



Executive Director's
Report to the

Board of Harbor Commissioners

DATE: AUGUST 19, 2014

FROM: REAL ESTATE

**SUBJECT: ORDER NO. _____ - APPROVE PERMIT NO. 907 WITH SSA
PACIFIC, INC. FOR PREMISES AT BERTHS 53-55**

SUMMARY:

Permit No. 714 (P. 714) between the City of Los Angeles Harbor Department (Harbor Department) and Stevedoring Services of America, currently known as SSA Pacific, Inc. (SSA), grants use of property located at Berths 52-55 and adjacent wharf and backland for the docking of vessels for the assembling, distributing, loading and unloading of palletized fresh fruit cargo. SSA has been on a month-to-month status since November 2009. This proposed successor Permit would be effective November 1, 2012, for a period of five years, with an option to extend for an additional year. Under the proposed Permit, SSA will have preferential use of Berths 53-55 and adjacent wharf and backland from December 1st through April 30th of each year and ten parking spaces all year. The rent will be based on the higher of a Minimum Annual Guarantee (MAG) or the cumulative Port of Los Angeles Tariff No. 4 (Tariff) fees charged.

RECOMMENDATION:

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

1. Concur with the termination of the month-to-month holdover tenancy under Permit No. 714 with Stevedoring Services of America (currently known as SSA Pacific, Inc.) upon execution of the proposed Permit;
2. Make the following findings:
 - a. Rate of Return: The expected rate of return of 6.89 percent is reasonable given the seasonal use of Berths 53-55 and adjacent wharf and backland due to the unique nature of the break-bulk fruit operations, the density of high-paying seasonable jobs in the local area, the need for such a facility at the Port of Los Angeles to support the U.S. West Coast market, the existing condition of the premises including the restrictive load limits on the wharf, and the ability to use the premises during the remainder of the year for other Port of Los Angeles requirements.
 - b. Payment Guaranty: SSA Pacific, Inc. is not required to provide a letter of credit or other means to secure payment of its obligations under the proposed Permit because it is a long-time tenant in good standing providing a unique service at the Port of Los Angeles.

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.

- c. Environmental Obligations: Since the improvements on the premises are the property of the City of Los Angeles Harbor Department, and since there is no baseline report for the premises, it is reasonable for the City of Los Angeles Harbor Department to assume the liability for the condition of the premises other than for contamination caused by SSA Pacific, Inc. or its affiliates. Accordingly, the Board finds that SSA Pacific, Inc. should only be responsible for term releases and not for any existing condition of the premises unless the condition was the result of a term release by SSA Pacific, Inc. or its predecessor, Stevedoring Services of America.
3. Approve Permit No. 907 with SSA Pacific, Inc.;
4. Direct the Board Secretary to transmit the proposed Permit with SSA Pacific, Inc. to the City Council for approval pursuant to Section 606 of the City Charter;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit with SSA Pacific, Inc. after approval by the City Council; and
6. Adopt Order No. _____.

DISCUSSION:

Background/Context – SSA began utilizing Berths 54-55 and adjacent wharf and backland in May of 1991, primarily for Chilean fruits and vegetables, under a Preferential Berth Assignment (PBA). In 1999, the PBA was superseded by P. 714, which was approved by the Board for a ten-year term of November 1, 1999 through October 31, 2009. Since November 1, 2009, SSA has been on a month-to-month status under the same terms and conditions contained in P. 714.

P. 714 grants SSA preferential use of Berths 54-55 and the adjacent 10.96 acres of wharf and backland, as well as secondary use of Berths 52-53 for the purpose of docking vessels for the assembling, distributing, loading and unloading of cargo and for incidental purposes (Transmittal 1). SSA is a tenant in good standing. SSA currently pays a MAG of \$73,093 per acre and a 50 percent revenue share after the MAG is achieved. This rental formula achieved an approximately 3.75 percent rate of return.

Initially, the Real Estate Division (RED) sought to negotiate a revocable permit to replace the holdover tenancy. However, at SSA's request to accommodate its customers' demands, RED instead negotiated a new five-year permit with a different rental structure to reflect the current market conditions for Chilean produce (primarily to acknowledge the drop in bulk shipments of fruits and vegetables from South America). SSA is not anticipating any increase in its operations with respect to ship calls or making any modifications to the facilities.

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.

