



**THE PORT
OF LOS ANGELES**

Executive Director's
Report to the

Board of Harbor Commissioners

DATE: MAY 14, 2024

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING & TERMINALS, L.P. AND GUARANTIES FURNISHED BY THE PASHA GROUP

SUMMARY:

Staff requests approval of the following:

1. Permit No. 963 between Pasha Stevedoring & Terminals, L.P. (Pasha) and the City of Los Angeles Harbor Department (Harbor Department) for premises located at Berths 174-181 and Berths 206-209 (Premises);
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. Two individual guaranty agreements furnished by The Pasha Group (Pasha's parent company) concerning Permit No. 963 and the Settlement Agreement, respectively.

The term of Permit No. 963 is five years, and the guaranteed compensation for Compensation Year 2024 will be \$6,280,000 on 49.07 acres for the first year.

Year one (i.e. Calendar Year 2024) compensation of \$6,280,000 under the Permit will be pro-rated based upon a compensation year-end of December 31, 2024. Furthermore, the MAG will be adjusted in Calendar Years 2025, 2026, 2027 and 2028 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 \$1,000,000 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;

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

2. Find that entering into Permit No. 963 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. 963 with Pasha Stevedoring & Terminals, L.P.;
4. Approve the Settlement Agreement with Pasha Stevedoring & Terminals, L.P.;
5. Approve the Guaranties furnished by The Pasha Group concerning Permit No. 963 and the Settlement Agreement;
6. Authorize the Executive Director to execute and the Board Secretary to attest to Permit No. 963 and the Settlement Agreement; and
7. Adopt Resolution No. _____.

DISCUSSION:

Background – Pasha uses and occupies Harbor Department property at two locations under several different real estate entitlements to conduct break bulk operations.

- Berths 174-181 - On December 17, 1986, the Board issued Permit No. 603 (Permit 603) to Pasha to use and occupy wharf and backland at Berths 174-181 for purposes of operating a breakbulk terminal, effective January 1, 1986, for a term of 15 years, with an expiration date of December 31, 2000. Permit 603 has been on month-to-month holdover since it expired in 2000. In 2014, there was a fire incident at Berth 177, and a portion of Pasha's wharf became unavailable. The Harbor Department subsequently provided substitute wharf premises at Berths 206-208 to be used until the wharf repairs are complete. Wharf repairs will include demolition of the wharf at Berth 177, without reconstruction, and reconstruction of the wharf at Berth 178.
- Berths 206-209 - In addition to the substitute wharf area, Pasha also uses adjacent supplemental backland at 206-209 under Space Assignments (i.e. use agreements governed by Tariff No. 4). See Transmittals 1, 2 and 3.

Provided below is a summary of Pasha's current real estate entitlements at the Port of Los Angeles:

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

<u>Location</u>	<u>Acreege</u>	<u>Real Estate Entitlement</u>
Berths 174-181	41.36 (2.25 acres unavailable due to wharf repairs)	Permit 603
Berths 206-209	2.25 acres (wharf)	Substitute Premises
Berths 206-209 ¹	25 to 40 acres (Backland) (Fluctuates based on business need)	Space Assignments

¹Berths 206-209 is comprised of 84 acres, Pasha occupies a portion, and the remainder is leased to other tenants.

Breakbulk Operations at the Port of Los Angeles

Pasha operates the only breakbulk terminals at the Port of Los Angeles and primarily handles steel slab and other breakbulk cargo. Pasha's 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 such as: metal products; mobile equipment; reinforced concrete products and structures; and large-sized and heavy cargo.

Commercial Framework of Existing Real Estate Entitlements

Berths 174-181: Under its existing Permit 603, Pasha pays the greater of a minimum annual guarantee (MAG) or Tariff charges for wharfage and dockage, net of revenue sharing breakpoints. The Tariff prescribes specific charges for the different commodities handled at the Premises.

- Pasha's MAG (\$5,106,059). Tariff charges arising from operations at both Berths 174-181 and Berths 206 and 209 accrue towards the Permit 603 MAG. Charges associated with use of Berths 206-209 accrue towards the Permit 603 MAG, due to the substitute premises arrangement noted above.
- Permit 603 includes revenue sharing breakpoints. Under this model, Pasha remits a percentage of wharfage and dockage tariff charges on a sliding scale:
 - 100% of tariff charges up to the first breakpoint,
 - 50% of tariff charges between the first and second breakpoints, and
 - 25% of tariff charges thereafter.

Berths 206-209: Pasha uses and occupies wharf space at Berths 206-209 under substitute premises as noted above. In addition, Pasha has Space Assignments allowing use of the backland.

