

THIRD AMENDMENT TO PERMIT NO. 907
BETWEEN THE CITY OF LOS ANGELES AND
SSA PACIFIC, INC.

PERMIT NO. 907 (“Permit No. 907” or “Permit”) by and between the CITY OF LOS ANGELES (“City”) acting by and through its Board of Harbor Commissioners (“Board”) and SSA PACIFIC, INC. (“Tenant”) is hereby amended a third time, with respect to the following:

WHEREAS, City and Tenant entered into Permit No. 907 commencing November 1, 2012;

WHEREAS, City and Tenant amended Permit No. 907 by means of a written First Amendment on January 4, 2017 which reduced the size of the subject premises as set forth therein;

WHEREAS, City and Tenant amended Permit No. 907 by means of a written Second Amendment on August 23, 2017 which extended the term of Permit No. 907 to October 31, 2022 as set forth therein; and

WHEREAS, City and Tenant seek to further extend the term of Permit No. 907 and modify certain provisions of the Permit;

WHEREFORE, City and Tenant agree to amend Permit No. 907 a third time, as follows:

1. Article I, Section 3.2, Term, is removed in its entirety and replaced with the following:

“3.2 Term.

3.2.1 Initial Term. The Term of this Agreement shall be for fifteen (15) years commencing on November 1, 2012 and expiring on October 31, 2027 (“Expiration Date”), unless sooner terminated in accordance with this Agreement or extended pursuant to section 3.2.2 and 3.2.3.

3.2.2 Extension Option. City and Tenant shall have one (1) mutual option to renew this Permit for one (1) five-year (5-year) period (“Option Period”) provided that the Executive Director in his or her sole discretion determines that the Tenant is a tenant in good standing as defined in the Leasing Policy of the Harbor Department.

3.2.3 Procedure for Exercising the Option. Tenant must notify the Executive Director, in writing, no later than one hundred eighty (180) days prior to the Expiration Date (as defined in paragraph 3.2.1 of this Permit) of its election to

exercise the extension option. The extension option shall become effective only upon the adoption of an order of the Board of Harbor Commissioners granting such extension option. If City and Tenant mutually exercise the option, then the defined term of the Permit shall include the Option Period and the Expiration Date shall be the end of the Option Period. All terms and conditions of the Permit shall apply to the full Term of the Permit including the Option Period.”

2. The following subsection (ii) is added after Article I, Section 4.2.1(a)(i):

“(ii) Preferential Use Period: Effective November 1, 2022, the MAG shall be Four Hundred Sixty-Three Thousand One Hundred Seventy-Six Dollars and Eighty-Five Cents (\$463,176.85). Tenant shall pay wharfage and dockage as required by the Tariff each month during the Preferential Use Period instead of the Minimum Monthly Rent as defined above. At the end of the Preferential Use Period, or thirty (30) days after submission of the Tariff invoices, the Harbor Department shall reconcile the total wharfage and dockage paid during the Preferential Use Period to the MAG. City shall provide a written statement to Tenant reconciling the wharfage and dockage paid to the MAG. Tenant shall pay any shortage (wharfage and dockage less than MAG due) and such payment shall be due from Tenant to City within thirty (30) days following City’s transmittal of such reconciliation.”

3. Article I, Section 4.2.2(a), Tariff Charges, is removed in its entirety and replaced with the following:

“(a) Tariff Charges. Tenant shall be responsible for (i) collecting Tariff charges accruing at the Premises established and required by the Tariff and (ii) remitting to City the total amounts of such Tariff charges, whether or not collected from Tenant’s customers. Notwithstanding any other provision of this Agreement, Tenant’s obligation to pay Tariff charges payable hereunder shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City. Tariff Charges include all applicable charges under Tariff No. 4. Tenant shall comply with all provisions of Tariff No. 4 and shall report all applicable activities and remit payment as described in Tariff No. 4, as modified and amended.”

4. Article I, Section 4.2.2(e), Tariff Charges Incurred During the Off-Season Period, is removed in its entirety and replaced with the following:

“(e) Tariff Charges Incurred During the Off-Season Period. Tenant and City acknowledge that this Agreement only provides for payment of the greater of the MAG or the Tariff Charges for the Preferential Use Period and that any Tariff Charges incurred, if any, during the

Off-Season Period (May 1st to November 30th) shall be Additional Rent and not part of the Base Rent or MAG and shall be due as set forth in the Tariff. Off-Season Period Tariff Charges shall not be added to any annual reconciliation calculation against the MAG.”

