions. American shall facilitate transportation for its passengers for such excursions. The City shall provide American with adequate space in the City's Adjacent Property for the purpose of loading and unloading motorcoaches and delivery truck access.

9. **THE CITY'S REPRESENTATIONS:** The City hereby covenants, warrants and represents to American that:

(a) The City warrants and represents that it has fee simple title to the Preferential Use Area.

(b) The City warrants and represents that there are no laws, endangered species, wetlands, ordinances, governmental rules or regulations, title restrictions, zoning or any other matters whatsoever which will restrict, limit or prevent American's Intended Use of the Preferential Use Area; and so long as this Agreement is in effect and American is not in monetary default hereunder, American shall have the right to use the Preferential Use Area consistent with the terms herein and of all easements, rights and appurtenances belonging thereto.

(c) The City has the sole right, legal power and authority to enter into this Agreement.

(d) All requisite municipal actions or any other required action have been taken and satisfied by the City to authorize the execution and performance of this Agreement. No other proceedings or actions on the part of the City are necessary to authorize this Agreement or to carry out the transactions contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

(e) The individual(s) executing this Agreement, on behalf of the City, has (or have) the full right, legal power and actual authority to bind the City to the terms and conditions hereof.

(f) Neither the execution nor the provisions of this Agreement violates or breaches or shall violate or breach any term or provision of any agreement, written or oral, between the City and any third party.

(g) Notwithstanding any other provisions of this Agreement to the contrary or any other rights the City may have, the City covenants and agrees not to encumber the Preferential Use Area or its surrounding property or otherwise alter or permit to the alteration of the status of the title to the Preferential Use Area or its surrounding property such that American's right to use the Preferential Use Area for American's Intended Use is diminished without American's prior written consent.

If the City breaches the City's covenants and representations as set forth in this Article, then American may, in addition to any and all other remedies available at law or in equity, terminate this Agreement without owing any liability to the City. In the event that the City cures such breach within thirty (30) days after written notice from American, then American's termination may be withdrawn.

10. **INSURANCE; DAMAGE OR DESTRUCTION:**

10.1 The City's Property Insurance. The City shall carry property insurance upon the Preferential Use Area covering the full value of the Preferential Use Area.

10.2 American's Insurance Coverages. American's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the American to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10.2.1 General Liability Insurance. American, at its sole cost and expense, shall carry at all times while this Agreement is in effect Commercial General Liability (CGL) insurance or Marine General Liability (MGL) insurance covering bodily injury and property damage liability on the Preferential Use Area and arising out of American's use,

occupation or control of the Preferential Use Area, in an amount not less than three million dollars (\$3,000,000) in any one occurrence and six million dollars (\$6,000,000) in the aggregate.

10.2.1.1 CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

10.2.1.2 MGL insurance must have no exclusions for non-owned watercraft.

10.3 Auto Liability Insurance. American, at its sole cost and expense, shall carry at all times while this Agreement is in effect, Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.

10.3.1 Automobile Liability insurance shall be as broad as Insurance Services Office (ISO) form CA 00 01.

10.4 Worker's Compensation. If required by law, American, at its sole cost and expense, shall carry at all times while this Agreement is in effect, Workers' Compensation Insurance providing statutory benefits to employees of American in the State of Washington, and Employer's Liability Insurance with limits of not less than \$100,000 per accident or disease and \$500,000 aggregate by disease and a waiver of subrogation in favor of the City.

10.5 Protection and Indemnity Insurance (P&I). American shall procure and maintain P&I insurance including hull coverage. This insurance must cover all claims with respect to vessel pollution, injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the Preferential Use Area, including while at a dock, marina and in transit, with limits of liability not less than Five Million Dollars (\$5,000,000).

10.7 General Requirements.

10.7.1 Endorsements. The City shall be named as primary and non-contributing additional insured on CGL/MGL insurances and American upon request by the City shall furnish an endorsement or endorsements, including any workers compensation insurance required under Article 10.3 above, to such effect in a form acceptable to the City, for all insurance required to be provided by American hereunder. American's insurance coverage under this Agreement shall not be changed or canceled without at least thirty (30) days' prior written notice to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the User's insurance and shall not contribute with it.