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

There is a high degree of variability in the size of the area that Pasha uses under space assignments due to the cyclical nature of break bulk business. The area ranges from 25-40 acres and is charged per the rate in the Tariff, which is approximately \$16,550 per month per acre, or \$198,660 per year per acre. Space Assignment charges do not accrue towards the Permit 603 MAG.

History of Rate Increases – Permit 603

Permit 603 does not contain a provision to escalate the MAG annually (i.e. there is no CPI adjustment). However, Permit 603 is subject to General Rate Increases (GRI), and MAG increases have been applied as follows over the term of the Permit:

- 2004 GRI: MAG increased from \$4,077,641 to \$4,279,006.
- 2005 GRI: MAG increased from \$4,279,006 to \$4,494,757.
- 2013 GRI: MAG increased from \$4,494,757 to \$4,573,878 in July 2013, but the GRI was never approved by City Council. As such, the MAG reverted to \$4,494,757 in November 2013.
- 2022 GRI: MAG increased from \$4,494,757 to \$4,811,202.
- 2023 GRI: MAG increased from \$4,811,202 to the current level of \$5,106,057.

Revenue sharing breakpoints were also increased proportionately as a result of the GRIs.

Proposed Commercial Framework of Existing Real Estate Entitlements

Under the proposed action, Permit 603 and the existing Space Assignments issued to Pasha would be terminated in favor of Permit No. 963.

The economic framework outlined below for the proposed successor Permit No. 963 (i.e. MAG and revenue sharing breakpoints) would essentially be a continuation of what has been in place under existing Permit 603. Overall, guaranteed compensation is increasing from what is required under the current Permit 603. See Financial Impact Section.

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.

Termination of Existing Permit No. 603

Approval of the proposed 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; and 2) breakbulk volumes are cyclical and vary based on market conditions which affected the negotiation of commercial terms.

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

- Holdover Terms: Permit 603 allowed for a holdover following the expiration date with the Executive Director's approval and with a corresponding rate increase of 150% to MAG and revenue sharing breakpoints. In January 2001, the then-current Executive Director authorized a holdover, but staff discovered the 150% rate increase was not implemented. Unfortunately, there are no records documenting why the 150% rate increase was not implemented.

While Permit 603 requires a 150% increase to rates, Permit 603 also states that if a new agreement is reached, monies paid at the 150% rate during holdover are to be considered a credit against new compensation which must accrue from the date Permit 603 expired (December 31, 2000). Staff reconciled the historical financial records and confirmed that had POLA implemented the 150% rate increase as called for in Permit 603, the money collected would have been returned to Pasha via a credit pursuant to this clause (given that rent collected under Permit 603 from January 1, 2001 through the Effective Date of Permit No. 963 is remaining unchanged). As such there is no outstanding retroactive amount due to POLA, as it relates to the 150% rate increase requirement.

Termination of Space Assignments

The existing Space Assignments would also be terminated in favor of the new Permit No. 963. Space assignments are not intended to be long-term real estate entitlements. They are cancelable on short notice, and, as a result, provide little-to-no revenue certainty to the Harbor Department. Staff worked diligently over the past three years to convert recurring space assignments to more appropriate real estate entitlements. Pasha has the last legacy recurring space assignments that are yet to be converted.

Proposed Permit No. 963

The proposed successor permit 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 proposed Permit No. 963 (Transmittal 4) are as follows:

<u>Provisions</u>	<u>P963 - Berths 174-181 and 206-209</u>
Real Estate Entitlement	Term Permit
Permitted Use	Operation of an omni terminal including the berthing of vessels, the unloading and loading of cargo, assembling and distributing of wares and merchandise, specifically steel slab, breakbulk, and containers, and all lawful activities related and incidental thereto.
Term	Five years

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

<p>Early Termination Rights</p>	<p>Either Party, with 18 months' written notice for either location, or both locations.</p> <p>In the event of early termination by either Party, rent would be pro-rated on a 1:1 acre basis.</p>
<p>Primary Premises (See Transmittal Nos. 1, 2 and 3)</p>	<p><u>Berths 174-181</u></p> <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 - Portions of Permit 603 are not carrying over to the new Permit, as such there is less acreage under Permit 963 - Wharf totals 1,970 linear feet <p><u>Berths 206-209</u></p> <ul style="list-style-type: none"> - Backland: 9 acres - 2-Story Marine Office - Wharf totals 1,326.77 linear feet
<p>Secondary Premises</p>	<p><u>Berths 174-181</u></p> <ul style="list-style-type: none"> - Pasha may flex in and out of an additional 2.28 acres of backland located adjacent to its Primary Premises, subject to availability and paying the then-current space assignment rate on uncovered, paved land, pursuant to Tariff No. 4. (Rate is currently \$0.38 per square foot, per month.) <p><u>Berths 206-209</u></p> <ul style="list-style-type: none"> - Pasha may flex in and out of an additional 28.67 acres of backland located adjacent to its Primary Premises, subject to availability and paying the then-current space assignment rate on uncovered, paved land, pursuant to Tariff No. 4.
<p>Compensation Structure</p>	<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. <ol style="list-style-type: none"> a. <u>MAG</u>: Refer to MAG section below. b. <u>Revenue Sharing Breakpoints</u>: Refer to the illustrative example in Transmittal No. 5.

