



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: MAY 17, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE PERMIT NOS. 958, 959 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING & TERMINALS, L.P.; GUARANTIES FURNISHED BY THE PASHA GROUP

SUMMARY:

Staff requests approval of the following:

1. Permit Nos. 958 and 959 between Pasha Stevedoring & Terminals, L.P. (Pasha) and the City of Los Angeles Harbor Department (Harbor Department);
2. Settlement and Mutual Release of Claims Agreement (Settlement Agreement) between Pasha and the Harbor Department to resolve a dispute concerning past due compensation under Space Assignment No. 09-01 for Berths 206-209 for the period of 2009 to 2012; and
3. Three individual guaranty agreements furnished by The Pasha Group (Pasha's parent company) concerning Permit Nos. 958, 959 and the Settlement Agreement, respectively.

With respect to Permit Nos. 958 and 959, the term of each proposed Permit is five years. Guaranteed compensation for each Permit is as follows for the first year:

- Permit No. 958 (concerning Berths 174-181) will be \$3,371,760 on 40.07 acres; and
- Permit 959 (concerning Berths 206-209) will be \$4,201,320 on 23.03 acres.

Year one (i.e. Calendar Year 2023) compensation under each Permit will be pro-rated based upon a compensation year end of December 31, 2023. The MAG under each Permit will be adjusted based upon scheduled increases through December 31, 2025, with annual adjustments occurring in Calendar Years 2026 and 2027 based upon the year-over-year change in the Consumer Price Index (CPI), subject to a floor of 2 percent.

Regarding the companion Settlement Agreement, Pasha agrees to pay \$1 million to resolve disputed Space Assignment charges that accrued between 2009 and 2012.

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 requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;

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2. Find that entering into Permit Nos. 958 and 959 is in the best interest of the City of Los Angeles despite certain exceptions to the City of Los Angeles Harbor Department's Leasing Policy, Section XI, concerning a 2 percent non-refundable holdback on security instruments for a maintenance fund;
3. Approve Permit No. 958 with Pasha Stevedoring & Terminals, L.P.;
4. Approve Permit No. 959 with Pasha Stevedoring & Terminals, L.P.;
5. Approve the Settlement Agreement with Pasha Stevedoring & Terminals, L.P.;
6. Approve the Guaranties furnished by The Pasha Group concerning Permit Nos. 958 and 959 and the Settlement Agreement Pasha Stevedoring & Terminals, L.P.;
7. Authorize the Executive Director to execute and the Board Secretary to attest to Permit Nos. 958, 959 and the Settlement Agreement; and
8. Adopt Resolution No. _____.

DISCUSSION:

Background - On December 17, 1986, the Board issued Permit No. 603 (Permit 603) to Pasha to use and occupy Berths 174-181, effective January 1, 1986, for a term of 15 years, with an expiration date of December 31, 2000. The Permit has been on month-to-month holdover since it expired in 2000.

Pasha also uses and occupies Berths 206-209 and adjacent backland under Space Assignments (i.e. use agreements governed by Tariff No. 4) as well as an additional area that serves as substitute premises for space removed at Berth 177 for wharf repairs. See Transmittals 1, 2 and 3.

Pasha operates the only breakbulk terminals at the Port of Los Angeles and primarily handles steel slab and other breakbulk cargo; its volumes fluctuate and are largely driven by infrastructure spending in the southwest United States. Pasha also handles a limited amount of containerized cargo.

Breakbulk cargo generally consists of various pieces of goods that typically cannot fit in a marine shipping container: metal products; mobile equipment; reinforced concrete products and structures; and large-sized and heavy cargo.

Historical Financial Performance - Under its existing Permit 603, Pasha pays the greater of a minimum annual guarantee (MAG) or Tariff charges for wharfage and dockage, subject to application of revenue sharing breakpoints. The Tariff prescribes specific charges for the different commodities handled at the premises.

