

DATE: JANUARY 25, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - APPROVE REVOCABLE
LICENSE NO. 2022-10 WITH FENIX MARINE SERVICES, LTD. AND
CENTER FOR TRANSPORTATION AND THE ENVIRONMENT, INC.**

SUMMARY:

Staff requests approval of Revocable License No. 2022-10 (License) with Fenix Marine Services, Ltd. (Fenix) and its contractor, Center for Transportation and the Environment, Inc. (CTE), to use and access the backland area of Berth 301 for a duration of up to 24 months, to test a zero-emission hybrid hydrogen fuel cell/battery electric top handler. License No. 2022-10 serves as the successor entitlement to Temporary Entry and Use Permit Nos. 1784 and 1835 (TEUPs), approved by the Board of Harbor Commissioners on January 14, 2021 and January 27, 2022, respectively, which expire on February 17, 2023. Since these TEUPs were executed, the process utilized for short-term revocable entitlement rights has been improved and updated, and the appropriate entitlement for this activity is now a Revocable License. Apart from providing extra time, the material terms of Revocable License No. 2022-10 are identical in substance to the TEUPs. Additional time is required due to shipping delays of the top handler and a lack of hydrogen fuel supply.

As noted in the staff report for the January 2022 Board action, the planned demonstration project is funded under a grant from the California Air Resources Board (CARB). The proposed successor License No. 2022-10 provides Fenix and CTE the necessary real estate entitlement to continue to undertake the demonstration project.

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 previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) and categorically exempt from the requirements of CEQA under Article II Section 2(i) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines;

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2. Approve Revocable License No. 2022-10 with Fenix Marine Services, Ltd. and Center for Transportation and the Environment, Inc.;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Revocable License; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background – On January 14, 2021, the Board adopted Resolution No. 21-9749, approving TEUP No. 1784, and further on January 27, 2022, the Board adopted Resolution No. 22-9957, approving TEUP No. 1835, with Fenix and CTE, each for a period of no longer than 12 months to complete a project to test a zero-emission hybrid fuel cell/battery top handler. This project has been delayed due to shipping delays of the top handler and a lack of hydrogen fuel supply. TEUP No. 1835 expires on February 17, 2023.

Fenix and CTE informed staff that additional time is needed to complete the demonstration project, and requested additional time to use and occupy the premises. Staff is requesting approval of proposed Revocable License No. 2022-10 for this project for an additional period of up to 24 months. The approach of approving a new Revocable License will ensure that both Fenix and CTE continue to have an appropriate real estate entitlement in place with insurance and indemnity protections provided for the duration of the project. Other than the extension of the term, there are no other changes to the material terms of the proposed Revocable License No. 2022-10 from the TEUPs previously approved by the Board in January 2021 and 2022, respectively.

The top handler to be used in the demonstration project was scheduled to arrive in February 2022, but issues discovered during the fuel cell validation testing caused the shipment of the top handler to be delayed until July 2022. After delivery of the handler, additional issues occurred including one with the battery pack, delaying the operation of the handler. In the meantime, the Fenix and CTE team completed pre-deployment activities including developing manuals, conducting training, developing a fueling protocol and finalizing a data collection plan. The top handler demonstration began in October 2022 and the vehicle successfully transported containers until operation was paused in December due to an issue with the hydrogen fuel supply. Fenix and CTE are seeking an extension of term to allow the continued demonstration of the top handler and to continue testing and collection of data. While the demonstration is expected to be complete in December 2023, staff recommends providing additional term of up to 24 months in the event of any additional unforeseen delays.

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As noted in the prior Board Reports, in 2017, CTE secured a grant on behalf of Fenix under CARB’s “Demonstration of Zero-Emission Technologies for Freight Operations at Ports” grant program to demonstrate a zero-emission hybrid hydrogen fuel cell/battery electric top handler at the Fenix terminal. The project cost remains the same as stated in the underlying December 2020 staff report, and is estimated to be \$8.8 million, of which \$6.5 million would be funded by the grant, and the remaining \$2.3 million would be borne by CTE and its partners. Further, this testing project aligns with the Harbor Department’s Zero Emissions Roadmap, Zero Emissions White Paper, and the 2017 San Pedro Bay Ports Clean Air Action Plan Update. Completion of the project would help forge a path towards commercialization of zero-emission top handlers, facilitating potential deployment by terminals at the Port of Los Angeles.