10.7.2 Increase in Insurance Rates. Except for the activities allowed under this Agreement, American shall not conduct itself or use or permit the Preferential Use Area to be used in a manner which will cause an increase of the existing rate of insurance upon the Preferential Use Area or other improvements owned or leased by the City without the prior written consent of the City. In the event American desires to take action which will cause an increase of insurance rates, and the City grants written consent to such action, then American shall pay, as additional fee, any and all additional insurance premiums charged to the City as a result of American's actions.

10.7.3 Deductibles and Retention. If American elects to purchase insurance hereunder with voluntary deductible amounts or self-insured retention, American shall be responsible for payment of costs not covered because of such deductibles or self-insured retention. Any such deductible or self-insured retention shall be subject to the City's prior written approval which shall not be unreasonably withheld, conditioned, or delayed.

10.7.4 Selection of Insurance Carrier. American shall have the right to select the insurance carrier(s) of its choice, provided that such carriers are acceptable to the City, which acceptance shall not be withheld so long as said carriers (i) are authorized to transact the business of insurance in the State of Washington, and (ii) maintain a rating at or better than A by Standard and Poor's Rating Service, A(VIII) by A.M Best Co., or A3 by Moody's Investor's Service.

10.7.5 City Full Availability of American's limits. If the User maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the User, irrespective of whether such limits maintained by the User are greater than those required by this Agreement or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the User.

10.8 Waiver of Subrogation. Each party hereto waives any and every claim which arises or may arise in its favor and against the other party hereto during the term of this Agreement or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Preferential Use Area, which loss or damage is covered by valid and collectible property insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Each party agrees to cause its insurance policies to include a waiver of subrogation provision consistent with this Article 10.6.

10.9 Alternative Insurance Coverage. In the event that the precise insurance coverage denominated in this Article 10 ceases to be commercially available during the term of this Agreement, American shall purchase and maintain alternative insurance coverage as similar as possible to those so denominated and shall consult with and obtain the concurrence of the City, which concurrence shall not be unreasonably withheld, conditioned, or delayed, before choosing such alternative.

## 11. **DAMAGE OR DESTRUCTION**

11.1 Reconstruction Obligation. In the event the Preferential Use Area are damaged or destroyed as a result of a fire or other casualty, the city shall have no obligation to repair, reconstruct or restore American's Personal Property except to the extent, if any, that the loss or damage to American's Personal Property is covered under the City's property insurance policy and the City collects insurance proceeds attributable to such loss or damage in which event the City shall deliver such insurance proceeds to American. All such work shall comply with all applicable codes, rules, regulations, and ordinances.

11.2 Option to Terminate. In the event the Preferential Use Area is damaged or destroyed due to fire or other casualty during the last year of the term of this Agreement, and such damage exceeds thirty-three (33%) of the full insurable value of the Preferential Use Area, then, in such event, either party, at its option, may terminate this Agreement by written notice to the other, in which event American shall have no claim to any insurance proceeds except any portion thereof attributable to loss or damage to American's Personal Property. Notice of exercise of the option, to be effective, must be given within sixty (60) days of the date of casualty. The City and American shall fully cooperate, both before and after the termination of the Agreement, with any reasonable request by the other party in connection with the collection of any insurance proceeds not yet paid.

11.3 Termination. Upon any termination pursuant to the terms of this Article ("Damage or Destruction"), the parties shall be released without further obligation to the other from the date possession of the Preferential Use Area is surrendered to the City except for sums and duties which have accrued and are then unpaid or unperformed, including, but not limited to, indemnification obligations under this Agreement.

11.4 Abatement of Fees. In the event of repair, reconstruction and/or restoration as provided in Article 11.1 above, the Usage Fee payable under this Agreement may be abated pursuant to Article 14.

12. **INDEMNITY:** (a) American agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees and volunteers from any and all claims, allegations, legal proceedings, damages, costs, actual attorneys' fees, losses or liability, in law or in equity, attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property or the natural environment, including loss of use thereof, arising out of or related to American's use and/or occupancy of the Preferential Use Area or from any activity, work or thing done, permitted, or suffered by American in or about the Preferential Use Area, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

(b) This indemnity provision specifically includes all environment damage that may result from American's operations under this Agreement and any penalties or fines which may be assessed in connection with such damage.

(b) With respect to American's duty to defend as set forth above, American shall obtain the other City's prior written consent as to the attorney being engaged.