5. Article I, Section 4.3.1, Annual Adjustments, is removed in its entirety and replaced with the following:

“4.3.1 Annual Adjustments. Effective on the first (1st) day of the third (3rd) Compensation Year (which date and subsequent annual anniversaries shall be referred to individually as “Annual Adjustment Date”), and annually thereafter, the MAG shall be adjusted as of the Annual Adjustment Date automatically without further notice to reflect the percentage increase (but in no event decrease), if any, in the CPI-U, or successor index selected by the Executive Director in the Executive Director’s sole reasonable discretion (“Annual Adjustments”); provided, however, that prior to November 1, 2022, each Annual Adjustment increase shall not exceed two percent (2%) and after November 1, 2022, each Annual Adjustment shall not be less than three percent (3%) or exceed five percent (5%). Such adjusted MAG shall be equal to the product obtained by multiplying the MAG amount in effect on the Annual Adjustment Date by a fraction, the numerator of which is the CPI-U index for the August preceding the Annual Adjustment Date (the “Adjustment Index”) and the denominator of which is the CPI-U index as it stood on the same month of the prior year (the “Base Index”). For accounting purposes, the Annual Adjustment shall be rounded to the nearest thousandth.

The formula illustrating the adjustment computation is as follows:

$$\text{Annual Adjusted Rent} = \text{MAG as of Annual Adjustment Date} \times \frac{\text{Adjustment Index}}{\text{Base Index}}$$

Notwithstanding the provisions of Section 4.1.3, as of November 1, 2022, the “CPI-U” shall mean the Consumer Price Index for All Urban Consumers for Los Angeles-Long Beach-Anaheim, California, All items, 1982-84=100, published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI-U is not published for any month during the remaining term of the Permit, then City, in its reasonable discretion, shall substitute a comparable index published by the Bureau of Labor Statistics of the U.S. Department of Labor. If such an index is not published by the Bureau of Labor Statistics, then City, in its reasonable discretion, shall select a comparable index published by a nationally recognized responsible financial periodical.”

6. Article I, Subsection 4.3.2.1, Adjusted Base Rent, is removed in its entirety and replaced with the following:

“4.3.2.1 Adjusted Base Rent. In addition to, and not as a substitute for the Annual Adjustments required by Section 4.3.1, above, as required pursuant to City’s Charter Section 607, on every fifth (5th) anniversary of the

commencement of this Permit on November 1, 2012 (“Reset Date”), the MAG to be paid by Tenant for each five (5) year period, or any portion thereof, following the first five (5) year period of the Term (“Five-Year Adjusted Period”) shall be adjusted to reflect the fair market rental for the Premises (“Adjusted Base Rent”), *provided that in no case will the MAG be adjusted downward and, effective November 1, 2022 and thereafter, in the year the compensation is reset, the minimum adjustment will be no less than a three percent (3%) increase.* The Adjusted Base Rent shall be mutually agreed upon between the Parties at some time not more than nine (9) months and not less than three (3) months before each Reset Date. If the Parties are able to reach agreement on the Adjusted Base Rent, then said agreement shall be presented as a recommendation to the Board. The Adjusted Base Rent shall be established by order of the Board, provide that if the Adjusted Base Rent has not been determined by the beginning of the Reset Date, the MAG for the new Five-Year Adjusted Period, subject to the final Adjusted Base Rent being negotiated or determined by the Appraisal Process, shall be one hundred twenty-five percent (125%) of the MAG for the former period, and shall be paid in the same manner as provided in this Section 4 until completion of the negotiations for the Appraisal Process procedure set forth below. Notwithstanding the provisions of this Section 4.3.2.1, the Adjusted Base Rent for the five-year period commencing on November 1, 2017 and expiring on October 31, 2022, and the Adjusted Base Rent for the five-year period commencing on November 1, 2022 and expiring on October 31, 2027, has been agreed upon by the Parties and is reflected in Sections 4.2.1(a)(i) and (ii) of the Permit without the necessity of an order of the Board.”

7. The following Section 14 shall be added to Article I:

“Section 14. Assistance with Zero-Emission CHE Goals.

