

RECOMMENDATION APPROVED;  
RESOLUTION 20-9661 ADOPTED; AND  
AGREEMENT 20-3112-D APPROVED;  
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's  
Report to the  
Board of Harbor Commissioners

June 18, 2020

*Amber M. Klesges*

#3  
6-18-20  
DATE: JUNE 2, 2020

AMBER M. KLESGES  
Board Secretary

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 20-9661 APPROVE FOURTH AMENDMENT TO  
AGREEMENT NO. 13-3112 WITH PORTS AMERICA CRUISE, INC.

**SUMMARY:**

Staff requests approval of the Fourth Amendment to Operating Agreement No. 13-3112 (Amendment) with Ports America Cruise, Inc. (Ports America/Operator). The Amendment will: (1) compensate the Operator for services provided to any cruise vessel calling at a berth outside the cruise terminal designated by and as deemed necessary by the City of Los Angeles Harbor Department (Harbor Department) regardless of the number of vessels calling at the Port of Los Angeles in one day; and (2) increase the compensation by \$25,000 for services provided by the Operator during Harbor Department-sponsored events from \$50,000 to \$75,000 per fiscal year. Payment of expenses incurred under Agreement No. 13-3112 will continue to be the financial responsibility of the Harbor Department.

**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 in accordance with the Los Angeles City Charter Section 1022, the services required can be performed more feasibly by an outside contractor than by City employees;
3. Approve the Fourth Amendment to Operating Agreement No. 13-3112;
4. Direct the Board Secretary to transmit the Fourth Amendment to Agreement No. 13-3112 to the City Council for approval pursuant to Charter Section 606 of the Los Angeles City Charter;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Fourth Amendment to Operating Agreement No. 13-3112 upon approval by City Council; and
6. Adopt Resolution No. 20-9661.

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

**DISCUSSION:**

On April 4, 2013, the Board approved the Agreement with Ports America for a term of five years, with two subsequent five-year renewal options. The Agreement is for the operation, management, and maintenance of the World Cruise Center (Cruise Terminal) at Berths 91 to 93 (Transmittal 1). The first five-year renewal option was exercised effective May 7, 2018.

**First Amendment**

At the inception of the Agreement, the fixed monthly fee was \$125,000, and the maximum compensation paid for services, rental, equipment, supplies and shuttle services at the Overflow Facilities at Berth 46 when three or more cruise ships calling at the Port of Los Angeles was \$75,000 per occurrence.

The fixed monthly fee is annually adjusted by the Consumer Price Index (CPI), and for the year beginning May 7, 2019, compensation was set at \$143,517. Through the First Amendment to the Agreement, approved by the Board on January 8, 2015, the maximum payment for three-ship calls at the Overflow Facilities was increased from \$75,000 to \$150,000 (with annual CPI adjustments) due to an unanticipated increase in cruise vessel sizes calling at the Overflow Facilities which required larger tents, additional equipment, supplies and services. The maximum payment allowed for a ship call at the Overflow Facilities beginning May 7, 2019 is \$166,363. The First Amendment also allowed for the reimbursement of \$198,816 to Ports America for the purchase of two gangways to service the larger vessels at the Overflow Facilities.

**Second Amendment**

In 2016, the Harbor Department hosted Fleet Week at the Cruise Terminal, a regulated maritime facility whose operations are subject to the Code of Federal Regulations enforced by the United States Coast Guard (U.S. Coast Guard). Activities occurring within secure or restricted areas at the Cruise Terminal require U.S. Coast Guard-approved security arrangements to ensure the safety and security of the facility. The Second Amendment to the Agreement, approved by the Board on May 18, 2017, permitted the Harbor Department to reimburse Ports America \$28,759 for services provided during Fleet Week, and set aside \$50,000 for the remaining term of the Agreement for compensation to Ports America for non-cruise related events that may occur from time to time at the Cruise Terminal.

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

Third Amendment

Annual year-over-year changes in the Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, All Items, Los Angeles-Riverside-Orange County, CA served as the basis for the annual escalation of the Fixed Monthly Fee and the compensation for Overflow Facilities fees paid to Ports America. In January 2018, the Bureau of Labor Statistics introduced a new geographic area sample for the CPI such that the changes in the distribution of the population across the country are properly reflected, and discontinued the index specified in the Agreement. The Third Amendment allowed the substitution of the discontinued index with CPI-W for Urban Wage Earners and Clerical Workers, All Items, Los Angeles-Long-Beach-Anaheim, CA, retroactive to May 7, 2018, to coincide with the annual adjustment of compensation for the 6<sup>th</sup> compensation year.