From January 1 through December 2022, Pasha generated gross qualifying tariff revenues of \$12,029,303. Based upon the revenue sharing provisions contained within Permit 603, Pasha ultimately remitted net revenues of \$6,099,803 or approximately 51 percent of gross tariff revenues to the Harbor Department. Under Permit 603, Pasha has

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been incentivized to process higher volumes within its premises as the percentage of net wharfage remitted to the Harbor Department generally declines as gross volumes increase. From 2018-2022, Pasha generated gross wharfage ranging from \$7.0 million to \$13.9 million and remitted net wharfage ranging from approximately 47 percent – 68 percent of gross wharfage over this same period. Following the general rate increase implemented effective August 1, 2022, Pasha currently pays a minimum annual guarantee (MAG) of \$4,811,202 under Permit 603. There is no MAG in place for Berths 206-209.

The economic terms outlined below for the proposed successor permits (i.e. MAG and revenue sharing breakpoints) would essentially be a continuation of what has been in place under existing Permit 603. The overarching goal of the revenue sharing framework is to preserve revenue certainty while simultaneously incentivizing further economic productivity within the premises. Ultimately, the structure is designed to increase break bulk volume at the Port of Los Angeles and foster further economic benefits such as job retention and creation. Break bulk operations are typically labor intensive; there are up to 250 longshore jobs per day associated with the Pasha operation.

Environmental Initiatives

The terminal at Berths 174-181 is the site of the Green Omni Terminal Project, which demonstrates a full range of zero- and near-zero emissions equipment and vehicles.

Termination of Existing Permit

Approval of this action would result in the termination of Pasha's holdover period. Negotiations for a successor permit were protracted for several reasons: 1) the scope of the renewal evolved over time due to the possibility for terminal redevelopment, but was ultimately abandoned for various reasons; 2) breakbulk volumes are cyclical and vary based on market conditions which affected the negotiation of commercial terms; and 3) key negotiators on both sides transitioned over time.

Proposed Permits

The proposed successor permits would enable Pasha to continue to operate at both sites for a term of up to five years. There is no terminal development planned at either site.

Material terms of the Permits (Transmittals 4 and 5) are as follows:

| <u>Provisions</u> | <u>P958 - Berths 174-181</u> | <u>P959 - Berths 206-209</u> |
|-------------------------|--|------------------------------|
| Real Estate Entitlement | Term Permit | Same |
| Permitted Use | Operation of a cargo terminal including the berthing of vessels, the unloading and loading of cargo, assembling and distributing of wares and merchandise. | Same |

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| Term | Five years | Same |
| Early Termination Rights | None, except for cause | Harbor Department may terminate with 30 days' notice for convenience following the third anniversary of the effective date. |
| Primary Premises (See Transmittal Nos. 1, 2 and 3) | <ul style="list-style-type: none"> - Backland: 40.07 acres - 2-Story Administration Building located at 802 S. Fries Avenue is comprised of 12,000 sf - Transit Shed is comprised of 118,000 sf - Wharf totals 1,969 linear feet | <ul style="list-style-type: none"> - Backland: 23.03 acres - 2-Story Marine Office - Wharf totals 1,326.77 linear feet |
| Secondary Premises | <ul style="list-style-type: none"> - Pasha may flex in and out of additional 2.28 acres of backland located adjacent to its Primary Premises, subject to paying the then-current space assignment rate on uncovered, paved land, pursuant to Tariff No. 4. (Rate is currently \$0.37 per square foot, per month.) | <ul style="list-style-type: none"> - Pasha may flex in and out of additional 10.15 acres of backland located adjacent to its Primary Premises, subject to paying the then-current space assignment rate on uncovered, paved land, pursuant to Tariff No. 4. |
| Compensation Structure | <p>Compensation comprised of Minimum Annual Guarantee (MAG) and additional rent as follows:</p> <ol style="list-style-type: none"> 1. <u>Primary Premises:</u> Greater of a) MAG or b) the amount of annual compensation determined by applying revenue sharing breakpoints to qualifying tariff charges. | Same |

