

DATE: OCTOBER 3, 2019

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE REVOCABLE PERMIT NO. 19-10 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND TOLL GLOBAL FORWARDING SCS (USA), INC.

SUMMARY:

Staff requests approval of Revocable Permit No. 19-10 (RP) with Toll Global Forwarding SCS (USA), Inc. (TOLL) for property located at 2401 E. Pacific Coast Highway in Wilmington. TOLL was the successful respondent to a February 2019 Request for Proposals (RFP). The 85.503-acre site is used for container transloading and truck staging operations and has historically handled a considerable portion of the containerized cargo throughput of both San Pedro Bay ports. The premises under the proposed RP lies within the footprint of the BNSF Railway Company (BNSF) Southern California International Gateway (SCIG) project. The site has been vacant since California Transload Services, LLC (CTS) vacated the premises on August 2, 2019. Annual rent under the proposed permit is expected to be \$5,363,725, with annual adjustments based on the Consumer Price Index, All Urban Areas for Los Angeles-Long Beach-Anaheim (CPI). The RP is revocable upon 30 days' written notice, with a maximum term of two years.

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 Article III Class 1(14) of the Los Angeles City CEQA Guidelines and State CEQA Guidelines 14 Cal. Code Regulations Section 15301;
2. Find that the proposed action is in the best interest of the City of Los Angeles Harbor Department for an interim period permit due to the site's use increases the efficiency of the Port of Los Angeles (Port) logistics chain, the monetary value of cargo that will be handled at the site and the approximately 300 jobs that will be created within the next six to eight months as TOLL is fully mobilized at the site; that the prolonged vacancy will result in vandalism, despite negotiated changes to the pre-approved terms and conditions in the Permit template and an estimated financial rate of return that does not meet stated policy targets as enacted by the Board;

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3. Approve Revocable Permit No. 19-10 with Toll Global Forwarding SCS (USA), Inc.;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Revocable Permit; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – In 1995 and 1998, respectively, the City of Los Angeles Harbor Department (Harbor Department) issued Revocable Permit No. 95-40 and Agreement 2069 to Cal Cartage Company (Cal Cartage) to entitle use and occupancy of approximately 85 acres to operate transloading warehouse facilities and related services. The company had operated in some fashion at this location since 1959. Previously, the Harbor Department issued lease documents for the site that were terminated in 2013 pursuant to the development agreement between the Harbor Department and BNSF, and subsequently were replaced by a BNSF license. That license, and development of the SCIG project, has been set aside by order of the California Court of Appeal, in connection with litigation concerning the SCIG project’s final environmental impact report, thus necessitating issuance of a lease document to allow BNSF’s subtenant, California Transload Services, LLC (CTS) (successor to Cal Cartage) to continue lawful use and occupancy of the property. As such, continued operations on the premises required a new entitlement to establish lawful occupancy and use of the property and to implement contractual provisions such as those concerning rent, indemnity, insurance, environmental remediation, and compliance with applicable laws.

On September 20, 2018, the Board approved Revocable Permit No. 18-08 (CTS RP) entitling CTS the use and occupancy of the premises. 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 CTS RP on the basis of OSHA violations committed most of which were still outstanding by Cal Cartage and unfair labor practices with warehouse workers and truck drivers as conveyed by the Teamsters Union. On October 11, 2018, the City Council vetoed the Board’s approval of the CTS RP, thereby eliminating CTS’ rights to use and occupy the premises.

On January 19, 2019, the Board approved a 180-day use and occupancy permit to CTS that would allow them the opportunity to wind-down their operations at the site as well as agree to a settlement agreement and general release by and between CTS and the Harbor Department. In that agreement, CTS agreed to pay its former employees \$1,340,391 as long as those employees agree to execute a general release of CTS, CTS affiliates, the Harbor Department and the City as a condition of payment. It was estimated by CTS that at least 300 jobs were lost as a result of the termination of their agreement.

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On February 11, 2019, the Harbor Department issued an RFP for the short-term use of the former CTS premises based upon the expected termination of the CTS agreement in August 2019. Conditions of proposal submissions within the RFP included that a proposer must have a Labor Peace Agreement (LPA). Such permit terms differed from the revocable permit form previously approved by the Board. The successful and only respondent was TOLL, which entitled them to enter into negotiations with the Harbor Department.

TOLL was founded in Newcastle, Australia in 1888 by Albert Toll. Mr. Toll began hauling coal by horse and cart. By 1958, upon Mr. Toll's death, the TOLL group operated a fleet of trucks in five locations. In 1959, TOLL was purchased by National Minerals. Over the years, TOLL underwent a name change to Toll-Chadwick and the new owners expanded into containerized shipping. By 1986, under new ownership, TOLL expanded and secured other transportation companies. As they grew, TOLL became a leader of integrated logistics services, employing around 40,000 people across 1,200 locations in more than 50 countries. In 2015, TOLL was purchased by Japan Post to spearhead its global operations. Business units within Japan Post include postal operations, banking operations, insurance operations, sales of documentary stamps, operations consigned by local government entities, bank and life and non-life insurance agency services, domestic distribution and delivery business and international cargo transport and agency services for air cargo business, logistics business, real estate business, and merchandise sales. TOLL continues to be headquartered in Melbourne, Australia and retains the TOLL brand.

