

0150-10358-0000

TRANSMITTAL

TO
Eugene D. Seroka, Executive Director
Harbor Department

DATE
MAR 18 2015

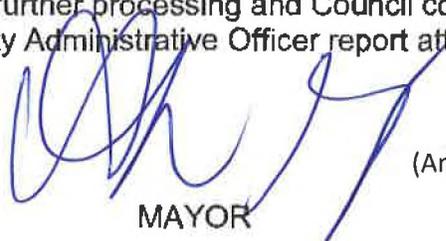
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT
15

**PROPOSED FIRST AMENDMENT TO OPERATING AGREEMENT NO. 3112
WITH PORTS AMERICA CRUISE, INCORPORATED**

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



(Ana Guerrero)

MAYOR

MAS:ABN:10150068t

REPORT FROM

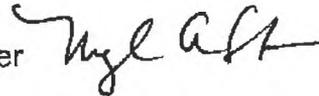
OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 13, 2015

CAO File No. 0150-10359-0000
Council File No.
Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated February 11, 2015; referred by the Mayor for report February 13, 2015

Subject: **PROPOSED FIRST AMENDMENT TO OPERATING AGREEMENT NO. 3112 WITH PORTS AMERICA CRUISE, INCORPORATED**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 15-7742 to authorize the proposed First Amendment for Operating Agreement No. 3112 with Ports America Cruise (Ports America) to operate, manage and maintain the Port of Los Angeles (POLA) Cruise Terminal at Berths 90-93 and the Outer Harbor Overflow Facilities (Overflow Facilities) for the loading and unloading of additional cruise line passengers at Berth 46. The original Agreement with Ports America, approved in April 2013, was for a term of five years, with two subsequent five-year renewal options, for a total contract of 15 years. The proposed Amendment will increase the maximum compensation for the Overflow Facilities from \$75,000 to \$150,000 per ship call (or ship arrival) in allowable expenses in order to service larger vessels at the Berths and pay an one-time reimbursement to Ports America of \$198,816 for their purchase of gangways (passageways) systems used at the Overflow Facilities. According to the Port, the Overflow Facilities is in the Outer Harbor and provide services to larger vessels that are used to load and unload approximately 2,000 passengers from the larger passenger cruise ships. According to the Port, these actions are necessary because the cruise line industry has recovered from an economic downturn faster than expected, with an unanticipated increase in vessel and passenger sizes. As a result, the Port has had to make greater use of its Outer Harbor because of space required for a greater number of cruise lines and their passengers calling at the Outer Facilities.

BACKGROUND

In April 2013, the Board selected and approved an Agreement with Ports America through a Request for Proposal (RFP) process. The Port received two proposals that were evaluated with the following criteria: 1) qualifications and experience; 2) financial capability; 3) general management and operating plan; 4) proposed collection and compensation plan; 5) quality and responsiveness of the proposal; and, 6) in-house interviews and reference checks. The Port states that Ports America was selected due to their qualifications and extensive experience in the operation of cruise terminals, financial and management systems, and work at ports in other cities across the country.

The compensation for the first of the five-year contract period for Ports America was for a total of \$1,830,000. This included the following costs: one flat-rate management fee of approximately \$1.5 million per year or \$125,000 per month; a one-time payment of \$30,000 for the first month to repair and upgrade its computer-based audio visual system, which is used regularly by all cruise lines; and, payment of approximately \$300,000 or \$75,000 for each of four outer harbor ship calls. Expenditures for each of the ship calls must be mutually agreed to by the Port and Ports America within 60 days prior to the date in which the ship is supposed to arrive at the berth through what is called an advanced notice for pass through reimbursements. Each of the scheduled ship calls by Ports America should include the following: a detailed budget justifying expenses; anticipated equipment, facility and material rentals, such as passenger gangways; and, security measures required by the Customs and Border Protection and U.S. Coast Guard. According to the Port, compensation is adjusted annually based on the Consumer Price Index (CPI) and any International Longshore and Warehouse Union (ILWU) labor rate increases for the ILWU personnel assigned to the property.

DISCUSSION

The proposed Amendment will include an increase of the fixed monthly management fee from \$125,000 per month to \$127,000 per month due to an annually adjusted increase of the CPI and ILWU labor rate. The proposed compensation for the Overflow Facilities will increase from \$75,000 to \$150,000 per ship call because of the number of larger cruise line vessels and more passengers. According to the Port, the higher than anticipated number of passengers was not anticipated in the current Agreement because the market for the cruise industry was not projected to recover as quickly as it did. When the original contract was negotiated and finalized, the Port had lost an estimated 60 percent of the cruise business in the midst of the recent recession. As a result of this recovery in the market, the associated costs for servicing larger passenger vessels are higher than the \$75,000 per ship call. Since there was an increase in rental and acquisition of materials, equipment and supplies, and personnel services and security screening, the Port proposes an increase from \$75,000 to \$150,000 for each larger passenger vessels to cover the additional costs for extra security, transportation, equipment and support for passenger visits.

