



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

Board of Harbor Commissioners

DATE: JANUARY 19, 2019

FROM: EXECUTIVE OFFICE

SUBJECT: RESOLUTION NO. _____ - APPROVE (1) 180-DAY PERMIT TO CALIFORNIA TRANSLOAD SERVICES, LLC AND (2) SETTLEMENT AGREEMENT AND GENERAL RELEASE BY AND BETWEEN CALIFORNIA TRANSLOAD SERVICES, LLC AND THE CITY OF LOS ANGELES

SUMMARY:

Staff requests approval of: (1) a Permit with California Transload Services, LLC (CTS) to allow use and occupancy of 85.50 acres of land located at 2401 E. Pacific Coast Highway, Wilmington, CA (Premises) for 180 days, with the ultimate purpose of allowing CTS to undertake an orderly wind-down of operations, and to vacate and surrender possession of the Premises; and (2) a "Settlement Agreement and General Release by and between California Transload Services, LLC and the City of Los Angeles" (Settlement Agreement) to resolve specified pending disputes that arose in and after August of 2018. These two documents together effectuate the arrangement under which CTS will exit from the Port of Los Angeles, and, for that reason, are being presented together as part of one recommendation and one proposed resolution.

The proposed Permit allows use and occupancy for 180 days, and requires CTS to perform various duties to vacate and surrender the Premises, which are intended to return them to the City of Los Angeles Harbor Department (Harbor Department) in an operable condition, free of personal property and encumbrances that could hinder subsequent use. In return for performance of those duties and compliance with the Settlement Agreement, CTS will pay no rent during the 180-day term, subject to \$14,899.24 per day of liquidated damages for every day performance of their vacate and surrender obligations extend beyond the termination date.

Under the Settlement Agreement, CTS and the City of Los Angeles, acting by and through the Board of Harbor Commissioners, will release all prior claims against one another, with the City's release extending to CTS affiliates, subject to certain carve-outs specified in the agreement. CTS will indemnify the City should any such CTS affiliates sue the City on any released claims. The Settlement Agreement requires CTS to disburse approximately \$1.34 million to workers who will lose employment as a result of CTS' vacation and surrender of the Premises.

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RECOMMENDATION:

It is recommended that the City of Los Angeles, acting through the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Find that the compensation provisions of the proposed Permit are in the best interest of the Harbor Department in view of: (a) the strong need to facilitate CTS' expeditious and orderly exit from the Premises in a manner that causes the least amount of disturbance possible to users of Harbor Department facilities that rely on CTS' services and the other stakeholders invested in CTS' operations; (b) the value of CTS' performance of the required vacate and surrender obligations; (c) the value of the consideration the City will receive under the settlement agreement; and (d) the \$14,899.24/day liquidated damages requirement should CTS' performance of vacate and surrender obligations extend beyond the 180-day term;
3. Approve the proposed Permit with California Transload Services, LLC;
4. Approve the Settlement Agreement;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Permit and Settlement Agreement; and
6. Adopt Resolution No. _____.

DISCUSSION:

In terms of background, the Premises are situated within the footprint of the proposed Southern California International Gateway (SCIG) project to be developed by the BNSF Railway Company. On September 20, 2018, the Board approved Revocable Permit No. 18-08 (RP) entitling CTS to use and occupy the Premises following the set aside ordered by the California Court of Appeals of all documents issued under color of the final environmental impact report for the SCIG project, including CTS' then-existing lease document.

On September 28, 2018, pursuant to Section 245 of the Los Angeles City Charter, the City Council adopted a motion asserting jurisdiction over the Board's action approving the RP. Pursuant to that exercise of jurisdiction, on October 11, 2018, the City Council vetoed the Board's approval of the RP, thereby eliminating CTS' rights to use and occupy the Premises.

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Utilizing a workforce of approximately 700 permanent and temporary workers, CTS engages in transloading and warehousing operations at the Premises, value-added services that benefit Harbor Department tenants and beneficial cargo owners by organizing and consolidating disparate cargo for more efficient disposition and, ultimately, delivery and use, later in the supply chain. CTS' operations impact 2 - 6 percent of daily cargo throughput within the Harbor District.