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

	2. <u>Secondary Premises</u> : Space Assignment Rate for uncovered, paved land, pursuant to Tariff No. 4.
MAG	2024 \$6,280,000
Annual Adjustments	>CPI or 2%
Revenue Sharing Breakpoints	See Transmittal No. 5
Annual Adjustments	>CPI or 2%
General Rate Increase	Tariff adjustments are applicable to MAG and Revenue Sharing Breakpoints (i.e. General Rate Increase), except that the increase will be offset by the CPI adjustment for that same calendar year.
Rent Credit for approved tenant improvements	<u>Berths 174-181</u> None <u>Berths 206-209</u> \$315,000 for electrical improvements (i.e. 500KVA Transformer Feeder Replacement at Pier S Berth 207).
Environmental Lease Measures	Pasha is responsible for: <ul style="list-style-type: none"> - Replacing cargo-handling equipment; equipment must be replaced with the 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).

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

Maintenance	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.
Restoration	Pasha is responsible for restoring the Premises at the expiration or earlier termination of the Permit.
Insurance	Insurance provision includes all standard insurance requirements and has been reviewed as acceptable by the Risk Management Division.
Security Deposit	<p>Two months' rent (i.e. 2/12 of MAG) in the form of a letter of credit or cash. Harbor Department reserves the right to increase the amount.</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 be excluded, it constitutes an exception to the Leasing Policy, which requires Board findings as noted in the Recommendations Section.</p>
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 permitted interest derived from the Premises.</p>
Guaranties (See Transmittal 6)	The Pasha Group has agreed to irrevocably guarantee the timely payment and performance of all obligations of Pasha arising under the proposed Permit and Settlement Agreement.

Companion Settlement Agreement

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 (Transmittal 7) is now recommended in conjunction with authorization to execute the Permit.

Under the Settlement Agreement, Pasha agrees to pay the Harbor Department one million dollars to settle disputed charges concerning the use of seven acres of Harbor Department property at Berths 206-209 granted under a Space Assignment between

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

2009 and 2012. Pasha will pay 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 precedent for the Harbor Department to enter into Permit 963.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Permit No. 963 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 Permit will increase Year 1 guaranteed compensation by \$1,173,941, or 23.0 percent, from \$5,106,059 currently to \$6,280,000. In addition, total acreage encumbered under the proposed Permit will increase by 7.71 acres from 41.36 acres currently to 49.07 acres as proposed such that the Year 1 MAG per acre will increase by 3.7 percent from \$123,454 currently to \$127,979 per acre as proposed.

In Year 2 and annually thereafter, minimum annual guarantees and revenue sharing breakpoints will increase by the greater of the annual change in CPI or 2 percent. Assuming the Permit is not terminated prior to December 31, 2028, staff estimates that guaranteed compensation of at least \$32.7 million will be generated over the five-year term of the proposed Permit.

The proposed Permit does not commit the Harbor Department to construct any specific new improvements within the 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 and represent the appropriate rates for these transactions.

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 The Pasha Group possesses a reasonable amount of financial wherewithal

SUBJECT: PERMIT NO. 963 AND SETTLEMENT AGREEMENT WITH PASHA STEVEDORING TERMINALS, LP AND GUARANTIES WITH PASHA GROUP

to fulfill its obligations as guarantor under the proposed Permit and companion Settlement Agreement.

From January 1 through December 2023, Pasha generated gross qualifying tariff charges of \$8,317,211. Based upon the revenue sharing provisions contained within Permit 603, Pasha ultimately remitted net revenues of \$5,360,472 or approximately 64 percent of gross tariff revenues to the Harbor Department. Based upon the revenue sharing provisions contained within Permit 963, the \$8,317,211 in gross qualifying 2023 tariff charges would have yielded \$6,475,303 in net revenues to the Harbor Department, an increase of approximately \$1.1 million relative to those actually remitted in 2023.

CITY ATTORNEY:

Proposed Permit No. 963, the 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 Berths 174-181
3. Premises of Berths 206-209
4. Permit No. 963
5. Revenue Sharing Breakpoint Example
6. Guaranties
7. Settlement Agreement

FIS Approval: 
CA Approval: 

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