Operational Issues and Corresponding Rent Adjustments:

- As part of the Cabrillo Way Marina Project, Miner Street was realigned, which resulted in an increase in backland area for SSA. The acreage increased from 10.96 to 14.72 acres. The extra acreage is not needed for SSA's operations, but due to the street realignment, it is not otherwise usable to the Harbor Department. Utilizing the prior rate per acre would result in a MAG that is not supportable by the revenues generated from SSA's operations at the site. Therefore, a more manageable rate of \$68,354.98 per acre was negotiated.
- SSA's operations at the berths are generally limited to palletized fresh fruit cargos, because the wharf cannot handle heavy-lift operations. Moreover, the operations are seasonal, and as a result, any major capital improvement in the wharf or any other improvements are cost prohibitive. In addition, it is anticipated that the fruit trade in refrigerated break-bulk vessels will not see a major increase in the future and may not remain steady. Nonetheless, continuing use of the facility at Berths 53-55 is recommended because this use is valuable to the regional market and creates high paying jobs. Therefore, due to the condition of the property and the restrictions on load limits, a 25 percent utilization rate reduction was applied to the negotiated rates for acreage, office, and gear corral (storage).
- Due to the seasonal nature of SSA's operations, and consequently the seasonal nature of the cash flow for the operations, the MAG for the entire premises will be paid over a five-month period with the difference between the MAG and the Tariff charges incurred to be reconciled by July of each year.
- Since the negotiations for a successor permit began in 2012, the new Permit will be effective November 1, 2012, and terminate on October 31, 2017, unless extended (at SSA's option to October 31, 2018). The new MAG rate will be effective retroactive to November 1, 2012. As consideration for the continued commitment to the continuation of important fruit imports to the U.S. West Coast market and the numerous high paying, seasonal longshore and related jobs created by SSA's use of the premises, the proposed Permit will supersede the terms of P. 714 from and after November 1, 2012. The result is that any payment shortfall which would have been due under the old rate structure is eliminated since it would not be due under the new rate structure. Consequently, the shortfall of approximately \$85,000.00 due under P. 714 (which shortfall has been held in abeyance pending resolution of these negotiations) will be considered subsumed and abolished by the new proposed Permit.

Review of Other Ports:

Staff conducted a survey of other ports to determine the market and optimal permit terms. They ascertained that leases and lease structures are different in major break-bulk/fruit ports around the country. Some, like Port Hueneme, have MAGs on the metric tonnage and provide the warehouse space/cold storage for free. Philadelphia has

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.

different lease structures depending on customers' needs, but all their land lease rents are under market value. Yet other ports have land lease structures that vary with the amount of cargo that moves over the wharf. As such, it is clear that there is no common formula for leases at break-bulk and fruit terminals.

Recommendation:

Given the condition of the facilities, particularly the load limitations, the fact that neither the Harbor Department nor SSA would find it financially feasible to improve the facilities based on current and projected cargo demand, the steady decline in the mode of operation, the large number of high paying jobs created by this seasonal operation, and the lack of other permanent tenants due to the limitations of the premises, staff determined that it would be in the Harbor Department's best interest to maintain the operations under the proposed terms delineated below. Therefore, staff recommends that the Board concur in the termination of the month-to-month tenancy under P. 714 and authorize the proposed Permit (Transmittal 2) with the following terms:

- Premises: The preferential use of Berths 53-55 and adjacent 14.72 acres of wharf and backland, which includes the warehouse and parking areas, for the months of December 1st through April 30th of each year of the Permit term and the exclusive use of approximately 2,195 square feet of office space and 15,129 square feet of gear corral space, consisting of approximately 2,173 square feet of fixed space within the warehouse for a charging station and 12,956 square feet of flexible space within the warehouse for storage, together with the right of ingress and egress and ten off-season parking spaces for the remainder of the year.
- Term: Five years with one option to extend for one additional year.
- Compensation: A MAG composed of the following elements: (i) a negotiated rate of \$68,354.98 per acre per year for the 14.72 acres for five months of the year (December 1st through April 30th) and (ii) the Tariff rates of \$0.72 per square foot per month for office space and \$0.22 per square foot per month for gear corral space for the remainder of the year, with (iii) all rates reduced by 25 percent due to the condition of the premises and the restrictions on the load limits on the wharf.

Based on these negotiated rates, the base rent will be the higher of (i) a MAG of \$340,204.00, payable in five-equal installments of \$68,040.80, paid during the months of December 1st through April 30th, or (ii) the Tariff charges incurred for the months of December 1st through April 30th. The rent for the office and gear corral for the year is included within the MAG.

As negotiated, the MAG is subject to annual increases based on the Consumer Price Index with a floor of 0 percent and a cap of 2 percent. The compensation will be reset by the Board after five years should SSA exercise its option for an additional year. Any Tariff charges incurred from May 1st through November 30th of each year will be additional rent; provided that if the Tariff charges are for fruit

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.

and vegetable cargo, those charges will apply to the next calculation of rent due for the immediately following December through April period.