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| | <p>a. <u>MAG</u>: Refer to MAG section below.</p> <p>b. <u>Revenue Sharing Breakpoints</u>: Refer to the illustrative example in Transmittal No. 6.</p> <p>2. <u>Secondary Premises: Space Assignment Rate</u> for uncovered, paved land, pursuant to Tariff No. 4.</p> | | | | | | | | | | | | | | | | | | | | | |
| MAG | <table border="1"> <tr> <td>2023</td> <td>\$3,371,760</td> <td>2023</td> <td>\$4,201,320</td> </tr> <tr> <td>2024</td> <td>\$3,505,560</td> <td>2024</td> <td>\$4,364,288</td> </tr> <tr> <td>2025</td> <td>\$3,746,400</td> <td>2025</td> <td>\$4,529,737</td> </tr> <tr> <td>2026</td> <td>+>CPI or 2%</td> <td>2026</td> <td>+>CPI or 2%</td> </tr> <tr> <td>2027</td> <td>+>CPI or 2%</td> <td>2027</td> <td>+>CPI or 2%</td> </tr> </table> | 2023 | \$3,371,760 | 2023 | \$4,201,320 | 2024 | \$3,505,560 | 2024 | \$4,364,288 | 2025 | \$3,746,400 | 2025 | \$4,529,737 | 2026 | +>CPI or 2% | 2026 | +>CPI or 2% | 2027 | +>CPI or 2% | 2027 | +>CPI or 2% | |
| 2023 | \$3,371,760 | 2023 | \$4,201,320 | | | | | | | | | | | | | | | | | | | |
| 2024 | \$3,505,560 | 2024 | \$4,364,288 | | | | | | | | | | | | | | | | | | | |
| 2025 | \$3,746,400 | 2025 | \$4,529,737 | | | | | | | | | | | | | | | | | | | |
| 2026 | +>CPI or 2% | 2026 | +>CPI or 2% | | | | | | | | | | | | | | | | | | | |
| 2027 | +>CPI or 2% | 2027 | +>CPI or 2% | | | | | | | | | | | | | | | | | | | |
| General Rate Increase | Tariff adjustments are applicable to MAG and Revenue Sharing Breakpoints (i.e. General Rate Increase), except that in 2026 and 2027 the increase will be offset by the CPI adjustment that same calendar year. | Same | | | | | | | | | | | | | | | | | | | | |
| Rent Credit for approved tenant improvements | None | \$315,000 for electrical improvements (i.e. 500KVA Transformer Feeder Replacement at Pier S Berth 207). | | | | | | | | | | | | | | | | | | | | |

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| Environmental Lease Measures | <p>Pasha is responsible for:</p> <ul style="list-style-type: none"> - Replacing cargo handling equipment; equipment must be replaced with cleanest available equipment that meets operating and safety standards anytime new or replacement equipment is purchased. - Conducting at-berth Vessel Emissions Control pilot study to determine feasibility of implementing the technology upon certification. - Reviewing new emissions -reducing technology not less infrequently than every 5 years following the effective date. i.e. holdover period, if any. | Same |
| Maintenance | <p>With the exception of certain structural items (e.g. wharf, high/low voltage electrical, maintenance dredging, rock slopes, hydrants, underground sewer and storm drain lines, if any), Pasha is responsible for maintaining the premises and all improvements, at its sole cost and expense.</p> | Same |
| Restoration | <p>Pasha is responsible for restoring the premises at the expiration or earlier termination of the Permit.</p> | Same |
| Insurance | <p>Insurance provision includes all standard insurance requirements and has been reviewed as acceptable by the Risk Management Division.</p> | Same |

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| Security Deposit | <p>Two months' rent (i.e. 2/12 of MAG) in the form of a letter of credit or cash.</p> <p>The following item required by the Leasing Policy was excluded from the Permit. Staff determined the commercial terms described herein provide sufficient coverage in lieu of this policy item:</p> <ul style="list-style-type: none"> • 2% non-refundable holdback on security deposit for port maintenance fund <p>Because staff recommends the holdback is excluded, it constitutes an exception to the Leasing Policy, which requires Board findings as noted in the Recommendations Section.</p> | Same |
| Transfers and Assignment Fee | <p>Assignment, transfer, and subletting require the Harbor Department's consent.</p> <p>In the event of a transfer, Pasha must pay an assignment fee equal to ten percent of the economic value attributable to the leasehold interest derived from the Premises.</p> | Same |
| Guaranty (See Transmittal 7) | <p>The Pasha Group has agreed to irrevocably guarantee the timely payment and performance of all obligations of Pasha arising under the proposed Permit.</p> | Same |