**13. TERMINATION:**

(a) If at any time during the Term of this Agreement, either party (i) materially breaches any of its obligations under this Agreement and fails to cure such breach within sixty (60) days of receiving written notice thereof; or (ii) either party is adjudged a bankrupt, makes a general assignment for the benefit of creditors, has a receiver appointed for it, or commits any other act of insolvency, then the Agreement may be terminated by the other and the parties' respective obligations arising under this Agreement shall cease.

(b) The City may terminate this Agreement if, in the City's sole discretion, it determines that the public welfare would be served by terminating American's use of the Preferential Use Area by providing three (3) months' written notice to American. If the City terminates the Agreement American shall be entitled to a refund of any pre-paid Usage Fees on a proportional basis as of the effective date of the termination.

**14. FORCE MAJEURE:** American shall be entitled to suspend its operations or terminate this agreement in the event a Force Majeure occurrence makes American's performance of its rights, duties, and/or obligations under this Agreement economically impracticable. Such Force Majeure events shall include, but are not limited to, acts of God; war; invasion; hostilities; rebellion; strikes; lockouts; fire; flood; hurricanes; water levels; epidemics; pandemics; outbreak; earthquake; explosion; decision of any court or other judicial body; unavailability of materials; labor shortages; volatile market conditions; transportation; satellite failure; acts of governments; defaults of third parties; or any other causes beyond the American's control. In the event of American's suspension of operations or termination of this Agreement pursuant to this provision, American shall only be required to pay a prorated amount of its Usage Fee calculated up and through the date of American's notice of suspension or termination. In the event of suspension, American's payment obligation shall resume when American resumes use of the Preferential Use Area as determined by American in its sole discretion. Notwithstanding, in the event of a suspension, the City shall continue to honor American's existing reservations, Preferential Use Rights and Scheduling Rights until released or waived in writing by American, which American shall not unreasonably withhold.

**15. GENERAL PROVISIONS:** (a) This Agreement (and the documents referred to herein) constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations and understandings, oral or otherwise, between or among the parties with respect to the matters contained herein.

(b) This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, legatees, distributees, legal representatives, successors and assigns. American may not assign, sublicense, or sublease any rights or interests under this Agreement without prior written consent of the City, which consent the City shall not unreasonably withhold. Should the City consent to an assignment, sublicense, or sublease American shall nevertheless remain liable for the performance of all of its obligations under this Agreement and the acceptance by the City directly from an assignee, sublicensee, or sublessee of any payments or other performance due under this agreement shall not be construed as a waiver of American's continuing liability. A change of control of American does not constitute an assignment, sublicense, or sublease for purposes of this provision.

(c) This Agreement shall not be modified, amended or supplemented, in whole or part, without the prior written consent of the parties hereto. Each and every waiver of any covenant, representation, warranty or any other provision hereof must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

(d) If any legal action or other proceeding is brought for the enforcement hereof, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions hereof, the successful or prevailing party or parties shall be entitled to recover attorneys' fees, court costs and all expenses even if not taxable as court costs (including,

without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. This attorneys' fees provision shall not apply in cases where there is a mutual settlement of claims between the parties.

(e) The parties hereby agree that each party and its attorneys have reviewed and revised this Agreement and that the normal rule of construction, to the effect that any ambiguities are resolved against the drafting party, shall not be employed in the interpretation of this Agreement and no other rule of strict construction shall be used against any party. All exhibits and schedules attached or to be attached hereto, and all other agreements and instruments referred to herein, are hereby incorporated herein by reference, as fully as if copied herein verbatim.

(f) The parties further agree that upon request, they shall do such further acts and deeds, and shall execute, acknowledge, deliver and record such other documents and instruments, as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purposes of this Agreement.

(g) The parties intend as follows: (i) that if any provision of this Agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (ii) that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of this Agreement will remain in effect as written; and (iii) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

(h) This Agreement shall be governed by the laws of the State where the Preferential Use Area are situated. It is expressly agreed between the parties that in the unlikely event of a dispute of any nature relating to this contract arising between them, the parties shall endeavor to resolve their claims by mediation. If the parties cannot agree to mediation, suit may be brought in any court of law having competent jurisdiction. The parties expressly agree that the venue for mediation, arbitration, or any other type of action to enforce the terms of this Agreement shall be Port Angeles, Washington unless otherwise agreed to by the parties in writing.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**THE CITY OF PORT ANGELES,  
WASHINGTON**, a political subdivision of the  
State of Washington

**AMERICAN CRUISE LINES, INC.**, a  
Delaware corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: Charles B. Robertson  
Its: President & CEO