



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: JUNE 28, 2022

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF ASSIGNMENT AND ASSUMPTION AND FIRST AMENDMENT TO MASTER JOINT REVOCABLE PERMIT NO. 09-18/HD-7930 AMONG ZENITH ENERGY WEST COAST TERMINALS LLC AND CITY OF LOS ANGELES HARBOR DEPARTMENT, AND PORT OF LONG BEACH, AS JOINT OWNERS

SUMMARY:

Staff requests approval of an Assignment and Assumption (Assignment) as well as a First Amendment (First Amendment) to MJRP No. 09-18 (MJRP). Under the proposed Assignment, the MJRP will be conveyed from Plains West Coast Terminals LLC (Plains) to Zenith Energy West Coast Terminals LLC (Zenith). Under the First Amendment, the following changes will be made: (1) monthly compensation will be adjusted, (2) the security deposit will be increased, (3) the index used as the basis for permit fee increases will be revised, (4) a corporate guaranty will be added to the MJRP, and (5) contact information for MJRP notification requirements will be updated.

Currently, the Port of Los Angeles ("Harbor Department") receives rent of \$114.64 per month under MJRP No. 09-18 (MJRP). Under the proposed First Amendment, monthly rent will increase by \$248.44, or 217 percent, to \$363.08 per month, or \$4,356.96 per year with annual increases based upon the consumer price index (CPI) beginning in Year 2. In addition, the Harbor Department will also receive 50 percent of a \$3,000 (\$1,500) assignment processing fee to be paid by Zenith.

The proposed Assignment and First Amendment require approval from the Harbor Department and the Port of Long Beach ("POLB", collectively "Ports"). The Assignment and First Amendment is expected to be considered by POLB at its Board of Harbor Commissioners meeting in August 2022.

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 is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 of the State CEQA Guidelines;
2. Approve Assignment and Assumption and First Amendment to Master Joint Revocable Permit No. 09-18 among Zenith Energy West Coast Terminals LLC and the City of Los Angeles Harbor Department and Port of Long Beach, as joint owners;

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3. Authorize the Executive Director to execute and the Board Secretary to attest to Assignment and Assumption and First Amendment to Master Joint Revocable Permit No. 09-18; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background - On December 22, 1994, the Harbor Department and POLB jointly purchased rail properties as part of the Alameda Corridor Transportation Authority (ACTA) construction project. The properties contain the former Southern Pacific Railroad and Union Pacific Railroad (UPRR) right-of-way (ROW) within the County of Los Angeles and are held by the Ports as tenants-in-common, with each holding an undivided 50 percent interest in the properties. In addition, the Ports became successors-in-interest to all railroad agreements, leases, and licenses related to the acquired railroad ROW.

On August 30, 2012, the Ports and Plains entered into the MJRP allowing Plains to operate and maintain six (6) subsurface pipelines (Transmittal 1) that are part of a network of pipes transporting oil and fuel oil products from storage facilities to both maritime end users and to Southern California refineries like Marathon and Valero. On or about January 10, 2020, Plains' parent company was sold to the parent company of Zenith, resulting in a transfer of Plains' interest in the MJRP to Zenith's parent. Subsequent to the transfer of the Plains' interest in the MJRP to the parent company of Zenith, on October 16, 2020, a name change amendment was filed with the Secretary of State of California changing its name to Zenith. In connection with granting approval of the Assignment, the Ports negotiated changes to the MJRP including the addition of a corporate guaranty, which extended the time required to finalize and execute the Assignment.

The proposed Assignment (Transmittal 2) would allow Zenith the necessary entitlement and access to maintain its subsurface oil and fuel pipelines and appurtenant facilities. The Assignment would further allow for the adjustment of the Permit Fee payable under the MJRP to equate with fair market rates, the addition of a qualified guarantor as surety for the financial obligations of Zenith, and the modification of certain provisions in the MJRP including such items as the definition of the Consumer Price Index (CPI) and lists of contact names and addresses for certain notification obligations of the permittee.

Material terms of the Assignment and Assumption and First Amendment to MJRP 09-18 are provided below. See Transmittals 2 and 3:

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<u>Provisions</u>	<u>Current Terms - Description</u>	<u>Proposed Amendment</u>
Compensation ¹	1. The Harbor Department receives 50 percent of the total permit fee, equal to \$114.64 per month. Total permit fee is \$229.28 per month split equally between the Ports.	1. The Harbor Department will receive 50 percent of the total permit fee, equal to \$363.08 per month. Total permit fee for the first month is \$726.16, split equally between the Ports. See note below concerning two pipelines, which are not subject to a fee. 2. The Harbor Department will also receive \$1,500, half of a \$3,000 assignment processing fee paid by Zenith.
Security Deposit	\$1,000	Greater of \$1,000 or three times monthly rent
CPI Index	Consumer Price Index for All Urban Consumers (base year 1982-84= 100) for Los Angeles-Riverside-Orange County	Consumer Price Index for All Urban Consumers (base year 1982-84=100) for Los Angeles-Long Beach-Anaheim, CA
Guarantor	None	Zenith Energy Terminal Holdings LLC. The Harbor Department's Financial Planning & Analysis Division has reviewed the financial statements and qualifications of the guarantor establishing its position as a well-capitalized entity with ample solvency for the underwriting and securing of the financial obligations of Zenith under the MJRP and Assignment.
Notes: ¹ See See Transmittal 4 for detail		

As noted in Transmittal 4, two pipeline segments covered under this MJRP are not charged a permit fee because they only intersect a rail easement granted to the Joint Ports by the underlying property owner. These pipelines are included in the MJRP, albeit without fee, in order to ensure appropriate insurance and indemnity coverage, and to otherwise protect the Ports' rights to the railroad ROW.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Assignment and Assumption and First Amendment to MJRP 09-18, which is an activity involving the amendment to a permit to use existing structures involving negligible or no expansion of existing or former use. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Section 15301 of the State CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Assignment would enable Plains to convey its interest in the MJRP to Zenith. Approval of the proposed First Amendment would increase annual rent received by the Harbor Department under the MJRP by \$2,981.28, or 217%, from \$1,375.68 currently to \$4,356.96 per year as proposed. In addition, the Harbor Department would also receive a one-time \$1,500 assignment fee in Year 1. Beginning in Year 2 and each year thereafter, annual rent would increase by CPI.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality the proposed Assignment and Assumption and First Amendment to MJRP No. 09-18.

TRANSMITTALS:

- 1. Premises Map
- 2. Assignment and Assumption and First Amendment
- 3. Master Joint Revocable Permit No. 09-18
- 4. Exhibit A-1

FIS Approval: MB
 CA Approval: SO

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APPROVED:

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