

DATE: OCTOBER 20, 2020

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ – APPROVE SECOND AMENDMENT TO
LEASE NO. 915 WITH SAN PEDRO PUBLIC MARKET, LLC**

SUMMARY:

Staff requests approval of the Second Amendment to Lease No. 915 (Lease) between the City of Los Angeles Harbor Department (Harbor Department) and San Pedro Public Market, LLC (SPPM). As a result of the ongoing and continued effects of the COVID-19 pandemic on the retail, dining, and entertainment sectors of commercial real estate from a tenant and financing perspective, revisions to development milestones are required. The purpose of the Second Amendment is to align the Lease with updated elements. The proposed Second Amendment would: (i) add two new option periods which would extend the entire period; (ii) require substantial completion notice for specific phases; (iii) define and require delivery notices for specific phases; and (iv) modify performance responsibilities. The proposed Second Amendment is not anticipated to have a financial impact on 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 has been previously evaluated pursuant to the California Environmental Quality Act (CEQA) under Article II Class 2(i) of the Los Angeles City CEQA Guidelines;
2. Approve the proposed Second Amendment to Lease No. 915 with San Pedro Public Market, LLC;
3. Direct the Board Secretary to transmit the Second Amendment to Lease No. 915 to the City Council pursuant to Charter Section 607;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Second Amendment to Lease No. 915 upon approval by City Council; and
5. Adopt Resolution No. _____.

SUBJECT: SECOND AMENDMENT TO LEASE NO. 915

DISCUSSION:

Background - On May 16, 2016, the Board approved the Lease with SPPM for the redevelopment of the site formerly known as Ports O' Call (POC) in San Pedro. The Los Angeles City Council (Council) subsequently approved the Lease on June 10, 2016. This will be the first comprehensive redevelopment of the approximately 40-acre site since its original development in the 1960s.

The Lease provided a 42-month Option Period where both parties are required to complete certain obligations. The Lease also included provisions describing Delivery Notices, Substantial Completion of City Improvements, and Harbor Department obligations to deliver primary electrical service to the premises. The proposed Second Amendment proposes to further amend all of the above-mentioned Lease provisions.

In November 2019, the Board approved First Amendment to the Lease amending the term to 66 years, and adjusting the option period to 48 months, during which time the SPPM will advance the project design, secure financing, and solicit tenants while the Harbor Department and SPPM prepare the site for development. The First Amendment also modified provisions related to development elements, design, plans, timing, and phasing of the overall project.

The first Delivery Notice was given to SPPM on March 5, 2020, and the Harbor Department has met its obligations to make the Lease effective. SPPM then exercised its Option Extension for an additional six months, extending the Option Period to December 17, 2020.

The Second Amendment (Transmittal 1) proposes modifying various Lease provisions to extend the Option Period, provide discrete definitions and processes for delivering Substantial Completion Notices and Delivery Notices, clarify the primary electrical service delivery condition and responsible parties for initiation of work required to meet this condition, and delete language creating financial liabilities for each party, as both parties have met respective investment and construction obligations. A further description of the proposed language revisions to specific lease terms is provided below.

Option Period - SPPM shall have the right to three (3) option extension periods. The first Option Extension, which has already been exercised, gave SPPM an additional six (6) months extension to the original Option Period after SPPM submitted evidence of a total investment in the development project equal to or exceeding Two Million Dollars (\$2,000,000). The second Option Extension gives SPPM an additional six (6) months extension to the Option Period subject to evidence of a total investment in Development Costs equal to or exceeding Ten Million (\$10,000,000.00) Dollars. The third Option Extension gives SPPM an additional six (6) months extension to the Option Period.

Primary Electrical – The Second Amendment clarifies that the primary electrical service is in the process of being upgraded with a new point of connection. The point of connection infrastructure will be upgraded when SPPM installs electrical infrastructure inside the new point of connection, which collectively is subject to design and installation by the City of Los Angeles Department of Water and Power.

SUBJECT: SECOND AMENDMENT TO LEASE NO. 915

Financial Liabilities for Non-Performance – Language requiring either party to pay the other party prescribed monetary amounts for failure to complete conditions under the terms of the contract has been deleted from Article 1, Section 2.5 and 2.6. SPPM's obligation to invest no less than \$2,000,000, and the City's obligation to enter into a contract to deliver certain City Improvements, have both been met. Therefore, the above-mentioned penalty language is no longer relevant.

Substantial Completion Notice – City shall provide SPPM written notice ninety (90) days prior to City's Substantial Completion ("Substantial Completion Notice") of portions of the premises including City Improvements described as parcels SPPM-2, SPPM-5, SPPM-6, and SPPM-7 in Exhibit F-2.

Delivery Notice – City will be required to provide SPPM sixty (60) days' written Delivery Notice describing the Phase designated as SPPM-2, SPPM-3, SPPM-4, SPPM-5, SPPM-6, and SPPM-7 in Exhibit F-2. On March 5, 2020, City provided SPPM written notice of the first Delivery Notice of City's timely completion and delivery of the Phase described as SPPM-1.

Staff recommends the Board approve the Second Amendment to Lease No. 915 to modify terms to align the Lease with updated lease provisions related to option period, substantial completion notice, delivery notice, electrical service performance responsibilities, and deletion of financial penalties for failing to meet delivery and investment conditions.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Second Amendment to Lease No. 915 between the City of Los Angeles Harbor Department and San Pedro Public Market, LLC for modifications to lease terms and provisions. This is an activity for which the underlying project has previously evaluated in the San Pedro Waterfront Project Environmental Impact Report (SPW EIR) (SCH# 2005061041) certified by the Board on September 29, 2009, the Addendum to the SPW EIR for the San Pedro Public Market Project considered by the Board on May 19, 2016, and the Addendum to the SPW EIR for the San Pedro Public Market 2 considered by the Board on November 21, 2019. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to CEQA in accordance with Article II Class 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Second Amendment will modify lease terms, provisions, and development milestones to align the Lease with an updated option period, revisions to the substantial completion notice as well as delivery notice definitions, updated phasing, and revised performance responsibilities. The changes proposed under the Second Amendment are largely administrative in nature and serve to generally extend phasing schedules as a result of the continued effects of the COVID-19 pandemic on the retail, dining, and entertainment sectors. So long as SPPM ultimately meets the amended performance criteria, the proposed Second Amendment is not anticipated to have a financial impact on the Harbor Department.

DATE: OCTOBER 20, 2020

PAGE 4 OF 4

SUBJECT: SECOND AMENDMENT TO LEASE NO. 915

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the Second Amendment as to form and legality.

TRANSMITTAL:

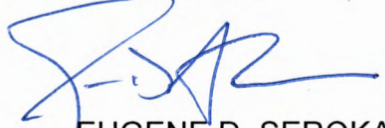
1. Second Amendment

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

FIS Approval: 
CA Approval: 

ANTONIO V. GIOIELLO, P.E.
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA
Executive Director

ES:AG:MG:HP:raw
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