

5/10.3.24
RECOMMENDATION APPROVED;
RESOLUTION 24-10442 (LEASE 915) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

October 3, 2024
AM KLESGES
AMBER M. KLESGES
Board Secretary



DATE: SEPTEMBER 24, 2024
FROM: WATERFRONT & COMMERCIAL REAL ESTATE
SUBJECT: RESOLUTION NO. 24-10442 – APPROVE SIXTH AMENDMENT TO
LEASE NO. 915 WITH SAN PEDRO PUBLIC MARKET, LLC

SUMMARY:

Staff requests approval of the proposed Sixth Amendment to Lease No. 915 (Lease) between the City of Los Angeles Harbor Department (Harbor Department or City) and San Pedro Public Market, LLC (SPPM).

The proposed Sixth Amendment will modify various Lease provisions to expand on delivery notice details; add language pertaining to reimbursements for unforeseen conditions, existing contamination, and environmentally regulated material found during SPPM construction; update costs for completed City improvements; and add exhibits for gross receipts reporting and a non-disturbance and attornment agreement (Non-Disturbance Agreement).

Under the proposed Sixth Amendment, the Harbor Department will be financially responsible for reimbursement of removal and handling of unforeseen conditions discovered during construction with annual costs not to exceed \$250,000 per calendar year as well as for a one-time payment in the amount of \$732,550.11 to cover past eligible reimbursement costs on work already completed during SPPM construction.

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 administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Delegate the Executive Director the authority to approve reimbursement costs for the removal of unforeseen conditions in an amount not to exceed \$250,000 per calendar year;
3. Approve the template entitled Non-Disturbance and Attornment Agreement and authorize the Executive Director to enter into the Non-Disturbance and Attornment Agreement on the approved template;
4. Approve the proposed Sixth Amendment to Lease No. 915 with San Pedro Public Market, LLC;

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5. Direct the Board Secretary to transmit the Sixth Amendment to Lease No. 915 to the City Council pursuant to Charter Section 607;
6. Authorize the Executive Director to execute and the Board Secretary to attest to the Sixth Amendment to Lease No. 915 upon approval by the Los Angeles City Council; and
7. Adopt Resolution No. 24-10442.

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 in San Pedro. The Los Angeles City Council subsequently approved the Lease on June 10, 2016. This is the first comprehensive redevelopment of the approximately 40-acre site since its original development in the 1960s. From November 2019 to August 2022 the Lease was amended five times for various reasons but primarily to address project schedule and financing milestones and adjustments to each party's construction obligations. SPPM closed financing in November 2022 and commenced construction of the project in the first quarter of 2023.

In November 2019, the Board approved the First Amendment to the Lease amending the term to 66 years and adjusting the option period to 48 months, during which SPPM worked on updating the project design, securing financing, and soliciting tenants while the Harbor Department and SPPM continued site preparation for the development. The First Amendment also modified provisions related to development elements, design, plans, timing, and phasing of the overall project.

In November 2020, the Board approved the Second Amendment to the Lease, amending various Lease provisions to extend the Option Period, providing definitions and processes for delivering substantial completion notices and delivery notices, clarifying the primary electrical service delivery condition and responsible parties for initiation of work required to meet this condition, and deleting language creating financial liabilities for each party, as both parties had met respective investment and construction obligations.

In December 2021, the Board approved the Third Amendment to the Lease, amending various Lease provisions, including the approval of a new fourth option period that extended the overall option period to June 16, 2022. The Third Amendment included a requirement that SPPM complete financing milestones by April 15, 2022.

As provided for in Section 1. Article 1, Section 1.2.1 (d) of the Third Amendment to the Lease, on April 4, 2022, SPPM submitted a letter to the Harbor Department to request extension of the milestone's completion date to June 16, 2022. On April 14, 2022, the extension was granted following review of SPPM's commercially reasonable efforts to secure financing.

In June 2022, the Board approved the Fourth Amendment to the Lease, enabling the Executive Director to extend the milestones completion date and the fourth option

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extension period to a date no later than September 17, 2022, to allow for SPPM to obtain and complete financing.

In August 2022, the Board approved the Fifth Amendment to the Lease to extend the option period no later than November 16, 2022; address SPPM's financing, including but not limited to modifications pertaining to assignments for security purposes and leasehold mortgages; and authorize the Executive Director to sign the consenting documents, memorandum of lease and estoppel certificate when escrow opens between SPPM and their lenders or when required prior to closing of the respective loans.

Overview of Proposed Amendment:

The proposed Sixth Amendment (Transmittal 1) will modify various Lease provisions to expand on Delivery Notice details; add language pertaining to reimbursements for unforeseen conditions, existing contamination, and environmentally regulated material found during Lessee construction; update costs for completed City improvements; and add exhibits for gross receipts reporting and a Non-Disturbance Agreement.

Delivery Notice – This amendment revises the delivery notice period from “60 days” to “up to 60 days” which adds more flexibility and efficiency in delivering parcels to SPPM once ready. With this new language the Harbor Department may give a 60-day notice or less for remaining parcel deliveries.