- **Uses:** The docking and mooring of vessels owned, operated, or chartered by SSA or SSA's customers for the assembling, distributing, loading and unloading of goods, wares and merchandise on and from such vessels over, through and upon the premises and from and upon other vessels, and for purposes incidental to the break-bulk operation on a preferential basis from December 1st through April 30th of each year; together with the exclusive use of office space and gear corral from November 1, 2012, until the termination or earlier expiration of the Permit.
- **Other:** The flexible space in the gear corral shall be the space used for storage within the warehouse at SSA's discretion; provided any equipment or supplies stored in the warehouse in such flexible space must be moved and segregated at the Harbor Department's request to accommodate other tenants', or the Harbor Department's, use of the remainder of the warehouse during the off-season period of May 1st through November 30th.
- **Deviations from the Leasing Policy:**
 - i. **Rate of Return:** The Board's current targeted rate of return of 10 percent on land and 12 percent on improvements, for a blended rate of 11.03 percent for this property, is not met by the proposed Permit. However, the current hold-over month-to-month tenancy only achieves an approximately 3.75 percent rate of return while the proposed Permit is expected to achieve a 6.89 percent rate of return for the five months of seasonal use. This rate of return assumes that the Tariff charges for wharfage and dockage will exceed the MAG; however, the rate of return on the MAG alone would only achieve a rate of return of 1.33 percent versus a blended rate of 8.27 percent. Nonetheless, since SSA would only have use of the majority of the premises for five months of the year, the Harbor Department will be able to increase its return on this property if it is able to rent the space during the off-season to temporary users (such as for other break-bulk cargos [mindful of load limits], lay-berthing, filming, parking, staging, or entertainment activities). While these rates of return are lower than the Board's targeted rates, they were justified in the past and are justifiable now due to the unique nature of the break-bulk fruit operations, the service to the entire U.S. West Coast market, the high paying seasonable jobs it creates, and the need for such a facility at the Port.
 - ii. **Payment Guaranty:** Consistent with P. 714, no standby letter of credit or other form of guaranty has been sought for the proposed Permit since SSA is a long time tenant in good standing and the rent structure in the proposed Permit is unique. However, SSA will be subject to the environmental deposit required by the Port's Leasing Policy.

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.

- iii. Environmental Obligations: Since the improvements on the premises are the property of the Harbor Department, and since the Harbor Department does not wish to expend any resources on obtaining a baseline report of the condition of the property, SSA shall only be responsible for Term Releases and not for any existing condition of the premises unless the condition was the result of a term release by SSA under the current or prior permits.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a replacement Permit for SSA to allow it to continue the existing use of the facilities at Berths 53-55. No increase or change in operations is anticipated. Although the acreage is greater than under P. 714, the increase is due to the Harbor Department's realignment of Miner Street and does not change the operations of the tenant, the amount of cargo that it can process or the frequency of use. This proposed Permit merely changes current month-to-month usage to a five-year term.

As such, the Director of Environmental Management has determined that the proposed action involving the issuance of a permit to use an existing facility with negligible or no expansion of use is exempt from the requirements of the California Environmental Quality Act (CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

The proposed Permit would secure existing jobs from SSA's operations for the duration of the Permit. Historically, during the five-month seasonal operation of the fruit terminal (from December through April each year) approximately 75,000 - 85,000 labor hours are created for terminal operations, or approximately 185-200 jobs on-site, during a season. Wages range from \$40 - \$45 per hour, excluding benefits. SSA has estimated that wage, benefits, and payroll taxes for SSA staff and longshore labor are approximately \$6 million per year. Additional jobs created from SSA seasonal fruit operations include necessary ancillary jobs for truckers, off-site warehouse, distribution, and administrative functions.

The break-bulk import of fresh Chilean fruit is important to the continued availability of this commodity during the months in question. As the primary location handling such imports, this facility supports the local and U.S. regional market and its continued operation has a positive impact on the market.

FINANCIAL IMPACT:

The proposed Permit decreases the minimum annual rental compensation (as represented by the MAG) from \$801,099.00 to \$340,204.00 per year and eliminates sharing of revenues (primarily to acknowledge the drop in shipments of fruits and vegetables from South America which makes the prior MAG and revenue sharing economically unviable). The new compensation will be based on the higher of the MAG or the Tariff charges incurred during the months of December 1st through April 30th, with

SUBJECT: APPROVE PERMIT NO. 907 WITH SSA PACIFIC, INC.


Tariff charges incurred in other months for non-fruit or vegetable cargo operations, if any, constituting additional rent. Additionally, the minimum annual compensation includes an annual Consumer Price Index adjustment of no less than 0 percent and no more than 2 percent. Furthermore, the Harbor Department will be able to increase revenues by renting a portion of the premises during the off-season to temporary users. The proposed Permit also settles any sums due from the holdover of P. 714. The current month-to-month tenancy achieves an approximately 3.75 percent rate of return while the proposed Permit is expected to achieve a 6.89 percent rate of return for the five months of seasonal use.

CITY ATTORNEY:

The Office of the City Attorney has approved the proposed Permit as to form and legality.

TRANSMITTALS:

1. Proposed Permit
2. Site Map



JACK C. HEDGE
Director of Real Estate

FIS Approval: DP (initials)
CA Approval: CRS (initials)



DAVID L. MATHEWSON
Interim Deputy Executive Director

APPROVED: 

EUGENE D. SEROKA
Executive Director

EDS:DM:JH:RG:PT:mnm
Author: P. Tubert
BL480mnm SSA Permit