The POLA's cruise business generated gross revenue from the cruise line and parking in Fiscal Year (FY) 2013 in the amount of \$4.3 million for 86 shipping calls and in FY 2014 the amount was \$8.2 million for 121 shipping calls. The Port states that total expenses breakdown for the three years of the current agreement generated by the cruise business out of the POLA are as follows:

Expenses	FY 2013	FY 2014	FY 2015 (Estimates) Per Amendment
Fixed Management Fee	\$255,806	\$1,500,000	\$1,524,000
Audio Visual System	\$30,000	0	0
Outer Harbor	\$25,620	\$235,976	\$225,000
Gangway Systems	0	0	\$198,816
Total	\$311,426	\$1,735,976	\$1,947,816

The proposed Amendment will also clarify language to provide greater flexibility in allowing compensation for both rental and acquisition of materials, equipment and supplies for the loading

and unloading of cruise passengers and vessel supplies in the future. In addition, the Port will revise contract language that will stipulate a reduction of the number of days, from the current 60 days to a proposed 15 days, which Ports America has to notify the POLA in advance for pass through reimbursement for three or more cruise vessels calling at the Overflow Facilities. The Port states that this change will allow better flexibility with cruise lines that wish to call at the Overall Facilities.

The proposed Amendment will include the reimbursement of \$198,816 to Ports America as payment for the purchase of two gangway systems for the Overflow Facilities. The purchase of the gangway systems was necessary for cruise operations at the Overflow Facilities for the scheduled three ship call days. Ports America had to replace the old gangway equipment owned by the Port because it was inadequate and would have been potentially unsafe for use by passengers. The Port states that the Department did not have sufficient time to go through a competitive bid process to purchase the gangway systems because they were needed for scheduled shipping calls. In order not to disrupt cruise operations at the Overflow Facilities, Ports America made a one-time purchase of gangway systems with the consent of the Port to ensure that the gangways were delivered when needed and before the scheduled shipping calls. The gangway systems included four ramps and two platforms for use to load and unload cruise line passengers in the Outer Harbor.

The Agreement may be terminated by the Port subject to the contractual provisions. All other terms and conditions in the proposed Amendment are similar to the initial Agreement.

CITY COMPLIANCE ISSUES

The proposed Amendment has been reviewed and approved by the City Attorney as to form. The proposed Agreement is in compliance with all applicable provisions of City Ordinances and contracting requirements. The proposed Agreement is subject to the Living Wage, Service Workers Retention, Equal Benefits, Affirmative Action and Minority, Women, and Other Business Enterprises compliances. The Port prepared a Charter Section 1022 determination as part of the original Agreement and concluded that the contracting work could be performed more economically and feasibly by an outside contractor instead of City employees because of the expertise required and the specialized nature of the work. The Port Director of Environmental Management has determined that the proposed Amendment includes components of the original Agreement include use of the existing facilities and Port property and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article III, Section 1(14) of the Los Angeles City CEQA Guidelines.

RECOMMENDATION

That the Mayor approve Harbor Department (Port) Resolution No. 15-7742 to authorize the proposed First Amendment to Operating Agreement No. 3112 with Ports America Cruise (Ports America) to operate, manage and maintain the Port of Los Angeles Cruise Terminal at Berths 90-93 and the Outer Harbor Overflow Facilities for the loading and unloading of additional passengers at Berth 46, which will increase the maximum compensation for the use of the Port facilities, as detailed in the Board Resolution due to the unanticipated increase in vessel sizes for cruise lines and the number of passengers, and return the documents to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the Harbor Department's (Port) proposed First Amendment to Agreement No. 3112 with the Ports America Cruise (Ports America) will do the following: increase the maximum compensation for the Outer Harbor Overflow Facilities (Overflow Facilities) from \$75,000 to \$150,000 per ship call in allowable expenses to service larger vessels at the Berths; pay a one-time reimbursement to the Ports America of \$198,816 for the purchase of gangways systems used at the Overflow Facilities; increase the fixed monthly management fee from \$125,000 per month to \$127,000 per month due to an annually adjusted increase of the Consumer Price Index rate; and, revise contract language that to reduce the number of days that Ports America has to notify the Port in advance for pass through reimbursement for three or more cruise vessel calling at the Overflow Facilities, from the current 60 days to a proposed 15 days. There is no impact on the City General Fund and funding for the proposed Amendment has been included in the Harbor Revenue Fund. Any future funding for the Agreement will be requested as part of the Port's annual budget process.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, Process for Granting Franchises, Permits, Licenses and Entering into Leases, unless Council takes action disapproving a contract that is longer than five years within 30 days after submission to the Council, the contract will be deemed approved.

MAS:ABN:10150068

