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THE PORT
OF LOS ANGELES
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: MAY 9, 2016

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - APPROVE PERMIT NO. 914
WITH EXXONMOBIL OIL CORPORATION AND ASSIGNMENT OF
PERMIT TO PBF ENERGY WESTERN REGION LLC**

SUMMARY:

Staff requests approval of Permit No. 914 with ExxonMobil Oil Corporation (ExxonMobil) for a term of five years to succeed Permit Nos. 704 and 418; and Revocable Permit Nos. 1059, 1464, and 96-40. Staff also requests consent to assign the proposed five year permit to PBF Energy Western Region LLC (PBF), a subsidiary of PBF Energy Inc. (PBF Energy).

Permit No. 704 grants ExxonMobil the right to use City of Los Angeles Harbor Department (Harbor Department) land, subsurface, and water areas at Berths 237-240D, and the parcels at 551 Pilchard Street on Terminal Island, for the construction, operation, and maintenance of a marine oil terminal and storage tanks. Permit No. 704 is currently on holdover, as its 25-year term expired on December 31, 2015.

Permit No. 418 grants ExxonMobil the right to use Harbor Department land (surface and subsurface) for construction, maintenance and operation of subsurface pipelines and for purposes incidental thereto. Permit No. 418 is currently on holdover, as its 20-year term expired on June 30, 2000.

Revocable Permit Nos. 1059, 1464, and 96-40 grant ExxonMobil use of Harbor Department property in various locations on Terminal Island for the construction, maintenance, and operation of directional signs, abandoned pipelines, and dust suppression landscaping strip.

In a separate transaction, staff requests approval of Revocable Permit No. 16-14 (RP16-14) to PBF for Mobil Pacific Pipeline Company's (MPPC) pipelines which are located under the classification yard in Wilmington currently issued under Permit No. 741.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

- 1) Find that the proposed action is exempt from the requirements of the California Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;

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2. Approve Permit No. 914 with ExxonMobil Oil Corporation;
3. Approve the restoration Guaranty provided by ExxonMobil Oil Corporation;
4. Approve the parent Guaranty(s) provided by PBF Energy, Inc., PBF Energy Company, LLC, and PBF Holding Company, LLC;
5. Approve the Order consenting to assignment of Permit No. 914 from ExxonMobil Oil Corporation to PBF Energy Western Region LLC, a subsidiary of PBF Energy Inc. Effectiveness of Board consent is subject to Permit No. 914 being effective per section 245 of the Los Angeles City Charter;
6. Approve Revocable Permit No. 16-14 PBF Energy Western Region LLC;
7. Authorize the Executive Director to execute and the Board Secretary to attest to Permit No. 914 with ExxonMobil Oil Corporation;
8. Authorize the Executive Director to execute and the Board Secretary to attest to the Order consenting to assignment of the successor Permit subject to Permit No. 914 becoming executable under Section 245 of the Los Angeles City Charter;
9. Authorize the Executive Director to execute and the Board Secretary to attest to the restoration Guaranty provided by ExxonMobil Oil Corporation;
10. Authorize the Executive Director to execute and the Board Secretary to attest to the parent Guaranty(s) provided by PBF Energy, Inc., PBF Energy Company, LLC, and PBF Holding Company, LLC;
11. Authorize the Executive Director to execute and the Board Secretary to attest to Revocable Permit No. 16-14;
12. Adopt Resolution No. _____; and
13. Adopt Order No. _____.

DISCUSSION:

Background/Context – Permit No. 704 was issued for a term of 25 years, from January 1, 1991 to December 31, 2015. The premises consist of approximately 30 acres on Terminal Island in two locations identified on the attached map (Transmittal 1) and is improved with wharf structures owned by the Harbor Department; and buildings, tanks, and pipelines owned by ExxonMobil. ExxonMobil pays approximately \$3,500,000 annually in land rent and tariff charges under Permit No. 704. Replacement of the existing wharf is required to meet Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS). Permit No. 418 was issued for a term of 20 years (July 1, 1980 to June 30, 2000) and grants ExxonMobil use of approximately 9 acres of subsurface land, with underground pipelines owned by ExxonMobil. ExxonMobil pays

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approximately \$575,000 annually in land rent under Permit No. 418. Revocable Permit Nos. 1059, 1464, and 96-40 grant use of various properties on Terminal Island for the construction, maintenance, and operation of directional signs, abandoned pipelines, and dust suppression landscaping strip and ExxonMobil pays approximately \$2,000 annually under these permits.

