

11/21/19

**RECOMMENDATION APPROVED;
RESOLUTION 19-9564 (LEASE 915) ADOPTED; AND
AGREEMENT 19-3707 APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS**

NOVEMBER 21, 2019

AMBER M. KLESGES

DATE: NOVEMBER 13, 2019 **AMBER M. KLESGES**
Board Secretary

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 19-9564 - APPROVE FIRST AMENDMENT TO
LEASE NO. 915 AND INDEMNIFICATION AGREEMENT WITH SAN
PEDRO PUBLIC MARKET, LLC



Executive Director's
Report to the
Board of Harbor Commissioners

SUMMARY:

Staff requests approval of the First Amendment to Lease No. 915 (Lease) between the City of Los Angeles Harbor Department (Harbor Department) and San Pedro Public Market, LLC (SPPM). Lease No. 915 was referred to as Permit No. 915 in Resolution No. 16-7946 but shall be referred as Lease No. 915. The proposed First Amendment modifies lease terms and provisions to align the Lease with updated development elements, design, plans, timing and phasing of the overall project. Modifications in the First Amendment include increasing the lease term, adjusting premises boundaries as well as amending construction milestones and development obligations.

Staff also requests approval of the Indemnification Agreement between the Harbor Department and SPPM related to the California Environmental Quality Act activities required for approval of the proposed First Amendment.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Consider the Addendum to the previously adopted Final Environmental Impact Statement/Environmental Impact Report for the San Pedro Waterfront Project;
2. Find that, in accordance with the provision of the California Environmental Quality Act (CEQA) Guidelines Section 15164, the proposed Amendment to Lease No. 915 will not result in any new significant environmental effects or any substantially more severe effects than previously analyzed in the adopted Final Environmental Impact Statement/Environmental Impact Report for the San Pedro Waterfront Project;
3. Authorize the Environmental Management Division to file a Notice of Determination with the Los Angeles County Clerk and the Los Angeles City Clerk;
4. Approve the Indemnification Agreement with San Pedro Public Market, LLC;
5. Authorize the Executive Director to execute and the Board Secretary to attest to the Indemnification Agreement;

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6. Delegate authority to the Executive Director to revise Exhibits B-1(a) through C-2 and E(a) through H(a) on behalf of the Board, as necessary, during the period of construction of City Improvements as set forth in the First Amendment and in accordance with the Los Angeles City Charter;
7. Approve the proposed First Amendment to Lease No. 915 with San Pedro Public Market, LLC;
8. Direct the Board Secretary to transmit the First Amendment to Lease No. 915 to the City Council pursuant to Charter Section 607;
9. Authorize the Executive Director to execute and the Board Secretary to attest to the First Amendment to Lease No. 915 upon approval by City Council; and
10. Adopt Resolution No. 14-01564

DISCUSSION:

Background - On May 16, 2016, the Board approved the Lease with SPPM for the redevelopment of the site formerly known as Ports O'Call (POC) in San Pedro. The Los Angeles City Council subsequently approved the Lease on June 10, 2016. This will be the first comprehensive redevelopment of the approximately 40-acre site since its original development in the 1960s. The Lease has a term of 50 years, and includes a 42-month option period, during which time the developer will advance the project design, secure financing, and solicit tenants while the Harbor Department and SPPM prepare the site for development.

The First Amendment (Transmittal 1) seeks to include San Pedro Public Market Project (Project) elements such as design, plans, phasing and responsibilities that have been adjusted, added or shifted since the commencement of the Lease. Key components of the First Amendment involve adjusting the lease term from 50 years to 66 years, adjusting the premises boundary, construction milestones, development obligations and other general provisions that require adjustment based on the current project status.

Term - On March 2, 2017, voters approved a charter amendment to Los Angeles City Charter Section 607 increasing the statutory limit of a lease term from 50 years to 66 years. The charter amendment was effective on April 13, 2017. The First Amendment proposes to change the lease term from 50 years to 66 years, as the Lease was approved in 2016 when the statutory limit was 50 years. A longer lease term provides for the largest potential private investment directly as a result of more favorable ground lease financing terms.

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Premises Boundary - The First Amendment also includes adjustments to the boundary of the premises. The adjustments are necessary because there were changes to the Town Square design scope whereas adjacent areas including parking and a graded slope, formerly not part of the Lessee's premises will now be included as part of Lessee's premises. The Lessee is also now responsible to maintain these new areas. Water frontage was slightly extended at the south end of the development at Berth 73 (SP Slip) to account for updated designs. The premises exhibit and all other exhibits that include the premises map or premises description will be modified accordingly.

