



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

Board of Harbor Commissioners

DATE: OCTOBER 22, 2014

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - SETTLEMENT AGREEMENT AND
FIRST AMENDMENT TO PERMIT NO. 882 WITH MILLENNIUM
MARITIME, INC.**

SUMMARY:

The Board of Harbor Commissioners (Board) granted Permit No. 882 (Permit) to Millennium Maritime, Inc. (MMI) for premises at Berth 301 (Premises) effective November 1, 2011. The Permit allows for the construction, operation, and maintenance of an office and maintenance facility for their tug and barge operation. The Permit was issued for a five-year term, with two five-year options.

The attached Settlement Agreement and Release (Settlement Agreement), as well as the proposed First Amendment to the Permit, addresses the need to correct a mutual oversight by the City of Los Angeles Harbor Department (Harbor Department) and MMI on the compensation and Tariff No. 4 charges by deleting most of MMI's submerged land (water) premises and settling certain outstanding invoices in connection with this oversight. As a result, \$359,500 of the total \$413,229 in outstanding dockage charges due will be reversed and MMI is responsible to pay the remaining \$53,729.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the proposed Settlement Agreement and Release with Millennium Maritime, Inc., and its related entities, Westoil Marine Services, Inc., and Olympic Tug and Barge, Inc.;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the proposed Settlement Agreement and Release;
3. Approve the proposed First Amendment to Permit No. 882 with Millennium Maritime, Inc.;
4. Direct the Board Secretary to transmit the First Amendment to Permit No. 882 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 First Amendment to Permit No. 882 upon approval by City Council; and
6. Adopt Resolution No. _____.

SUBJECT: SETTLEMENT AGREEMENT AND FIRST AMENDMENT TO PERMIT NO. 882 WITH MMI, INC.

DISCUSSION:

Background and Context – The Permit grants MMI the use of wharf and water areas at Berth 301 (Transmittal 1) for five years beginning November 1, 2011, with two consecutive, five-year options to extend. MMI was occupying premises at Berth 195 and at 300 Water Street but was relocated to make room for the development of the Maritime Law Enforcement Training Center (MLETC).

Prior to moving to Berth 301 in November 2011, MMI was paying rent to the Harbor Department under three separate agreements, as well as dockage fees for their working vessels. Of the three agreements, one was for office space, one for water space, and another for wharf area. It should be noted that all three agreements and dockage fees were in effect and paid during the period of construction at Berth 301 under separate entities of parent company Harley Marine Services, including Westoil Marine Services, Olympic Tug and Barge, and MMI, all hereinafter referred to as MMI.

- Office space – In 2009, the Harbor Department took ownership of the two-story building located at 300 Water Street in Wilmington (Water Street). MMI was leasing office space from the Harbor Department on the second floor of the building.
- Water space adjacent to Water Street – MMI was paying for water space under Revocable Permit No. 06-19 to occupy Berths 195 through 198 for docking their vessels.
- Wharf space – MMI was paying on Space Assignment 05-23 at Berth 240Y.

The objective of the Permit was to move MMI out of Water Street as soon as possible to accommodate the MLETC, and also to achieve temporary parity of rent with the rent and other charges MMI was paying at Water Street, including Berth 240Y and Berths 195-198. This temporary rent parity is only for the first five years of the Permit, with annual Consumer Price Index (CPI) increases. Compensation will be adjusted to market rent starting on the sixth year of the Permit as part of the renewal process.

MMI currently pays for 111,416 square feet (s.f.) of wharf space and approximately 190,320 s.f. of water area. The wharf contains a modular office building and a maintenance building, with parking areas for employees and visitors. The water area is used to dock their tugs and barges. The current monthly base compensation is \$35,299 and reflects CPI increases over the last three years.

Explanation of mutual oversight – The compensation clause of the Permit (Section 3.2) states that the tenant is subject to charges under Tariff No. 4. While the reference to Tariff No. 4 charges is a standard provision in virtually all permits, the additional dockage when an MMI barge berthed at another wharf to receive bunker fuels was neither anticipated nor accounted for in the calculations during negotiations. Since the commencement of the Permit, these charges have added \$6,757.50-\$16,022 per month to MMI's operational expenses. Because incorrect assumptions on dockage charges were made by staff and MMI, such additional costs became virtual double payments. To date, MMI has disputed approximately \$359,500 in dockage charges. If these charges would have been anticipated and presented in negotiations, MMI would have not requested as much water space.