Companion Settlement Agreement

Material Terms of previously negotiated and approved companion Settlement Agreement (Transmittal No. 8) are as follows:

In 2020, with guidance from the Board, the parties agreed to a settlement resolving disputed invoices for the use of additional premises granted to Pasha under Space Assignments. Execution of a formal settlement agreement was reserved pending the completion of permit negotiations. Authorization to execute the Settlement Agreement

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(Transmittal No. 8) is now recommended in conjunction with authorization to execute the Permits.

Under the Settlement Agreement, Pasha agrees to pay the Harbor Department one million dollars to settle disputed charges concerning use of seven acres of Harbor Department property at Berths 206-209 granted under a Space Assignment between 2009 and 2012. Pasha will pay the one million dollars in equal monthly installments over five years. Pasha will secure said payments by providing a letter of credit in the amount of \$100,000. In addition, the Pasha Group will provide a Guaranty. Execution of the Settlement Agreement is a condition for the Harbor Department to enter into the Permits.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Permit Nos. 958 and 959 with Pasha, which is an activity for which the underlying project has been previously assessed in the Initial Study/Negative Declaration for the Pasha Stevedoring and Terminals Lease Renewal Project (SCH# 2015111029), which was certified by the Board on May 19, 2016. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA under Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

In order to align previously proposed Lease Measures (LM) with current Clean Air Action Plan goals, LM-1 Fleet Modernization for Off-Road Cargo Handling Equipment has been updated to place preference on conversion to zero and low-NOx emission equipment compared to previous language that favored Tier-4 Diesel equipment. The remaining Lease Measures proposed in the original document have remained unchanged.

FINANCIAL IMPACT:

Approval of the proposed Permits will increase Year 1 guaranteed compensation by \$2,761,878, or 57.4 percent, from \$4,811,202 currently to \$7,573,080, in aggregate, across the two Permits. In addition, total acreage encumbered under the proposed Permits will increase by 21.74 acres from 41.36 acres currently to 63.10 acres as proposed such that the Year 1 MAG per acre will increase by 3.2 percent from \$116,325 per acre currently to \$120,010 per acre as proposed.

In Years 2 and 3, minimum annual guarantee and revenue sharing breakpoints will increase according to scheduled increases. In Years 4 and 5, minimum annual guarantees and revenue sharing breakpoints will increase by the greater of the annual change in CPI or 2 percent. Assuming neither Permit is terminated prior to December 31, 2027, staff estimates that guaranteed compensation of at least \$38.9 million will be generated over the five-year term of the proposed Permits.

The proposed Permits do not commit the Harbor Department to construct any specific new improvements within the entitled premises. Staff benchmarked proposed MAG rates and future potential rent in excess of the MAG relative to comparable entitlements observed at West Coast break bulk terminals (i.e., Long Beach, San Diego and Stockton) and determined the economic terms outlined herein are in line with the benchmark data represent the appropriate rates for these transactions.

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With respect to the proposed guaranties, staff has reviewed financial information pertaining to the Pasha Group from 2019 through 2022. Based upon that review, it appears that Pasha Group possesses a reasonable amount of financial wherewithal to fulfill its obligations as guarantor under the proposed Permits.

CITY ATTORNEY:

Proposed Permit Nos. 958, 959, Settlement Agreement, and the Guaranties have been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Combined Site Map
2. Premises of Permit No 958
3. Premises of Permit No. 959
4. Permit No. 958
5. Permit No 959
6. Revenue Sharing Breakpoint Example
7. Guaranties
8. Settlement Agreement

FIS Approval: *MB*
CA Approval: *SO*

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