TOLL plans to use the site as a truck depot, container storage on chassis facility, as well as for container trans-loading and warehousing operations. TOLL's hiring at the site is subject to the City of Los Angeles Worker Retention Ordinance. TOLL has a Labor Peace Agreement in place with the Warehouse Workers and currently employs truck drivers affiliated with the Teamsters union that will operate within the site.

Summary of Significant Permit Terms

Effective Date: The Revocable Permit (Transmittal 1) will be effective upon execution by the Executive Director and revocable upon 30 days' written notice, with a maximum of two years.

Premises: The Premises (Transmittal 2) consist of 85.503 acres of paved land, including three transloading warehouses with integrated offices in each, a railyard, a maintenance and repair shed, a raised forklift dock, and minor ancillary structures. The premises mirror what existed prior to the BNSF license agreement and the use is unchanged.

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Compensation: The RP requires the payment of \$446,977.10 per month, or \$5,363,725.20 per year in rent the first year, including an annual CPI (CPI-U) adjustment for the Los Angeles-Long Beach-Anaheim area to be applied one year after the effective date of the RP. The POLA lease financial policies require that "Market rental rates shall be established in accordance with the Appraisal Institute's definition of "market rent" which is *"the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, and tenant improvements."*

The Property was tendered in a competitive and open market RFP. TOLL was the only respondent. TOLL is of the opinion this rent is reflective of a 30-day revocable permit. TOLL has advised they are investing in excess of \$1 million in the Property, even though this is a 30-day revocable permit.

TOLL is also of the opinion the rent being paid under this Permit is in fact the actual rent that the property brings in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, and tenant improvements.

In addition, after thorough review of the property, staff feels the deferred maintenance/functional obsolescence of buildings justifies the proposed rent. Additionally, staff feels that continuity of the operations will benefit the supply chain with the movement of cargo off Harbor Department property. Seeking to maintain transload and warehousing capabilities in the Port of Los Angeles will assist existing customers that rely on this service to make their operations more efficient/attractive. Beneficial use of land and buildings that, if not occupied, could become a public health and safety hazard based on actual on the ground experiences in the area.

Permitted Uses: The permitted uses are for the distribution of cargo in containers transported by truck and rail to and from a trans-loading facility and services ancillary thereto.

Security Deposit: In lieu of a cash security deposit, at the outset of the RP, the tenant will provide a standby letter of credit (LOC) in the amount of three months' rent, and the tenant will maintain the standby LOC at that level over the term of the RP.

Maintenance: All maintenance of the premises, including all improvements, will be the responsibility of the tenant. However, the standard maintenance clause has been modified to eliminate the requirement to modify or rebuild a damaged or lost structure to its original condition. In lieu of making such alteration as may otherwise be required after a casualty event (defined as an event causing substantial destruction of the improvements, such as an earthquake), the tenant may surrender and restore the Premises per the agreement and terminate the RP. The original terms are cost prohibitive and of limited market utility given the age of the improvements and the interim nature of the entitlement.

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Environmental Condition: Tenant is responsible, and will indemnify the Harbor Department, for any and all claim and liability arising out of any contamination or release occurring during the term of the RP. A Baseline Condition report is attached to the RP and sets the agreed levels of known contaminants on the premises as of the Effective Date of the RP. The tenant is responsible to rebut any claim made regarding contamination on-site not otherwise addressed in the Baseline Condition report. The Harbor Department will pursue fully any and all prior occupants of the property and any third parties which may have caused any contamination if successfully rebutted by the tenant.

Regulatory Compliance: The RP requires compliance with all applicable, laws, standards, rules, and regulations as a condition of occupancy and use. Language in the RP has been modified as agreed between the Parties to fully incorporate the terms and conditions of the agreement given the age and functional utility of the improvements and the interim nature of the entitlement.

Given the set aside of the SCIG project, continuation of transload operations at the premises constitute the highest and best use of that property. According to TOLL, maintaining an operation on the premises may generate approximately 300 jobs. The proposed RP is a 30-day entitlement. If the circumstances underlying staff's recommendation herein deteriorate, the Harbor Department can terminate the RP on 30 days' notice.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of Revocable Permit No. 19-10 with Toll Global Forwarding SCS (USA), Inc. which is an activity involving the issuance of a permit to use an existing facility involving negligible or no expansion of existing or former use. Therefore, the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines and the State CEQA Guidelines 14 Cal Code Regulations Section 15301.

FINANCIAL IMPACT:

The proposed RP will produce revenue of \$446,977.10 per month to the Harbor Department, or \$5,363,725.20 per year. This amount will increase by CPI on the first anniversary of the effective date.

The estimated financial rate of return associated with the proposed RP meets neither the 10 percent target rate of return for land nor the 12 percent target rate of return requirement for buildings as stated in the Port's Leasing Policy, as enacted by the Board. While the estimated financial rate of return falls below the Harbor Department's blended target rate of return, given that TOLL was the only respondent to the aforementioned RFP, the return implied by the proposed RP appears to reflect a market rate of return.

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CITY ATTORNEY:

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

TRANSMITTALS:

1. Revocable Permit
2. Site Map

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

for *Andre*
PAUL ANDRE
Property Manager

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Eugene D. Seroka
EUGENE D. SEROKA *FOR*
Executive Director

MD:PA:raw
Author: P. Andre
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