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**RECOMMENDATION APPROVED;
RESOLUTION 19-8450 (PERMIT 936) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS**



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

Board of Harbor Commissioners

March 7, 2019

DATE: FEBRUARY 21, 2019 AMBER M. KLESGES
Board Secretary

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. 19-8450 - APPROVE PERMIT NO. 936
WITH PBF ENERGY WESTERN REGION LLC**

SUMMARY:

Staff requests approval of the proposed Permit No. 936 with PBF Energy Western Region LLC (PBF) for a term of 30 years to succeed Permit No. 914. Permit No. 936 will grant PBF the right to use City of Los Angeles Harbor Department (Harbor Department) premises consisting of 40.04 acres at Berths 238-239 for the construction, operation, and maintenance of a marine oil terminal, subsurface pipelines, and storage tanks. The Final Initial Study/Mitigated Negative Declaration (IS/MND) describing this project was adopted by the Board of Harbor Commissioners (Board) on June 21, 2018.

Permit No. 936 is necessary to finance the changes being made to the wharf structure at the premises in compliance with California's Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) developed to protect public health and safety. Effective July 1, 2019, PBF's annual fixed rental compensation for land rent will be \$6,236,794 (\$1,559,198.50 per quarter), an increase of \$1,378,053.76 from the current rent of \$4,858,740.24 per year. The annual compensation for land rent is based on the land market value of \$40 per square foot and Board policy of 10 percent rate of return on land, with a 50 percent discount for subsurface rights. Land rent will be adjusted annually based on the Consumer Price Index (CPI-U), Los Angeles-Long Beach-Anaheim.

Compensation will also include a minimum wharf rent for the new wharf of \$900,000 per year and "tank rent" on the area of the premises primarily containing storage tanks (Area II) of \$812,000 per year. Should PBF's wharfage and dockage exceed \$1,712,000 per each compensation year, the minimum wharf rent and tank rent will be waived for that compensation year. In 2018, PBF paid a total of \$1,340,986.94 in wharfage and dockage in addition to land rent. The Harbor Department will be financially responsible for maintenance dredging and rock slope maintenance, while PBF will be financially responsible for all other maintenance and operation costs associated with the premises.

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 California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(i) of the Los Angeles City CEQA Guidelines;
2. Approve Permit No. 936 with PBF Energy Western Region LLC;

SUBJECT: APPROVAL OF PERMIT NO. 936 WITH PBF ENERGY WESTERN REGION LLC

3. Direct the Board Secretary to transmit Permit No. 936 to the City Council for approval pursuant to Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to Permit No. 936 upon approval by City Council; and
5. Adopt Resolution No. 19-8450.

DISCUSSION:

Background: PBF operates a marine oil terminal (Area I) in the Port of Los Angeles on Terminal Island, which has been in service since 1923. In addition, PBF operates a crude oil storage terminal (Tank Farm, Area II) that has been in continuous service since 1961. PBF purchased these oil terminal facilities in 2016 from ExxonMobil. The proposed Permit No. 936 (Transmittal 1) will grant PBF the right to continue the use of Harbor Department property (land, subsurface, and water areas) consisting of 40.04 acres at Berths 238-239 (Transmittal 2) for the construction, operation, and maintenance of a marine oil terminal, subsurface pipelines, and storage tanks. On July 1, 2019, or upon City Council approval, whichever is later, Permit No. 936 will supersede Permit No. 914 which has an expiration date of June 1, 2021.

Permit No. 936 is necessary to comply with MOTEMS, which requires all marine oil terminals to undergo an audit to determine "Fitness for Purpose" of the marine structures, embankment, piping, electrical, mechanical, and fire suppression equipment under the jurisdiction of the California State Lands Commissions. The existing wharf at Berths 238-239 has deteriorated extensively and is classified as "not fit for service" pursuant to MOTEMS. The age of the wharf makes bringing the marine oil terminal in compliance with the current codes a challenge. Therefore, in order to fully comply with the MOTEMS regulations, it was decided that the existing wharf would be replaced.

In November 2011, the Harbor Department completed its MOTEMS Implementation Strategy (MIS), which included a uniform negotiation strategy for all MOTEMS projects and the Harbor Department's capital investment limitation of \$7,500,000 per berth. The MIS proposed negotiating long-term permits to allow both the Harbor Department and tenants to amortize large investments in new MOTEMS compliant facilities. The proposed project to construct a new MOTEMS-compliant loading platform and mooring system for PBF's first berth is estimated to cost \$19,750,000. PBF will construct other project elements including piping, related foundation supports, and topside equipment replacement at its sole cost. The Harbor Department will invest \$7.5 million based on the MIS, and PBF will be responsible for all costs thereafter. Separately, the Harbor Department's IS/MND cost was approximately \$214,000. This will not count towards the \$7.5 million Harbor Department cost.

Staff has reached the proposed agreement with PBF to implement the MOTEMS wharf improvement project. The Board adopted the Final IS/MND on June 21, 2018. The summary of the terms and conditions of the proposed 30-year permit for the continued operation of the Berths 238-239 marine oil terminal, tank farm, and underground pipelines are stated below:

SUBJECT: APPROVAL OF PERMIT NO. 936 WITH PBF ENERGY WESTERN REGION LLC

Proposed Permit

Term. 30 years.

Compensation.