Proposed Fourth Amendment

A. Use of Outer Harbor for Any Cruise Vessel

In 2013 at the commencement of the Agreement, the expectation was that the use of Overflow Facilities (such as the Outer Harbor/Berth 46 or Berths 54-55) would only occur when there are three or more cruise vessels calling in one day. Berths 92 and 93 can accommodate two vessels, with Berth 92 being the only berth that can safely accommodate larger vessels weighing over 120,000 gross tons and measuring over 1,000 feet long. With the trend of cruise ships getting larger, the possibility of having two such vessels calling at the Port of Los Angeles on the same day is increasing, requiring a ship to dock at Overflow Facilities.

Currently, the Overflow Facilities compensation provision only applies when there are three or more cruise vessels calling at the Port in one day. The proposed amendment (Transmittal 2) will allow Ports America to be compensated for a second, or any cruise vessel calling at any other berth designated by and as deemed necessary by the Port of Los Angeles. The intent of this provision is to provide the Harbor Department increased flexibility in managing daily multiple ship calls under typical operational conditions and during the current operational conditions affected by Covid-19 in which maximum flexibility will be required as the cruise business recovers.

Payment for Additional Events Hosted by the City

The Operator is responsible for managing all facility operations, including but not limited to coordinating use of the facility and terminal security for cruise ship and non-cruise ship related events. In 2016, the Operator was required to provide security for the Harbor Department-sponsored LA Fleet Week, for which they incurred additional cost. The Second Amendment to the Agreement provided for a one-time reimbursement of \$28,758.62, with a provision that allowed future reimbursements to the Operator for expenses incurred during Harbor Department-sponsored events not to exceed \$50,000 during the remaining term of the Agreement.

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

The Harbor Department foresees continued use of the Cruise Terminal for Harbor Department-sponsored community events. In addition, the Harbor Department also sponsors other events such as the State of the County Reception, Pacific Maritime Association, EXP (formerly ITEP) receptions, etc. The proposed amendment will increase the current annual not-to-exceed amount of \$50,000 to \$75,000. This increase will provide the flexibility required to maintain adequate security requirements and to account for any other contingencies. The amendment will also include a clarification that the \$75,000 limit is per fiscal year and not for the remaining term of the Agreement.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a proposed Fourth Amendment to Operating Agreement No. 13-3112 between the Harbor Department and Ports America Cruise, Inc. for modifications to Overflow Facilities cruise vessel calling payments and an increase in fiscal year limit compensation during Harbor Department-sponsored events, 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 proposed amendment will: (1) compensate the Operator for services provided to cruise ships calling outside the cruise terminal regardless of the number of vessels calling at the Port of Los Angeles; and (2) increase compensation by \$25,000 for services provided by the Operator during Harbor Department-sponsored events from \$50,000 to \$75,000 per fiscal year.

Through June 30, 2020, staff does not anticipate additional expenses being incurred by the Operator for services provided to cruise ships calling outside the cruise terminal.

Furthermore, staff does not anticipate additional funding in Fiscal Year (FY) 2020 being required for Operator-provided services during Harbor Department-sponsored events. Agreement No. 13-3112 requires the Operator to provide an anticipated expense sheet for every vessel calling at the Overflow Facility as well as for Harbor Department-sponsored, non-cruise related events at the Cruise Terminal. Staff will continue to review and oversee the Operator's plans and expenses prior to the Operator contracting for equipment and personnel.

Given that no additional funding is anticipated to be required in FY 2020 for cruise ships calling at overflow facilities or Harbor Department-sponsored events, the proposed amendment is not expected to have a financial impact on the Harbor Department in the current fiscal year. Funding in future years will be requested as part of the annual budget process, subject to Board approval.

DATE: JUNE 2, 2020

PAGE 5 OF 5

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

**CITY ATTORNEY:**

The Fourth Amendment to Agreement No. 13-3112 has been reviewed and approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Site Map
2. Fourth Amendment

FIS Approval:   
CA Approval: 

*Michael J. Galvin*  
MICHAEL J. GALVIN  
Director of Waterfront & Commercial Real Estate

*Michael DiBulo*  
MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

*Mark Bleavin FOR*  
EUGENE D. SEREOKA  
Executive Director

ES:MD:MG:HP:RV:raw  
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