

0150-10358-0003

TRANSMITTAL

TO
Eugene D. Seroka, Executive Director
Harbor Department

DATE
11/17/20

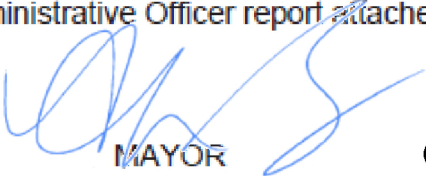
COUNCIL FILE NO.
13-0454

FROM
The Mayor

COUNCIL DISTRICT
15

**PROPOSED FOURTH AMENDMENT TO AGREEMENT NO. 13-3112 WITH
PORTS AMERICA CRUISE, INC.**

Transmitted for further processing and Council consideration. See the
City Administrative Officer report attached.



MAYOR

(Ana Guerrero for)

RHL:JCY:10210026t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: September 3, 2020

CAO File No. 0150-10358-0003

Council File No. 13-0454

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., City Administrative Officer 

Reference: Correspondence from the Harbor Department dated June 24, 2020

Subject: **PROPOSED FOURTH AMENDMENT TO AGREEMENT NO. 13-3112 WITH PORTS AMERICA CRUISE, INC.**

RECOMMENDATION

Approve Harbor Department (Port) Resolution No. 20-9661 authorizing a proposed Fourth Amendment to Operating Agreement No. 13-3112 with Ports America Cruise, Inc. to expand allowable service conditions and locations and to adjust compensation for service during Port-sponsored events; and, return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 20-9661 authorizing a proposed Fourth Amendment (Amendment) to Agreement No. 13-3112 (Agreement) with Ports America Cruise, Inc. (Ports America) to expand allowable service conditions and locations and to adjust compensation for service during Port-sponsored events. The current Agreement with Ports America is for the operation, management, and maintenance of the World Cruise Center (Cruise Terminal) at Berths 91-93 and the Outer Harbor Overflow Facilities (Overflow Facilities) at Berth 46 at the Port of Los Angeles (POLA). The proposed Amendment would expand the terms of the Agreement to compensate Ports America for services provided to any cruise vessel calling at any POLA berth as designated and deemed necessary by the Port, and increase the compensation for services provided by Ports America at the Cruise Terminal during Port-sponsored events to \$75,000 per fiscal year. Except for these provision changes, all other terms and conditions of the Agreement will remain in effect, including the term, which is currently valid through May 6, 2023.

BACKGROUND

Ports America's main responsibility is the service of cruise ships berthing at the Cruise Terminal, including embarkation and debarkation of passengers and goods, maintenance and security of the Cruise Terminal, and collection of Cruise Terminal fees. Under Exhibit E, "Compensation and

Payment,” in the original Agreement, which was executed in April 2013, compensation to Ports America for servicing cruise vessels at the Overflow Facilities would only occur if there were three or more cruise vessels calling at POLA in one day, at a maximum of \$75,000 per occurrence. The original Agreement did not anticipate the large number of high-capacity cruise vessels calling at POLA, including at the Overflow Facilities. The First Amendment to the Agreement, approved by the Board on January 8, 2015, increased the Overflow Facilities per-occurrence compensation rate to \$150,000, adjusted annually according to the Consumer Price Index (CPI), in order to accommodate the increased equipment, transportation, and security needs of the larger ships.

Cruise vessels have continued to grow in length and tonnage, straining the capacity of the Cruise Terminal to accommodate more than one ship at a time and increasing the need to use the Overflow Facilities with just two ships calling. Additionally, the effects of the Coronavirus disease (COVID-19) pandemic on the cruise industry necessitate increased flexibility for the Port in berthing options, currently and as the industry recovers. The proposed Amendment to the Agreement will allow Ports America to be compensated for cruise vessel service at any berth in POLA as designated and deemed necessary by the Port, removing the three-ship minimum. The maximum CPI-adjusted compensation rate, which the Port reports is \$166,363 as of May 2019, will remain the same. The Port has budgeted \$499,089 for this purpose in 2020-21.

Under the current Agreement, Ports America is also responsible for operating and managing the Cruise Terminal during Port-sponsored, non-cruise related events held at the facilities, including providing security that must meet United States Coast Guard-enforced Code of Federal Regulations requirements. The Agreement currently provides reimbursement of expenses to Ports America, not to exceed \$50,000, for its obligations to service the Cruise Terminal during Port-sponsored events. This increased scope and compensation was added in the Second Amendment to the Agreement in May 2017. The Port anticipates continued and increased use of the Cruise Terminal for Port-sponsored events, including Fleet Week and other community and maritime-related events. The proposed Amendment will increase to \$75,000, annually, the maximum compensation amount to Ports America for service of the Cruise Terminal for special events.

Ports America is a branch of Ports America, Inc., a terminal operator and stevedore, which has headquarters in New Jersey and marine and cruise terminal operations at ports across the country. Ports America, Inc. also operates within other terminals at POLA. The Port selected and approved the Agreement with Ports America for operation of the Cruise Terminal in April 2013 through a competitive bid process for a term of five years, with two subsequent five-year extension options for a total term of up to 15 years. The first five-year extension option was exercised effective May 7, 2018, in conjunction with the Third Amendment to the Agreement, which updated the CPI used to calculate compensation amounts from the discontinued CPI-W for Los Angeles-Riverside-Orange County to CPI-W for Los Angeles-Long Beach-Anaheim. Base compensation under the Agreement is a fixed monthly fee of \$125,000 per month, adjusted annually according to the CPI and every five years in accordance with Charter Section 607.

The Port has budgeted \$2,232,057 in the Harbor Revenue Fund for costs under the Agreement in 2020-21. The City Attorney has approved the proposed Amendment as to form and legality. The Port states that the Amendment is in compliance with all applicable provisions of City Ordinances

and agreement requirements. In accordance with Charter Section 606, the Amendment requires Council approval because the term exceeds five years. The Port states that the proposed action is the amendment to compensation under an existing operating agreement, which is an administrative activity, and is therefore administratively exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles CEQA Guidelines.

FISCAL IMPACT STATEMENT

The proposed Fourth Amendment to Harbor Department (Port) Operating Agreement No. 13-3112 (Agreement) with Ports America Cruise, Inc. is to expand allowable service conditions and locations and to adjust compensation for service during Port-sponsored events. The Port has budgeted \$2,232,057 in the Harbor Revenue Fund for costs under the Agreement in Fiscal Year 2021. There is no impact on the City General Fund.

RHL:JCY:10210026