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PROPOSED FIRST AMENDMENT AND SETTLEMENT TERMS:

A First Amendment to the Permit (Transmittal 2) is proposed basing compensation on a reduced amount of water area assigned under the Permit. All working barges will be placed on the appropriate daily dockage or flat rate, as applicable pursuant to Tariff No. 4.

Second, a Settlement Agreement (Transmittal 3) has been negotiated to reverse dockage charges due for up to five working barges each month from November 1, 2011 through September 30, 2014, as the effective date of the First Amendment is October 1, 2014. Reversing charges for the five vessels would satisfy the parity issue consistent with the original intent of the Permit. However, \$53,729 in dockage charges resulting from additional vessels beyond those five would be paid by MMI. This two-step approach will resolve several issues including:

- Revising the compensation structure to be similar to that of the other tug and barge company permits at the Port of Los Angeles (Port);
- Bringing MMI, and MMI's related entities operated under Olympic Tug and Barge, Inc. and Westoil Marine Services, Inc., current on their outstanding dockage billings; and
- Returning 146,534 s.f. of deep water submerged land area to the Harbor Department.

Effective Dates: First Amendment shall be effective October 1, 2014.

Premises: Water area: 43,786 s.f. (reduced from 190,320 s.f.)
Land area: 111,416 s.f. (unchanged)

The permitted water area is for docking and storage of up to six working tugs and two floating docks. Unlike working barges, these vessels would not incur additional dockage charges as they do not dock at any other berth.

Land and Water Rates: Pursuant to Section 5.1 of the Permit, and as previously described, the initial rent was based on MMI's 2008 monthly rent and Tariff No. 4 totals. This prorated formula for allocation for land and water was applied below and will continue to include annual CPI adjustments. Additionally, pursuant to Section 5.3, rent will be adjusted to market rent at the end of the current five-year term which is November 1, 2016.

	Rate per s.f.	Current Area in s.f.	Current Rent Per month	Proposed Area in s.f.	Proposed Rent per month
Water Space	\$0.0673	190,320	\$12,807.07	43,786	\$2,946.46
Land Space	\$0.2019	111,416	\$22,492.32	111,416	\$22,492.32
Total water and land		301,736	\$35,299.39	155,202	\$25,438.78

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Monthly Charges: Monthly Rent + Tariff No. 4 Charges

Monthly Rent: \$25,438.78

Tariff No. 4 charges: All working barges would be billed the appropriate dockage charges under Tariff No. 4, which currently ranges from \$8,445 - \$10,072 per month depending on number of vessels operating in the Port.

Outstanding Billings: The negotiated Settlement Agreement would reverse \$359,500 of the \$413,229 currently outstanding amount invoiced through September 30, 2014. The remaining amount of \$53,729 would be paid by MMI.

Estimated Revenue: Under this proposed amendment, MMI's monthly base rent will be reduced to \$25,438.78. However, MMI will pay dockage, as appropriate for their working barges which this calendar year ranges from \$8,445 - \$10,072 per month.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Settlement Agreement and First Amendment to the Permit with MMI for premises at Berth 301 to correct an oversight on the compensation and Tariff charges. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

It is estimated that under the Settlement Agreement the Harbor Department will reverse approximately \$359,500 in previously invoiced amounts that were disputed by MMI. This reversal will reduce revenues in an equal offsetting amount in Fiscal Year 2014/2015.

The settlement agreement provides for the following financial benefits to the Harbor Department:

- Agreement by MMI to pay \$53,729 of the \$413,229 in previously billed invoices;
- Avoidance of litigation costs by the Harbor Department; and
- Continued business relationship with a valued tenant.

Additionally, under the proposed First Amendment, MMI's submerged land (water) area will be reduced by 146,534 s.f., with a commensurate reduction of monthly base rent from \$35,299 to \$25,439, a difference of \$9,860. However, MMI will pay monthly dockage charges for their working barges ranging from \$8,445 to \$10,072 per month.

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CITY ATTORNEY:

The proposed First Amendment and the Settlement Agreement have been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Premises Map
2. First Amendment
3. Settlement Agreement



JACK C. HEDGE
Director of Real Estate

FIS Approval: WJ (initials)
CA Approval: DM (initials)



DAVID L. MATHEWSON
Interim Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

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