Staff has been in negotiations with ExxonMobil for a new long-term wharf development permit to comply with MOTEMS. On September 30, 2015, ExxonMobil announced its intention to sell its Torrance refinery and marine oil terminal to PBF. Permit No. 914 (Transmittal 2) for a term of five years has been agreed to in order to replace the permits on holdover and to satisfy ExxonMobil's desire to execute a Permit before it transfers the premises to PBF.

The proposed five year permit includes contemporary Harbor Department standard permit terms which in comparison to the existing Permit 704 include stronger environmental remediation language and added security to ensure remediation and restoration of the premises occurs in the short term if a long term permit is not entered into with PBF. This proposed five year permit is a transitional permit to allow the Harbor Department and the proposed transferee, PBF, to enter into a long term agreement for the implementation of MOTEMS improvements at the facility. MOTEMS improvements will increase the resiliency of the wharf structures and pipeline support systems and reduce the likeliness of petroleum product loss in the case of a significant seismic event. The scope of the proposed MOTEMS improvements requires significant investment by both the Harbor Department and the proposed tenant which requires a long term agreement to amortize each parties' investments.

The Harbor Department is currently in various stages of negotiation with all of our marine oil terminal tenants to implement MOTEMS including agreeing to a scope of work and preliminary business terms followed by processing of an Environmental Impact Report (EIR) to assess the construction of MOTEMS improvements and a long term permit. As a condition of the assignment, PBF has agreed to a scope of work for MOTEMS improvements and preliminary business terms which will allow the commencement of the EIR process immediately following commencement of the proposed Permit and assignment. The EIR process for the MOTEMS improvements and long term permit will assess the current operations and any feasible environmental mitigation measures that may apply to the proposed construction of MOTEMS improvements or long term operation as a continued marine oil terminal.

The five-year Permit No. 914 is accompanied by a request to assign the permit to PBF, which includes guarantees from PBF Energy, Inc. (Transmittal 3), PBF Energy Company, LLC (Transmittal 4) and PBF Holding Company, LLC (Transmittal 5). PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstock, lubricants and other petroleum products in the United States.

Proposed Five Year Permit

Term. The term shall total five years.

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Compensation. Minimum Annual Guarantee (MAG). The aggregate amount of fixed rent and tank rent is referred to as the MAG. Fixed rent and tariff charges for wharfage (excluding wharfage charges for liquid bulk commodities entering and leaving the premises by truck or pipeline) will be collected in lieu of the MAG and will be subject to annual reconciliation.

1. Fixed Rent. Fixed rent is set at \$4,549,042 per year (paid quarterly) includes rent on all surface and subsurface land, excluding the wharf parcel. Land unit value is \$29 per square foot. Subsurface rent is 50 percent of the established Land Unit Value. Subsurface rent only applies to locations where ExxonMobil is not paying for surface rent.
2. Tank Rent. Tank rent is set at \$812,000 ((795,771 barrels or working capacity) x \$0.085 x 12 (1 turn per month)) annually. Tank rent is established based on an annual payment equal to the wharfage revenue that would result if the operational tanks within Area 2 were turned one time per month with crude oil based on those tanks' working capacity. Operational tanks include only those tanks that are available to store liquid bulk commodities, and working capacity is the actual volumetric capacity after tank heels and other limitations to storage capacity are deducted.

Consumer Price Index (CPI) Adjustments. Following the effective date, on July 1 of each compensation year, fixed rent and tank rent shall be adjusted, but in no event downward, based on the percentage increase in the CPI.

Maintenance and Repair. The Harbor Department shall maintain the rock slope and engineered dredge depth of not less than 35 feet for the respective berths, creating unobstructed access for vessels to dock, load and unload at the wharf. ExxonMobil shall be responsible for all other maintenance including the wharf structure. The proposed Permit includes identification of a seawall repair project that the Harbor Department is in the process of completing within the term of the proposed Permit.