1. Land Rent. PBF's annual fixed rental compensation for land rent will be \$6,236,794 (\$1,559,198.50 per quarter), effective July 1, 2019. The annual fixed rental compensation for land rent is based on the land market value of \$40 per square foot and Board policy of 10 percent rate of net return on land with a 50 percent discount for subsurface rights. Land rent will be adjusted annually by CPI.
2. Wharf Rent. Minimum wharf rent is set at \$900,000 per year per berth based upon the Harbor Department's policy rate of return of 12 percent on its investment of \$7,500,000 per wharf structure.
3. Tank Rent. Additional rent on the premises, known as Area II in the amount of \$812,000 is also due at the end of each compensation year.
4. Should PBF's wharfage and dockage exceed \$1,712,000 per each compensation year, the minimum wharf rent and tank rent will be waived for that compensation year.
5. Annual CPI Adjustments. Following the effective date, fixed rent, wharf rent, and tank rent will be adjusted annually based on the percentage increase in the CPI-U.
6. Five-Year Adjustments of Land Rent. Pursuant to the City Charter Section 607, land rent will be adjusted to reflect the fair market rental for surface and subsurface land.

Maintenance and Repair. The Harbor Department shall maintain the rock slope and engineered dredge depth of not less than -35 feet for the respective berths. PBF shall be responsible for all other maintenance including the wharf structure.

MOTEMS or Regulatory Changes. PBF is solely responsible for all MOTEMS requirements, including all regulatory requirements related to the premises and improvements and including but not limited to the wharf structure.

ExxonMobil Restoration Guaranty. Execution of the proposed new permit with PBF will allow ExxonMobil's restoration guaranty under Permit No. 914 to expire in 2021. Three PBF entities will continue to provide separate guarantees encompassing all permit obligations, including this restoration obligation as described below. However, the marine terminal (Area I) portion of the site is subject to a Cleanup and Abatement Order (CAO) No. 99-003 from the Regional Water Quality Control Board (RWQCB) that includes active product recovery. ExxonMobil has not been released by the RWQCB for cleanup under CAO 99-003.

SUBJECT: APPROVAL OF PERMIT NO. 936 WITH PBF ENERGY WESTERN REGION LLC

PBF Performance Bond and Parent Guaranties. Section 113.9 of the Permit No. 914 requires PBF to provide the Harbor Department a performance bond of \$50,000,000 in 2020 to perform its obligations under Section 117 comparable to ExxonMobil's restoration obligations. The performance bond was required to secure funding to restore the premises if PBF was not willing to enter into a long-term permit with the Harbor Department. Upon execution of the proposed new permit, this requirement shall expire as restoration will not be required until the new 30-year permit terminates and the proposed PBF guarantees will adequately secure this restoration obligation.

PBF will furnish separate written guaranties which have been executed by PBF Energy, Inc., PBF Energy Company LLC, and PBF Holding Company LLC¹, in which such entities, and each of them, absolutely, irrevocably and unconditionally guarantee, and become surety for, the full and timely payment and performance of the debts, obligations and liability of PBF under the proposed permit.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of Permit No. 936. This project was previously assessed in the Final Mitigated Negative Declaration for the PBF Energy Marine Oil Terminal Improvements Project, which was certified by the Board of Harbor Commissioners on June 21, 2018. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed Permit No. 936 will increase annual land rent to \$6,236,794 (\$1,559,198.50 per quarter), an increase of \$1,378,053.76 from current rent of \$4,858,740.24 per year. Land rent will be subsequently adjusted annually based on the CPI-U for Los Angeles-Long-Beach-Anaheim. Proposed compensation will meet the Board policy rate of return for land and improvements. In addition to land rent, PBF will also be responsible for the payment of minimum wharf rent and tank rent of \$1,712,000 each compensation year as well as the payment of tolls and charges required under Tariff No. 4.

In addition, the proposed Permit No. 936 obligates the Harbor Department to construct new MOTEMS-compliant loading platforms and a mooring system for PBF's first berth (Project). The Harbor Department will be financially responsible for the costs of the Final Initial Study/Mitigated Negative Declaration associated with the Project, as well as ongoing MOTEMS audits. Based upon an estimated cost of \$19,647,147.31 to construct the Project, the Harbor Department will be responsible for \$7,500,000, while PBF will be responsible for the remaining \$12,147,147.31, as well as Project construction costs in excess of \$19,647,147.31.

¹ PBF is a subsidiary of PBF Holding Company LLC, which is a subsidiary of PBF Energy Company LLC, which operates as a subsidiary of PBF Energy Inc. PBF Energy is one of the largest independent petroleum refiners and suppliers of unbranded transportation fuels, heating oil, petrochemical feedstock, lubricants and other petroleum products in the United States.

SUBJECT: APPROVAL OF PERMIT NO. 936 WITH PBF ENERGY WESTERN REGION LLC

Pursuant to the terms of proposed Permit No. 936, PBF will be responsible for all costs associated with maintenance and operation of the premises except maintenance dredging and rock slope maintenance.

CITY ATTORNEY:

Permit No. 936 has been reviewed and approved as to form and legality by the Office of the City Attorney.

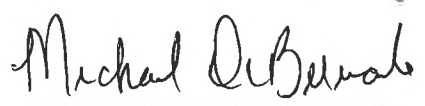
TRANSMITTALS:

- 1. Permit No. 936
- 2. Site Map




MICHAEL J. GALVIN
 Director of Waterfront & Commercial Real Estate

FIS Approval: MB
 CA Approval: MB



MICHAEL DiBERNARDO
 Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
 Executive Director

ES:MD:MG:ER:HP:KK:raw
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