Unforeseen Conditions and Existing Environmental Conditions – This amendment provides Lessee the ability to request reimbursement for costs related to permitting, removal, disposal and restoration of unforeseen conditions and/or existing environmental conditions discovered during Lessee's construction. It is necessary for any of these conditions to be addressed immediately as to not slow down or delay completion of Lessee's improvements required in the Lease.

Upon Lessee's request for reimbursement for removal costs related to unforeseen conditions, it is proposed that the Executive Director have authority to approve a total amount not to exceed \$250,000 each calendar year for costs incurred by Lessee within a calendar year. If the not to exceed amount for unforeseen conditions is exceeded in any given year, those reimbursable costs will require additional Board approval. Any remaining balance at the end of the calendar year will not be carried over to the following year. The Lessee's option to request for reimbursable costs for unforeseen conditions will terminate the earlier of 1) five (5) years from the delivery of the respective parcel in which the unforeseen condition was discovered; or 2) issuance of a temporary or permanent Certificate of Occupancy for improvements located on the respective parcel.

Approval of \$732,550.11 reimbursement to Lessee - The amendment provides Lessee a one-time payment in the amount of \$732,550.11 to cover past eligible reimbursement costs on work already completed during SPPM construction. Review and analysis of this total proposed reimbursement amount was conducted by Harbor Department engineering and real estate staff and included SPPM making submissions for reimbursement that adhered with the amendment requirements including notice, location of occurrence, reason why unforeseen conditions could not be mitigated without removal and total cost

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to handle and remove materials. Further, SPPM was required to adhere to City of Los Angeles procurement requirements, follow all applicable laws and receive all required permits prior to handling any materials. The amendments reimbursement process allows for the most efficient execution of work from a cost and timing perspective and ensures expedited delivery of improvements to the Harbor Department's property.

City Improvements – This amendment updates cost and balance amounts related to improvements to be constructed and completed by the City at an agreed upon cost not to exceed \$2,003,552. With this amendment there is acknowledgement that certain City improvements have been constructed and completed at a cost of \$544,095 with a remaining balance of \$1,459,457.

Monthly Gross Receipts – A new gross receipts reporting form is provided for Lessee to utilize for monthly reporting. The form is added to the Lease as Exhibit AB (Transmittal 2).

Non-Disturbance and Attornment Agreement – The Non-Disturbance Agreement previously referenced only as a placeholder Exhibit Q (Transmittal 3) in the Lease, establishes rights, obligations and protections of lessor, lessee, subtenants and lending institutions. This exhibit provides an established template agreement for subtenants who propose substantial investment in the premises that requires security if the Lease is terminated, which is beneficial to both SPPM's leasehold interest and the Harbor Department's land.

The proposed Non-Disturbance Agreement template provides that if SPPM's Lease with the Harbor Department is terminated and if sublessee is not in default under its sublease, the Harbor Department will not disturb sublessee's possession of their subleased space and the Harbor Department will continue to allow sublessee to own and operate on the premises for the remaining term of the sublease. Additionally, the Non-Disturbance Agreement outlines that the Harbor Department and sublessee agree that all its improvements on equipment are solely owned by sublessee and that no such property or credits shall be considered as fixtures to the premises and may be removed by sublessee at any time without approval from the Harbor Department.

The proposed Non-Disturbance Agreement template will be in effect so long as SPPM's sublease with sublessee is in effect, but in no event shall it be longer than the term of the Lease. The Executive Director is proposed to have the authority to enter into the Non-Disturbance Agreement(s) unless there is a material deviation from the approved template.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the proposed Sixth Amendment to the Lease with SPPM, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from

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the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Sixth Amendment will modify various Lease provisions to expand on Delivery Notice details; add language pertaining to reimbursements for unforeseen conditions, existing contamination, and environmentally regulated material found during Lessee construction; update costs for completed City improvements; and add exhibits for gross receipts reporting as well as a Non-Disturbance Agreement.

If the proposed Amendment is approved, the Harbor Department will be financially responsible for potential reimbursements of preexisting environmentally regulated material removal and unforeseen conditions over a five-calendar year period in an amount not to exceed \$250,000 per year or \$1,250,000 over the five-year period. Additionally, the Harbor Department will also be financially responsible for a one-time payment in the amount of \$732,550.11 to cover past eligible reimbursement costs on work already completed during SPPM construction.

Fiscal Year 2025 funding in the aggregate amount of \$982,550 is available within the Unallocated Capital Improvement Program Fund, Center 1900, subject to approval by the Project Development Committee. Future fiscal year funding will be requested as part of the annual budgeting process, subject to Board approval.

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CITY ATTORNEY:

The proposed Sixth Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTAL:

1. Sixth Amendment
2. Exhibit AB
3. Exhibit Q

Michael J. Galvin
MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

FIS Approval: JS
CA Approval: SO

Erica M. Calhoun
DINA ARYAN-ZAHLAN, P.E.
Deputy Executive Director
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APPROVED:

Erica M. Calhoun for
EUGENE D. SEROKA
Executive Director

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BL1058ga SPPM 6th Amendment