MOTEMS or Regulatory Changes. ExxonMobil is solely responsible for all MOTEMS requirements, except for the proposed development of a new marine oil terminal wharf currently under negotiation in a separate long-term Permit intended to succeed Permit No 914. ExxonMobil is responsible for all regulatory requirements related to the premises and for all improvements including but not limited to the wharf structure.

Environmental Conditions: The premises under the proposed Permit consist of adverse environmental conditions related to historic petroleum storage uses. The marine terminal portion of the site is subject to a Cleanup and Abatement Order (CAO) from the Regional Water Quality Control Board (RWQCB) that includes active product recovery. Under the proposed Permit, the tenant will accept responsibility to remediate the premises in accordance with cleanup standards governed by the CAO. The current estimated remediation cost for the Permit premises is \$50 million. Additionally, the Tenant is providing a Restoration Guaranty that will provide additional security to ensure remediation and restoration occurring in accordance with section 117 of the Permit in

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the case that the Permit is transferred to another party and remediation and restoration is required.

The Restoration Guaranty provides security for restoration and remediation obligations in Section 117 of the Permit. The Guarantor obligations will become effective if the Tenant defaults on any Section 117 obligations or if the Premises do not receive clearance under the CAO from the RWQCB prior to the expiration. It is expected that the Permit will be transferred to PBF in the near future. In the case that the transfer occurs and the Harbor Department does not reach an agreement on a new long term permit for the premises with PBF, Section 117 obligations must be achieved prior to the end of the five year term of the Permit. If the obligations are not met, the Restoration Guaranty will become effective as discussed above.

Proposed Transfer

Assignment Fee: The parties have agreed to an assignment fee of \$250,000 to process the requested transition of rights from ExxonMobil to PBF (Transmittal 6).

ExxonMobil Guarantee and PBF Energy Security Instrument: Following the transfer to PBF, ExxonMobil will provide a five-year guaranty (Transmittal 7) to the Harbor Department for the restoration obligations addressed in Section 117 of Permit No. 914. In the fourth year, PBF Energy will provide a performance bond from an A.M. Best "A+" rated insurance or bonding company for the obligations in Section 117 of Permit No. 914. The Harbor Department will have the right to accept an alternative form of security from PBF that provides comparable or better security to ensure Section 117 obligations are completed.

Other conditions of Transfer: The parties have agreed that PBF will provide parent guarantees from PBF Energy Inc., PBF Energy Company, LLC, and PBF Holding Company LLC. The parties have also agreed that PBF will execute a non-binding term sheet encompassing a proposed long-term permit, and including a MOTEMS compliant wharf development project.

Transfer Notice Provisions: Per the terms of Section 113.3.1 of Permit No. 914, ExxonMobil is required to provide the Harbor Department a Transfer Notice establishing the intent to make a transfer of the Permit. The Transfer Notice is required to include prescribed information to allow the Harbor Department to review the nature of the transfer and quality of the proposed transferee. Prescribed information requirements in the transfer notice include 1) the identity of the transferee; 2) specific detailed description of the transferee's business entity type, ownership, history, nature of business, character, reputation and experience in the proposed operation; 3) specific and detailed description of the type of transfer proposed 4) specific and detailed description of proposed operation on the existing premises of tenant and transferee including each parties' responsibilities; 5) all of the terms of the proposed transfer including total consideration payable by transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use of the Premises; the effective date of

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the proposed Transfer; and a copy of all documentation concerning the proposed Transfer; 6) proposed form of guarantee or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer if any, 7) proposed business plan for transferee including anticipated revenue, 8) general description of any planned alterations or improvements to the premises, 9) a general description of the transferee's worth including audited financial statements, and 10) and any other relevant information. The following information was provided in the ExxonMobil transfer notice to address the above information requirements.