As also noted in the prior Board Reports, the Harbor Department’s contribution to this project is limited to 1) granting the underlying TEUPs and this successor Revocable License No. 2022-10; and 2) constructing paving work associated with a driveway to the demonstration site, which was completed in February 2022.

Consistent with the previous TEUPs, there is no charge associated with the License for the following reasons: 1) providing the space facilitates completion of a critical demonstration project; 2) the rights granted under the License are non-exclusive and primarily utilized for ingress and egress to the fueling location; and 3) the License is revocable at any time with fifteen (15) days’ written notice in the event the site is needed for the Harbor Department’s operations in the future.

Material terms of the proposed Revocable License (Transmittal 2) are as follows, and are identical to the material terms of the previously approved TEUPs, except for the 24 additional months requested to complete the project:

Provisions	Description
Real Estate Entitlement	Revocable License
Assignees	1. Fenix Marine Services, Ltd. 2. Center for Transportation and the Environment, Inc.
Premises (Transmittal 1)	24,450 square feet (0.56 acres) of backland area at Berth 301 as depicted in the attached site map.
Permitted Use	Use and occupancy of the Premises for the demonstration of a zero-emission hybrid hydrogen fuel cell/battery electric top handler, including the installation of a wireless charging station and mobile hydrogen fueling system, and all lawful activities related and incidental thereto. Assignees are prohibited from conducting any marine terminal operations under this License.
Effective Date	Upon Board approval and execution by the Executive Director

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Term	February 18, 2023 through February 17, 2025
Revocation	Executive Director may revoke this License at any time with 15 days' written notice.
Compensation	Assignees will not pay any monetary compensation for the use of the Premises under this License.
Compliance with Applicable Laws and Environmental Obligations	Assignees will comply with all applicable laws and regulations and implement any environmental permit conditions as required by the Environmental Management Division.
Restoration	Upon expiration or termination of this License for whatever reason, Assignees shall restore the Premises to the same or as good condition as the premises were in at first occupancy.
Insurance	Insurance provision includes all standard insurance requirements.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a License with Fenix and CTE to use and access the backland area of Berth 301, which is an activity for which the underlying project has been previously assessed in Addendum #2 to the Berths 302-306 Container Terminal Project Final Environmental Impact Report (SCH# 2009071031), which was considered by the Board on May 20, 2021 and the issuance of any license to use an existing facility involving negligible or no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA and is categorically exempt under Article II Section 2(i) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Proposed Revocable License No. 2022-10 will be provided on a rent-free basis and allow Fenix and its contractor, CTE, use of the property located in the backland area of Berth 301 to test a zero-emission hybrid hydrogen fuel cell/ battery electric top handler. Fair market rental value for this site is speculative as no entity has expressed interest in leasing the space because it is currently undeveloped. However, the rent could potentially be approximately \$8,300/month, using the tariff rate for unpaved land if there were an interested party.

As noted previously, consistent with the previous TEUPs, there is no charge associated with the Revocable License for the following reasons: 1) providing the space facilitates completion of a critical demonstration project; 2) the rights granted under the License are non-exclusive and primarily utilized for ingress and egress to the fueling location; and 3) the License is revocable at any time with fifteen(15) days' written notice in the event the site is needed for the Harbor Department's operations in the future.

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The total cost of the demonstration project is \$8.8 million, of which \$6.5 million would be funded by the CARB grant and the remaining \$2.3 million would be borne by CTE and its partners.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved proposed Revocable License No. 2022-10 as to form and legality.

TRANSMITTALS:

1. Project Site Map
2. Revocable License

FIS Approval: MB
CA Approval: SO

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BL979raw Fenix CTE Revocable License 2022-10