

FOURTH AMENDMENT TO AGREEMENT NO. 13-3112
BETWEEN THE CITY OF LOS ANGELES AND
PORTS AMERICA CRUISE, INC.

20-3112-D

THIS FOURTH AMENDMENT to AGREEMENT NO. 13-3112 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and PORTS AMERICA CRUISE, INC. ("Operator") as follows:

1. The map in Exhibit A-1 is replaced in its entirety. (See attached Exhibit A-1 as amended.)
2. Exhibit E entitled COMPENSATION AND PAYMENT is replaced in its entirety. (See attached Exhibit E as amended.)

Except as amended herein, all remaining terms and conditions of Agreement No. 13-3112 and its amendments shall remain in full force and effect.

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(Signature page follows)

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Agreement No. 13-3112 on the date to the left of their signatures.

THE CITY OF LOS ANGELES,
by its Board of Harbor Commissioners

Dated: _____, 2020

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: 4/23, 2020

PORTS AMERICA CRUISE, INC.
By: _____

STEVE HOEVSKEY/PRESIDENT
(Print/type name and title)

Attest: Vinelly Nunez
Vinelly Nunez, Sr. Paralegal
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

5-20, 2020
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
MINAH PARK, Deputy City Attorney

COMPENSATION AND PAYMENT

The Operator shall receive the following compensation for its services:

1. **Fixed Monthly Fee**

\$125,000 per month* (regardless of number of days the vessel may be at berth at the Cruise Terminal during such call) ("Fixed Monthly Fee") payable, upon monthly submission of an invoice stipulating the name, date, services provided and duration of vessel calls that have occurred for that monthly period.

For the first month after the Effective Date only, Operator shall receive a one-time additional fee of \$30,000 for the upgrade of the audio/visual equipment, as needed for the Operator to enter into an annual maintenance contract with a service provider, due to the age and obsolescence of certain computer components integral to the system.

The compensation paid in the amount of \$125,000 per month, includes all maintenance and repair costs associated with the audio/visual equipment installed on the premises.

Fixed Monthly Fee is inclusive of all charges, and no additional reimbursement for any other service or operating item shall be paid by the City. Payment of the Fixed Monthly Fee will not be made by the City to Operator in advance of any month or vessel call.

2. **Options Period Compensation Renegotiation**

At the conclusion of the initial five-year term and the first 5-year option period of this Agreement, Operator and City shall renegotiate compensation amounts. At least six (6) months prior to the conclusion of the initial five-year term and the first 5-year option period of this Agreement, Operator and City shall begin negotiations.

3. **Overflow Facilities**

Compensation paid for any cruise vessel calling at any overflow cruise facilities, shall not exceed a total of \$150,000*. Compensation shall include, but not be limited to the following expenses: rental and acquisition of materials, equipment and supplies needed for the embarkation/debarkation of cruise passengers and vessel supplies; facility rentals; scanning equipment; tents; shuttle transportation services; and any other expenditures that may be deemed necessary by the United States Coast Guard and/or the United State Customs and Border Protection Agency.

Operator shall provide City at least 15 calendar days advanced notice of any vessel calling at any overflow facility prior to the date of ship call and provide an anticipated expense sheet to be reviewed by the Director of Waterfront and Commercial Real Estate or his/her designee. If 15 calendar days advanced notice is impracticable due to unforeseen circumstances, reasonable notice will be required.

* Each year after the Effective Date of this Agreement, both the Fixed Monthly Fee and the maximum amount for Overflow Facilities will adjust, in no event downward, in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, All Items, Los Angeles-

Long-Beach-Anaheim, CA (as of this Fourth Amendment) or successor index selected by the Executive Director in the Executive Director's sole reasonable discretion. The price adjustment rate will be determined by comparing the percentage difference between the monthly CPI of the Effective Date of the Agreement and each year thereafter. The percentage difference between those two CPI figures will be the adjustment rate of the Fixed Fee and the Daily Fee. Should the percentage difference be negative, there shall be no adjustment to the Monthly Fixed Fee. In addition to any increase as a result of increases in CPI, the Fixed Monthly Fee shall also be increased by the additional amount, if any, that labor rates for ILWU sweepers assigned to the Cruise Terminal are increased pursuant to any applicable collective bargaining agreement or amendment thereto.

4. Payment for Additional Events Hosted by the City

Operator shall provide and be compensated for additional event services as may, from time to time, be required by City, but in no event, shall such services or compensation exceed Seventy-Five Thousand Dollars (\$75,000) annually.