City will cooperate with Tenant in obtaining the necessary service from local utility companies should the existing utility service be insufficient for Tenant to migrate to a complete zero emission cargo handling equipment operation by December 31, 2023.”

8. Exhibit “H-1” is removed in its entirety and replaced with the Exhibit “H-1” attached to this Third Amendment to Permit No. 907.

Except as amended herein, all remaining terms and conditions of Permit No. 907 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed this Third Amendment to Permit No. 907 on the date to the left of their signatures.

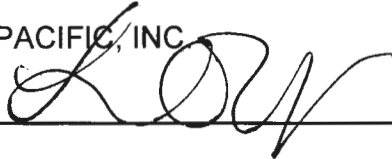
THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

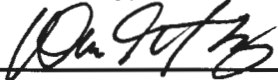
Dated: _____, 20__

By _____
EUGENE D. SEROKA
Executive Director

Attest _____
AMBER M. KLESGES
Board Secretary

Dated: March 16, 2023

SSA PACIFIC, INC
By 
Lauren H. Offenbecher, President
(Print/type name and title)

By 
William R. Fitz, Regional Vice President - Southern California
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

March 22, 2023
HAYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By 
JANET L. KARKANEN, Deputy

JLK/ila 01/26/2023

EXHIBIT H-1 - PORT ENVIRONMENTAL POLICIES

APPLICABLE ENVIRONMENTAL POLICES, RULES AND DIRECTIVES OF CITY'S HARBOR DEPARTMENT

GENERAL POLICIES

1. Port of Los Angeles Environmental Management Policy, as amended, or its successor policy. Available at: http://www.portofla.org/img/Env_Mgmt_Policy.gif
2. San Pedro Bay Ports Clean Air Action Plan, as amended, or its successor plan/document, Available at: <http://www.cleanairactionplan.org>.
3. Port of Los Angeles and Port of Long Beach Water Resources Action Plan or Its successor plan/document. Available at http://www.portoflosangeles.org/DOC/WRAP_Final.pdf.
4. Port of Los Angeles Green Building Policy (2007), as amended, or its successor policy.
5. Port of Los Angeles Sustainable Construction Guidelines (2008), as amended, or its successor document.
6. Resolution No. 5317 - Policy for Operation of Hazardous Waste Transfer, Storage and Disposal (TSO) facilities on Harbor Department Property and any amendments or successor resolution.

Tenant acknowledges that City has provided copies or made copies available via the Port's website, of the above policies to the Tenant.

FACILITY OPERATIONS ON PAVED AREAS

SSA Pacific is currently covered under the State Water Quality Control Board's Industrial General Permit (IGP) and has received No Exposure Certification (NEC). SSA Shall comply with the requirements as outlined in the NEC. Should coverage terminate under the IGP during the Term, SSA shall comply with the Municipal NPDES permit, which excludes all industrial maintenance operations.

1. Facility shall be cleaned and maintained regularly. All areas shall be swept at least once per week or as needed to control trash, debris, and other waste.
2. Sweepings and/ or sediment shall not be allowed to enter the storm drains or leave the property.
3. Do not feed birds, feral cats, sea lions, or other scavengers.
4. Parts, equipment, or materials with metal particulate, rust, grease, and/ or oil shall be stored indoors, or if outdoors then elevated off the ground and covered.
5. Outdoor dumpsters, recycle bins and trash containers shall have lids that are kept closed. Leaking dumpsters and bins shall be replaced immediately.

SITE SPECIFIC FACILITY OPERATIONS

1. Operating Conditions

The tenant shall perform fumigation operations under the following parameters:

- a) Fumigations will be limited to four (4) enclosures per day (680 lbs. of methyl bromide per day)
- b) At least one hour between the start of aeration of the first two enclosures and the start of aeration of the last two enclosures
- c) Aeration will not be started in more than two (2) enclosures per hour
 - i. The first two enclosures to be vented will be physically separated by at least two other enclosure between them (Approximately 189 ft)
 - ii. The last two enclosures vented will be physically separated by at least two other enclosures between them (Approximately 189 ft)
- d) These proposed fumigation activities would occur between 6pm and 10pm with aeration activities occurring between the hours of 9pm and 3am.

2. Reporting Requirements

Upon request by the Executive Director, Tenant shall evidence in a form acceptable to Executive Director, the quantity of Methyl Bromide used at the Premises in daily, Monthly, and/or annual intervals.