Requested Transfer

ExxonMobil Oil Corporation (EMOC) and Mobil Pacific Pipeline Company (collectively ExxonMobil) recently executed a Sale and Purchase Agreement with PBF Holding Company LLC (PBF Holding) for a number of California refining and logistics assets, including assignment of Southwest Terminal Area 1 and Area 2, and associated pipelines, located within the Port of Los Angeles. ExxonMobil is proposing a sale of the improvements on Southwest Terminal Area 1 and 2 and associated pipelines, as well as an assignment of the new Permit, encompassing Permit Nos 704 and 741 and Revocable Permit Nos. 418, 1464, 1059, and 96-40 to PBF. All rights and obligations within the new Lease will be transferred to PBF. The effective date of the proposed transfer is estimated in 2nd Quarter of 2016.

Description of Transferee Business and Background

PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstocks, lubricants and other petroleum products in the United States. PBF Energy is a Fortune 200 company publicly traded on the NYSE. PBF Energy currently owns and operates four domestic oil refineries and related assets with a combined processing capacity, known as throughput, of approximately 729,000 barrels per day. PBF Energy refineries are located in Toledo, Ohio; Delaware City, Delaware; Paulsboro, New Jersey and the recently acquired, former ExxonMobil-affiliated refinery in Chalmette, Louisiana. PBF Holding and its subsidiaries have operated marine terminal and storage facilities in both Paulsboro, NJ, Delaware City, DE, and Chalmette, LA, and maintain a good relationship with the Coast Guard and other local marine agencies. PBF Energy also owns and operates pipelines in Delaware and Louisiana, including MOEM Pipeline LLC, and its 80 percent ownership interest T&M Terminal Company and Collins Pipeline Company, all of which it also operates.

Description of Transferee Business Structure and Proposed Guarantors

PBF's wholly owned subsidiary, Torrance Logistics Company LLC, a Delaware Limited Liability Company registered to do business in California, will be the asset owners. PBF's ultimate parent, PBF Energy, will guarantee PBF's performance under Permit No. 914, along with PBF Energy Company, LLC and PBF Holding Company, LLC. PBF and PBF Energy's audited financial statements have been provided to Harbor Department Staff. This will provide the backing of a Fortune 200 company and PBF maintains credit ratings with both S&P and Moody's. Further, EMOC will provide a five-year guarantee to the Harbor Department for the restoration and remediation of the premises and all other Sections 117 obligations.

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PBF plans to utilize the facilities with the existing employee base consistent with ExxonMobil's historical use, taking into account future MOTEMS improvements. This includes the storage and transfer of petroleum products. Products, feedstocks, and intermediates will be moved across the dock and stored in tanks at Area 1. Crude will be stored in Area 2. The only changes currently envisioned for the facilities are those included in the MOTEMS improvements which are subject to the parties reaching an agreement on a new long-term permit.

Terms of the Proposed Transfer

On September 29, 2015, PBF, a subsidiary of PBF Energy, entered into a definitive Sale and Purchase Agreement (the Sale and Purchase Agreement) with ExxonMobil Oil Corporation and its subsidiary, Mobil Pacific Pipeline Company (Sellers), to purchase the ownership interests of the Torrance refinery, and related logistics assets (collectively, the Torrance Acquisition). The Torrance refinery, located on 750 acres in Torrance, California, is a high-conversion oil refinery with 155,000 barrels per day of oil refining capacity. The facility is strategically positioned in Southern California with advantaged logistics connectivity that offers flexible raw material sourcing and product distribution opportunities primarily in the California, Las Vegas and Phoenix area markets.

In addition to refining assets, the transaction includes a number of high-quality logistics assets including a sophisticated network of crude and products pipelines, product distribution terminals and refinery crude and product storage facilities. The most significant of the logistics assets is a 171-mile crude gathering and transportation system which delivers San Joaquin Valley crude oil directly from the field to the refinery. Additionally, included in the transaction are several pipelines which provide access to sources of crude oil including the Ports of Long Beach and Los Angeles, as well as clean product outlets with a direct pipeline supplying jet fuel to the Los Angeles airport. The refinery also has crude and product storage facilities with approximately 8.6 million barrels of capacity.

The purchase price for the total assets is \$537.5 million, plus inventory and working capital to be valued at closing. The purchase price is also subject to other customary purchase price adjustments. The Torrance Acquisition is expected to close in the second quarter of 2016, subject to satisfaction of customary closing conditions, receipt of regulatory approvals and required consents and absence of a material adverse effect. Additionally, as a condition of the closing, the refinery is to be restored to full working order and shall have operated for a period of at least fifteen days prior to close.