Construction Milestones - The following construction milestones will be adjusted:

- An additional 6 months will be added to the original 42-month option period, for a total of 48 months. The additional time accounts for any unknowns and delays that may occur.
- Newly proposed phasing and delivery revisions will be depicted in a revised Exhibit F2 - Construction and Delivery Phasing.
- An updated construction schedule for both parties will be depicted in a new Exhibit G – SPPM/POLA Schedule.

Development Obligations - Other amended items include development obligations where certain obligations and responsibilities for various project elements will be modified as follows:

- Addition of language stating that any improvements or items to remain as instructed by Lessee shall be left "as-is" in its current condition with no improvements made by City.
- Deletion of Article 1, Section 2.2.1 (c) where Lessee may elect to manage Town Square.
- Lessee to provide a new exhibit of improvements to remain at the site in a timely manner. City reserves sole discretion to demolish or modify any existing improvements as required for design and/or construction of City Improvements.
- Addition of language to provide for Port Police access to Lessee's security camera and video data or live stream at no cost to City. This will give Port Police and Security access to video coverage of common areas of the development site.
- Lessee to accept responsibility for the following items previously obligated as City's responsibilities, with corresponding estimated costs totaling \$2,003,552.36.
 - Procurement and installation of a Sewer Lift Station with an estimated cost of \$1,192,161;
 - Promenade and Town Square concept design work with an estimated cost \$600,000;
 - Landscaping and irrigation finishes on western seven feet of promenade with an estimated cost of \$147,000; and
 - Electrical connection between new Promenade and Visitor Dock and Tenant's main electrical panel with an estimated cost of \$64,391.

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- City is to provide new City Improvement scope and/or materials, to be established at a later date through action of the Board with a cost not to exceed \$2,003,552.36.
- Addition of the following language to Subsection 6.1.1.2 Berth 80-83 Waterside Improvements in Article II, "Lessee shall make commercially reasonable efforts to limit ten percent of the docking area to usage by small vessels of twenty-six feet (26') or smaller by designating a specific area for use by small vessels. City reserves the right to conduct periodic site inspections to monitor the ten percent restriction."
- Addition of language where Lessee is responsible for a Storm Water Pollution Prevention Plan upon receipt of each delivery Phase.
- Addition of language stating that any damage to City Improvements after parcels have been delivered and accepted as described in Article 1, Section 2.4, shall be the Lessee's responsibility.
- Addition of the following language, "Lessee to assume all responsibility for any relocation, upgrading or final connections for all utilities."
- Addition of the following language, "Lessee responsible for any damages to City Improvement and seawall caused by any additional improvements made by Lessee."

Delegation to Executive Director - Due to a complex construction process that may involve changes to scheduling, phasing, design, premises and mapping, the First Amendment includes delegation of authority to revise and replace Exhibits B-1(a) through C-2 and E(a) through H(a) during construction of City Improvements as is required to complete City Improvements unless said change changes the premises area compared to what was previously authorized, prolong any City Improvement project duration in excess of 12 months, result in change of cost in excess of \$150,000 or exceed the general authority of the Executive Director without further action from the Board.

General Provisions - Lastly, there are new general provisions that are to be added as follows:

- Language to state that the Harbor Department's electrical service site located at 230 Ped Timms Way in the parking area adjacent to Utro's Restaurant which feeds SP Slip and Harbor Blvd. shall remain in place with access to the Harbor Department through the term of the Lease.
- Language to state that SPPM is to meet all event and venue permitting requirements. This will ensure that SPPM will adhere to all pertinent regulatory agencies and regulations.
- Addition of a Table of Contents of Exhibits listing all lease exhibits.

Staff recommends the Board approve the First Amendment to Lease No. 915 to modify lease terms to align the Lease with updated development elements, design, plans, timing and phasing of the overall development project.

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Staff also requests approval of the Indemnification Agreement (Transmittal 3) between the Harbor Department and SPPM related to the CEQA activities required for approval of the proposed First Amendment. SPPM shall indemnify the Harbor Department for any legal action or challenges arising from CEQA actions solely related to approval of the proposed First Amendment.

