

DATE: DECEMBER 19, 2014

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - PROPOSED FIRST AMENDMENT
TO OPERATING AGREEMENT NO. 3112 WITH PORTS AMERICA
CRUISE, INC.**

SUMMARY:

On April 4, 2013, the Board of Harbor Commissioners (Board) approved Operating Agreement No. 3112 (Operating Agreement) with Ports America Cruise, Inc. (Ports America) for a term of five years, with two subsequent five-year renewal options, to operate, manage, and maintain the Port of Los Angeles (Port) Cruise Terminal (Cruise Terminal) at Berths 90-93 and at the Outer Harbor overflow facilities located at Berth 46 (Overflow Facilities). Overflow Facilities are used during three-ship call days. The Los Angeles City Council subsequently approved the Operating Agreement, pursuant to Charter Section 606 of the City Charter.

Due to unanticipated increase in vessel sizes, an increase of \$75,000 per instance in allowable expenses to service the larger vessels if the Overflow Facilities is needed, as well as \$198,816 for a one-time reimbursement to Ports America for the purchase of two gangways that are used at the Overflow Facilities.

Approval of the proposed First Amendment will allow for continued uninterrupted operations of the Overflow Facilities for the cruise lines and their passengers. The City of Los Angeles Harbor Department (Harbor Department) is financially responsible for budgeting sufficient funds for the Operating Agreement.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the First Amendment to Operating Agreement No. 3112 with Ports America Cruise, Inc;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment to Operating Agreement No. 3112;
3. Direct the Board Secretary to transmit the First Amendment to the City Council for approval pursuant to Charter Section 606 of the City Charter; and
4. Adopt Resolution No. _____.

SUBJECT: FIRST AMENDMENT TO OPERATING AGREEMENT NO. 3112**DISCUSSION:**

Background/Context: Ports America was awarded the current Operating Agreement in April 2013 through the Request for Proposal process. Compensation paid under the Operating Agreement includes a monthly management fee of \$125,000; up to \$75,000 per three-ship call day at the Overflow Facilities in the Outer Harbor; and a one time-fee of \$30,000 for repairs and upgrades to the Harbor Department's computer-based audio visual system in the Cruise Terminal. Compensation in subsequent years will be adjusted annually by the Consumer Price Index (CPI) and any International Longshore and Warehouse Union (ILWU) labor rate increases for the ILWU sweeper assigned to the premises.

The Overflow Facilities in the Outer Harbor will begin servicing vessels doing a full turn of embarkation and debarkation with 2,000 or more passengers. These larger passenger counts were not anticipated in the current Operating Agreement since the cruise industry market was not projected to recover as quickly as it did. Even our largest customer, Princess Cruises, did not anticipate having ships this size back in the Los Angeles cruise market so quickly.

The \$75,000 limit originally imposed is enough to cover the costs associated with smaller vessels, however, the associated costs for servicing larger passenger vessels are higher than the \$75,000. When the contract was being negotiated and finalized, the Port had lost approximately 60 percent of the cruise business in the midst of the recession. The ships that remained at the Port were of the smaller size and our customers were not committing the larger ships to our market. However, the recovery in the cruise business was faster than anticipated at the time. Servicing the larger vessels requires an increase in the rental and acquisition of materials, equipment and supplies such as tents, motor coaches, traffic and crowd control barriers and stanchions, stevedoring services, and security screening. The proposed increase of \$75,000 per instance in allowable expenses for larger vessels at the Outer Harbor will be sufficient to cover the additional costs for extra security, transportation, and equipment and will ensure that the larger passenger vessels will be supported.

In addition to the above, staff recommends that the amendment include reimbursement for the \$198,816 purchase of two gangway systems for the Overflow Facilities. During preparations for a fast approaching three-ship call day it was discovered that the gangway equipment owned by the Harbor Department was inadequate and would have been unsafe to use. Rental of the appropriate equipment was available during the bidding of the contract, but was no longer available. It would have been impossible for the Harbor Department to go through a competitive bid procedure and purchase the gangway systems in time for the scheduled three-ship call day. To effectively continue cruise operations at the Overflow Facilities, Ports America made a one-time purchase of gangway systems on behalf of the Harbor Department to ensure timely delivery of the gangway systems for the scheduled three-ship call day. The systems consist of four ramps and two platforms and are necessary for the embarkation/debarkation of cruise passengers in the Outer Harbor. The original Operating Agreement did not contemplate the purchase of the gangway systems.

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The following is a breakdown of total gross revenue, ship call, and expenses for the three years of the current agreement, generated by the cruise business out of the Port of Los Angeles.

