

DATE: FEBRUARY 8, 2012

FROM: BUSINESS DEVELOPMENT

SUBJECT: RESOLUTION NO. _____ - SETTLEMENT AND RELEASE AGREEMENT AMENDING PERMIT NO. 893 WITH PACIFIC MARITIME ASSOCIATION

SUMMARY:

In May 2011, the City of Los Angeles Harbor Department (Harbor Department) granted Permit No. 893 to the Pacific Maritime Association (PMA) for the purpose of constructing and operating an International Longshore and Warehouse Union (ILWU) Dispatch Hall on Harbor Department owned property located at Alameda Street and Anaheim Street in Wilmington.

The Permit language calls for the PMA, at its sole cost and expense, to prepare the property for construction, which includes remediation of contaminated soil and/or groundwater encountered during construction of improvements.

An environmental assessment of the site was conducted and certain soil and groundwater contamination was identified. The assessment was submitted to the Regional Water Quality Control Board (RWQCB) for review and discussion. As a result of this discussion, the RWQCB has indicated they will likely require remediation of all soil and groundwater contamination on the 8.77 acre site, not just the contamination encountered during construction. An issue has arisen between the PMA and the Harbor Department regarding responsibility for the cleanup required by the RWQCB.

Therefore, the Harbor Department and the PMA propose to enter into a Settlement and Release Agreement Amending Permit No. 893 to resolve respective responsibilities for soil and groundwater contamination.

RECOMMENDATION:

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

1. Approve the Settlement and Release Agreement Amending Permit No. 893 with Pacific Maritime Association;
2. Direct the Board Secretary to transmit the agreement to City Council for approval pursuant to Section 607 of the City Charter;

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3. Authorize the Executive Director to execute and the Board Secretary to attest to the Settlement and Release Agreement upon approval by City Council; and
4. Adopt Resolution No. _____.

DISCUSSION:

In May 2011, the Board approved Permit No. 893 with the PMA covering 8.77 acres of Harbor Department land for a period of 32 years (Transmittal 1). The compensation for the permit is \$1 per year. In exchange, the Harbor Department has the option to obtain title to PMA owned property in Wilmington valued at \$1.04 Million or to use the PMA's existing dispatch hall located on Broad Avenue in Wilmington to conduct port-related meetings and events. The Harbor Department recently elected to take title to the PMA owned property, upon completion of the new Hiring Hall.

Harbor Department and PMA staff submitted a Phase I and Phase II Environmental Assessment of the Harbor Department property to the RWQCB for review and discussion. As a result of this discussion, the RWQCB has indicated they will likely require the cleanup of all contamination on the site. PMA and the Harbor Department have been in disagreement regarding responsibility for the cleanup required by the RWQCB.

The actual clean up requirements will not be known until further soil and water sampling data and a proposed Remedial Action Plan (RAP) have been submitted to and approved by the RWQCB. In anticipation of submission of the RAP, the parties met in an attempt to resolve their issue with respect to clean up obligations. The proposed Settlement and Release Agreement (Transmittal 2) resolves the issue in the following manner:

PMA

- The PMA will take responsibility for remediation of all soil contamination, including preparation of a RAP and/or soil management plan as required by the RWQCB. The Harbor Department also has the ability to approve or reject the PMA's RAP and/or soil management plan. If PMA and the Harbor Department cannot agree on the nature of the RAP and/or soil management plan, and physical remediation has not yet commenced, then the PMA may terminate Permit 893 and have no further obligations with respect to the Permit or the existing contamination. The estimated cost of implementing a likely RAP and conducting a health-risk assessment for soil gas is currently \$633,670.
- If, upon approval of a RAP by the RWQCB and before physical remediation has commenced, the estimated cost of soil remediation has risen and exceeds 150% of the current estimate, or \$950,550, the PMA may terminate Permit No. 893 and have no further obligations with respect to the Permit or the existing contamination.

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- Upon commencement of construction, the PMA will pay the Harbor Department \$500,000 and will be released from any responsibility for groundwater contamination. Also, the Harbor Department will indemnify the PMA for claims or enforcement actions that might be brought by a regulatory agency, or claims that might be brought by neighboring property owners.

Harbor Department

- The Harbor Department will take responsibility for remediation of groundwater contamination, including preparation of a work plan and/or groundwater monitoring plan as required by the RWQCB. It is anticipated that groundwater quality will improve after the overlying contaminated soil is removed and that only ongoing monitoring will be required. The estimated cost for groundwater monitoring, is currently \$271,150. Groundwater treatment, if required, could increase the Department's obligation tenfold.

Both parties agree that as of the date of the agreement, neither party is in default or has breached any terms of Permit 893.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval to enter into a Settlement and Release Agreement with PMA to apportion responsibility for soil and groundwater contamination on a 8.77 acre site located at Alameda Street and Anaheim Street in Wilmington, as will be required by a RAP to be approved by the RWQCB. As an activity involving an action taken by a regulatory agency to assure the restoration and protection of the environment where the regulatory process involves procedures for protection of the environment, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article 3 Class 8 of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action to amend Permit 893 will have no employment effect.

FINANCIAL IMPACT:

The proposed action commits the Harbor Department to take responsibility for remediation of groundwater contamination, including preparation of necessary work plans, remedial action plans and/or groundwater monitoring plans as required by the RWQCB. The total estimated cost associated with groundwater contamination is \$356,150 (\$85,000 plan preparation, \$271,150 monitoring/remediation). It is anticipated that these costs will be expended as follows:

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FY 11/12	\$105,000
FY 12/13	\$100,000
FY 13/14	\$151,150
Total	\$356,150

Funds in the current fiscal year are available in Account 54260, Center 331, Program 000. Funding needed in future fiscal years will be requested through the annual budget adoption process.

The Harbor Department is solely responsible for the plan preparation costs. If the actual costs to monitor/remediate the groundwater exceed 150% of the estimated cost or \$406,723, the PMA shall reimburse the Harbor Department in the amount of 75% of any costs above and beyond \$406,723. If the Harbor Department files any claim or action against a third party to recover costs associated with groundwater contamination, then any such costs that are recovered will be split proportionately with the PMA.

Remediation of soil contamination is estimated to cost \$633,670. The PMA is obligated to fund these activities up to \$950,505 (excluding plan preparation costs). If these soil remediation activities exceed \$950,505, PMA has the option to terminate Permit 893 and the Harbor Department would be obligated to fund any costs exceeding this threshold.



CITY ATTORNEY:

The Office of the City Attorney has approved the proposed agreement.

TRANSMITTAL:

1. Settlement and Release Agreement Amending Permit No. 893


KATHRYN McDERMOTT
Deputy Executive Director

FIS Approval:  (initials)
CA Approval:  (initials)

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

KM:km
Author: K. McDermott