PBF filed a copy of the Sale and Purchase Agreement with the SEC following the announcement of the transaction. The Agreement contains all the relevant terms of the transaction. A copy of that filing is available at the following link on the SEC website: <http://www.sec.gov/Archives/edgar/data/1534504/000153450415000076/exhibit21-doradogroupspa.htm>

PBFs representatives previously provided financial and background information to Harbor Department staff on both PBF and PBF Energy. PBF and PBF Energy's audited

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financial statements have been provided to Harbor Department staff. Harbor Department staff has reviewed the financial information provided as well as more recent public information and find PBF to have the financial backing to meet the obligations of the proposed permit, including the restoration obligation.

Transfer Notice Findings

Staff evaluated the Transfer Notice as required under Section 113.4, Factors Germane to City Consent and summarized in Transmittal 9. . Based on the information provided in the transfer notice and financial and other information previously reviewed during the due diligence process that has been ongoing since the proposed transfer was publicly announced in September 2015, PBF and its affiliates have demonstrated the requisite experience, financial backing, and ability to continue to operate the ExxonMobil marine terminal in the Port of Los Angeles. Based on the all of the information provided and reviewed staff recommends the Board consent to the proposed transfer of ownership from EMOC to PBF conditioned on receiving parent guarantees from PBF Energy, Inc., PBF Energy Company, LLC, and PBF Holding Company, LLC, as conditioned in the attached guarantee agreements.

REVOCABLE PERMIT 16-14

In a separate transaction, staff proposes approval of Revocable Permit No. 16-14 to PBF for 4,273 Square Feet of MPPC's regulated pipelines located under the classification yard in Wilmington currently issued under Permit No. 741. The annual rent is \$7,723. This RP is coming before the board due to two significant changes from the standard template as identified below:

- 1) Due to lack of Baseline report required in Section 54 of the revocable permit, Tenant has agreed to accept the premise "as is", including pre-existing conditions. Therefore, the Section 54 Baseline Condition has been deleted and Section 11 Tenant's Restoration Obligations enhanced to include pre-existing contamination.
- 2) The PBF guaranties discussed above will also guaranty obligations under Revocable Permit 16-14. These guaranties will serve as security for remediation and restoration of the permit premises and therefore, Section 52 covering Restoration Security has been deleted.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a five-year successor permit with ExxonMobil for continued operation and maintenance of a marine oil terminal and storage tanks, subsurface pipelines, directional signs, abandoned pipelines and dust a suppression landscaping strip, which is an activity involving the issuance of a permit to use existing structures and facilities involving negligible or no expansion of use. As such, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

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FINANCIAL IMPACT:

Approval of the proposed Resolution for a new five-year term Permit No. 914 will increase the MAG from \$3,231,423 to \$5,361,041, for an increase of \$2,129,618. Fixed rent and Tariff charges for wharfage and dockage will be collected in lieu of the MAG and reconciled annually. The increase is due to an increase in land unit value to \$29.00 per square foot; a decrease in subsurface discount from 75 percent to 50 percent; and a collection of tank rent of \$812,000 annually. The proposed compensation over the five-year Permit term conforms to the Board's ten percent rate of return policy on land. The actual compensation paid by ExxonMobil during the past three fiscal years 2013-2015 ranged from \$3.5 million through \$3.7 million to \$3.9 million in each respective year.

CITY ATTORNEY:

Permit No. 914, the Order consenting to the assignment of Permit No. 914, and Revocable Permit No. 16-14 have been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

- 1. Site Map
- 2. Permit
- 3. Guaranty – PBF Energy, Inc.
- 4. Guaranty – PBF Energy Company, LLC
- 5. Guaranty – PBF Holding Company, LLC
- 6. Assignment Order
- 7. Guaranty – ExxonMobil
- 8. Revocable Permit 16-14
- 9. Factors Germane to City Consent

FIS Approval: MB (Initials)
CA Approval: MB (Initials)



MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate



MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
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