In view of these facts, staff viewed preserving CTS operations on the Premises as an extremely high priority. Accordingly, following City Council's veto, staff engaged with CTS on a daily basis, which involved outreach to all interested stakeholders, in an effort to ascertain a deal structure that might result in continued occupancy. Those efforts proved unsuccessful, and resulted in CTS and the Department discussing and agreeing upon a process for CTS vacation and surrender of the Premises. The proposed Permit, along with the Settlement Agreement, both of which are discussed in detail below, implement that process.

Permit

The proposed Permit (Transmittal 1) allows CTS to use the Premises for transloading operations, but also requires that it "vacate and surrender" the Premises within 180 days. The proposed Permit defines "vacate and surrender" to include: cessation of all commercial activities; completion of all environmental remediation of contaminants placed on the Premises during the term; removing all personal property and executing all documents necessary to allow the Department to remove or dispose of remaining personal property; and departure from the Premises leaving buildings, structures, utilities and other improvements in the same or better condition than they were in on the effective date of the proposed Permit. The proposed Permit requires CTS and City to meet on the Premises every month to facilitate the vacate and surrender process, and for the parties to comply with any reasonable requests made in connection with that process.

In consideration of CTS' performance of these duties and compliance with the Settlement Agreement, CTS will pay no rent, but will be responsible for any charges under the Tariff. Should CTS' performance of vacate and surrender obligations extend beyond 180 days, it will pay the Harbor Department \$14,899.24 every day until those obligations are fully performed.

It should be noted that 180 days' worth of rent under the vetoed revocable proposed Permit would have totaled approximately \$2.6 million, which will not be collected under this proposed Permit. While the economic consequences of foregoing rent collection are not insignificant, staff believes that a number of factors justify doing so as part of the proposed Permit. First, the Harbor Department has a strong interest in facilitating CTS' orderly and systematic exit from the Premises in a manner that causes the least amount of disturbance possible to users of Harbor Department facilities that rely on CTS' services and the other stakeholders invested in CTS' operations. Second, the value of CTS' performance of the required vacate and surrender obligations and the Harbor

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Department's ability to regain the Premises in operable condition, is significant. Third, the consideration the City will receive under the Settlement Agreement, and the \$14,899.24/day liquidated damages requirement should CTS' performance of vacate and surrender obligations extend beyond 180 days likewise is significant.

Beyond these specific matters, the proposed Permit includes standard Harbor Department provisions for such lease documents, including those provisions related to indemnity, insurance, and hazardous material.

Settlement Agreement

Under the Settlement Agreement (Transmittal 2), the City of Los Angeles, acting by and through the Board of Harbor Commissioners, and CTS release one another from all claims and liability arising from matters commencing after the set aside in August 2018 of the lease document issued by the BNSF Railway Co. to CTS up to the date of the agreement. The City's release extends to CTS affiliates, and CTS must indemnify the City should any of those affiliates sue the City on any released claims.

On a retrospective basis, the Settlement Agreement expressly excludes from its scope any pending matters concerning employee classification and wage payment within the jurisdiction of City entities outside the Harbor Department.

The Settlement Agreement requires CTS to render payments with a total not to exceed \$1.34 million to workers who lose their employment as a result of CTS' vacation and surrender of the Premises. CTS must make all such payments within 30 days after the proposed Permit's termination date, and must obtain releases in the Harbor Department's favor from any workers who accept such payments.

As noted, approval of both the proposed Permit and the Settlement Agreement is necessary to effectuate the intent of the City and CTS to vacate and surrender the Premises to the City, and to resolve all pending disputes that arose after August 2018 in connection with the Premises.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a 180-day proposed Permit to California Transload Services, LLC which includes a settlement agreement and use and occupancy of 85.50 acres, which is an administrative activity and an issuance of a proposed Permit to use an existing facility. Therefore, the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of CEQA in accordance with Article II Section 2(f) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

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FINANCIAL IMPACT:

During the 180-day term of the proposed Permit, CTS will pay no monetary rent to the Harbor Department. Under the terms of the vetoed revocable permit, the Harbor Department would have earned revenues of \$2.6 million over the 180-day term. CTS will be subject to a charge of \$14,899.24 per day of liquidated damages for every day performance of their vacate and surrender obligations extend beyond the termination date of June 30, 2019.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the Permit and the Settlement Agreement as to form and legality.

TRANSMITTALS:

1. Permit
2. Settlement Agreement

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

Mark Bleavins FOR

EUGENE D. SEROKA
Executive Director

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