Revenues (in millions)	FY 2012	FY 2013	FY 2014
Cruise	\$6.1	\$3.0	\$6.0
Parking	\$1.5	\$1.3	\$2.2
TOTAL	\$7.6	\$4.3	\$8.2
Ship Calls	125	86	121

EXPENSES	FY 2013*	FY 2014	FY 2015 (Estimates)
			Per Amendment
Fixed Mgmt 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

*May '13 - June '13

CURRENT OPERATING AGREEMENT:

Term: Five years, with two subsequent five-year options for renewal at discretion of the Executive Director, for a total term not to exceed 15 years.

Fixed Monthly Fee for Terminal Management and Operations/Costs: Fixed monthly fee of \$125,000 with compensation adjusted annually by the CPI and ILWU labor rate increases. Currently the fixed monthly fee is \$127,000. A one-time fee of \$30,000 was paid for the first month of the contract to repair and upgrade equipment needed for the Harbor Department's computer-based audio visual system, used regularly by all cruise lines.

Compensation for Overflow Facilities: Not to exceed \$75,000 per occurrence. Expenditures will be mutually agreed upon 60 days prior to date of ship call upon submission by Operator of a detailed budget justifying said expenses, including but not limited to, rental of materials, equipment and supplies, such as scanners, fencing, tents, tables and chairs, facility rentals and security measures required by both Customs and Border Protection and the U.S. Coast Guard, etc.

Current Agreement Amount:

	Approved Agr. 3112					
	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17	FY 17/18*
Mgmt Fee	\$375,000	\$1,500,000	\$1,524,000	\$1,569,720	\$1,616,812	\$1,387,763
3-Ship Fee	\$75,000	\$300,000	\$225,000	\$225,000	\$225,000	\$225,000
One-Time Fee (US Customs)	\$30,000					
One-Time Fee (A/V Sys)		\$30,000				
TOTAL	\$480,000	\$1,830,000	\$1,749,000	\$1,794,720	\$1,841,812	\$1,612,763
GRAND TOTAL						\$9,308,295

*July 2017 – April 2018

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PROPOSED FIRST AMENDMENT:

Term: No change.

Fixed Monthly Fee for Terminal Management and Operations/Costs: No change.

Compensation for Overflow Facilities: The First Amendment (Transmittal 1) will increase the maximum compensation for Overflow Facilities from \$75,000 to \$150,000 per occurrence for larger passenger vessels. Increasing the maximum compensation for pass through costs associated with larger vessels and the higher than anticipated number of passengers will allow reimbursement of actual costs associated with the Overflow Facilities operations. In addition, it will clarify the language to allow compensation for both rental and acquisition of materials, equipment and supplies needed for the embarkation/debarkation of cruise passengers and vessel supplies and provides flexibility for future years.

The advance notice language for pass through reimbursements will be revised to require that the Operator provide the Harbor Department at least 15 days, rather than 60 days advance notice of three or more cruise vessels calling at the Overflow Facilities and provide an anticipated expense sheet to be reviewed by the Harbor Department. This change is necessary to allow better flexibility with cruise lines who wish to call at the Overflow Facilities.

Options Period Compensation Renegotiation: The Options Period Compensation Renegotiation language will be updated to clarify that compensation renegotiations shall occur for each and every five-year option period. This will ensure that appropriate compensations are renegotiated and applied for each option period.

One-Time Reimbursement of Gangway Systems: The proposed First Amendment will clarify language to allow reimbursement of purchases and includes a one-time reimbursement of \$198,816 to Ports America for the purchase of the gangway systems.

The purchase of the gangway systems was necessary to effectively initiate cruise operations at the Overflow Facilities for scheduled three-ship call days.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the proposed First Amendment to the Operating Agreement with Ports America. The proposed First Amendment would eliminate the maximum compensation for additional expenses associated with servicing large vessels in the Overflow Facilities. As an activity involving the amendment of an agreement to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III, Section 1 (14) of the Los Angeles City CEQA Guidelines.

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ECONOMIC BENEFITS:

The Board action will have no employment impact.

FINANCIAL IMPACT:

The proposed First Amendment to the Operating Agreement with Ports America will allow for uninterrupted cruise service to the Cruise Terminal by increasing the funding authority under the existing Operating Agreement. The proposed First Amendment will authorize a one-time payment of \$198,816 to reimburse Ports America for the purchase of gangway equipment. Fiscal Year 2015 funds in the amount of \$198,816 are available in the Real Estate Division budget, Account 13150, Center 0424. Future fiscal year funding under the Operating Agreement will be requested to be budgeted as part of the Harbor Department's annual budget adoption process.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the First Amendment as to form and legality.

TRANSMITTAL:

- 1. First Amendment

FIS Approval: ef (Initials)
 CA Approval: efab (Initials)



JACK C. HEDGE
 Director of Real Estate



DAVID L. MATHEWSON
 Interim Deputy Executive Director

APPROVED:



for EUGENE D. SEROKA
 Executive Director

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