ENVIRONMENTAL ASSESSMENT:

On November 14, 2019, the Harbor Department issued the Addendum (“Addendum”) to the 2009 San Pedro Waterfront Environmental Impact Statement/Environmental Impact Report (Transmittal 2) (“2009 EIR/EIS”) and posted it on the POLA website at <https://www.portoflosangeles.org/environment/environmental-documents>. The 2019 Addendum was prepared pursuant to CEQA and revises the proposed project by extending the Lease duration from 50 years to 66 years. The provisions to align the Lease with updated development elements, design, plans, timing and phasing of the overall project is also included in the 2019 Addendum. As there are no changes to the in-water work of the previously approved project, the 2019 Addendum does not trigger the need for any additional National Environmental Policy Act (NEPA) analysis.

On September 29, 2009, the Board certified the 2009 San Pedro Waterfront Environmental Impact Statement/Environmental Impact Report which analyzed the full development and operation of the San Pedro Waterfront area. On May 19, 2016, the Board considered the 2016 Addendum to the San Pedro Waterfront Project Environmental Impact Report for the San Pedro Public Market Project, which modified the development scenario for Ports O' Call and extended the Lease from 30 years to 50 years.

According to Section 15164(b) of the state CEQA Guidelines, the Lead Agency may prepare an Addendum to an adopted Environmental Impact Report “if only minor technical changes or additions are necessary, or none of the conditions described in Section 15162 calling for a subsequent EIR or negative declaration have occurred.” The Director of the Environmental Management Division has determined that none of the conditions set forth in CEQA Guidelines Section 15162 have occurred; therefore, an addendum is the appropriate document. An Addendum does not need to be circulated for public review but can be included in or attached to the adopted Environmental Impact Report per CEQA Guidelines Section 15164 (c). The Board is required to “consider” the Addendum with the adopted Environmental Impact Report prior to making a decision on the Project per CEQA Guidelines Section 15164 (d).

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The proposed action is approval of the First Amendment to Lease No. 915 with SPPM which modifies lease terms and provisions to align the Lease with updated development elements, design, plans, timing and phasing of the overall project. Based on the findings of the Addendum, the proposed action will not add any new significant environmental impacts or increase severity of any significant impacts previously analyzed in the 2009 EIS/EIR and the 2016 Addendum and therefore does not trigger any of the conditions calling for the preparation of a subsequent Environmental Impact Report under CEQA Guidelines Section 15162. With no new impacts or increased severity of environmental impacts, no mitigation is necessary.

FINANCIAL IMPACT:

Approval of the proposed First Amendment will update the Lease to account for updates to certain design elements, plans, phasing and development responsibilities which have been adjusted since the Lease's commencement date. In addition, the proposed First Amendment will increase the statutory limit of the lease term from 50 years to 66 years.

With respect to development responsibilities, \$2,003,552.36 of City responsibilities will now become Lessee responsibilities if the proposed First Amendment is approved. Specifically, the Lessee will procure and install a sewer lift station, accept responsibility for the Promenade and Town Square concept design work, finish landscaping and irrigation work on the western seven feet of the Promenade and accept responsibility for an electrical connection.

In conjunction with the Lessee accepting these development responsibilities previously held by the City, if the proposed First Amendment is approved, the City will agree to provide new improvements and/or materials to be specified at a later date at a cost not-to-exceed \$2,003,552.36. There is anticipated to be no financial impact associated with the transfer of City responsibilities to the Lessee because the City will concurrently commit to spend a like amount on currently unspecified additional improvements and/or materials.

With respect to the increase in lease term from 50 years to 66 years, the Lessee will commit to pay an additional 16 years of rent as per the original terms of the Lease . Under the Lease , compensation to the Harbor Department was initially set at three percent of gross receipts with the possibility of increasing to thirty-three percent if the Lessee achieves a twelve percent return on project development costs. Furthermore, the Lease provided for the payment of a minimum annual guaranteed rent at a later date which will be subject to Consumer Price Index (CPI) increases, subject to a four percent annual cap. Charter required market adjustments and contractual CPI adjustments to the minimum rent will continue into the additional 16 years of the Lease. Given the difficulty in forecasting gross receipts, returns on developer costs and CPI changes over the next fifty years, staff is currently unable to quantify the present value of the additional income which will be derived from extending the lease term by 16 years.

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CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the First Amendment as to form and legality.

TRANSMITTALS:

1. First Amendment
2. Addendum
3. Indemnification Agreement



MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

FIS Approval: MB
CA Approval: AG



ANTONIO V. GIOIELLO, P.E.
Deputy Executive Director

APPROVED:


EUGENE D. SEROKA *for*
Executive Director

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BL810 SPPM 1st Amendment