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6.7.23 SP

RECOMMENDATION APPROVED;
RESOLUTION 23-10191 ADOPTED AND;
AGREEMENT 23-2012-A APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS

June 7, 2023
AM KLESGES
AMBER M. KLESGES
Board Secretary



DATE: MAY 31, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 23-10191 - APPROVE THE FIRST AMENDMENT TO AGREEMENT NO. 2012 WITH SOUTHERN CALIFORNIA EDISON COMPANY

SUMMARY:

Staff requests approval of the First Amendment (First Amendment) to Reciprocal License Agreement No. 2012 (Agreement No. 2012) between Southern California Edison Company (SCE) and the City of Los Angeles Harbor Department (Harbor Department), which would extend the term by five years, for a total aggregate term of thirty years. Under the proposed First Amendment, the expiration date would change from April 30, 2023, to April 30, 2028. All other terms, conditions, and obligations would remain unchanged. There is no compensation payable by either the Harbor Department or SCE under Agreement No. 2012, due to the reciprocal nature of the agreement.

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 categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Approve and ratify the First Amendment to Reciprocal License Agreement No. 2012 between the City of Los Angeles Harbor Department and Southern California Edison Company;
3. Direct the Board Secretary to transmit the proposed First Amendment to the Los Angeles City Council for approval and ratification pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;
4. Authorize the Executive Director to execute, and the Board Secretary to attest to the First Amendment; and
5. Adopt Resolution No. 23-10191.

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SUBJECT: FIRST AMENDMENT TO AGREEMENT NO. 2012 SOUTHERN CALIFORNIA EDISON COMPANY

DISCUSSION:

Background - Under Agreement No. 2012, which took effect May 1, 1998, SCE uses and occupies land owned by the Harbor Department generally located at 2422 E. Sepulveda Blvd., Long Beach, CA, including portions of an access road (SCE Licensee Area); and the Harbor Department uses and occupies land owned by SCE located near 2401 E. Sepulveda Blvd., Long Beach, CA; and 2401 E. Pacific Coast Hwy., Wilmington, CA, and retains rights to an access road (HD Licensee Area) (Transmittal 1). There is no compensation payable by either party under Agreement No. 2012, due to the reciprocal nature of the agreement. The agreement provides for the exchange of comparable access/connectivity rights as opposed to a 1:1 transfer of square footage/property rights.

- The SCE Licensee Area on Harbor Department property is used by SCE as a truck storage and staging area for SCE's tenant. The SCE Licensee Area also includes an access road, as described above. The truck staging area consists of 80,964 square feet, and the access road area allotted to SCE is 34,578 square feet.
- The HD Licensee Area on SCE property is used for the operation and maintenance of spur tracks that connect the Union Pacific Intermodal Container Transfer Facility (a/k/a ICTF) and one other Harbor Department tenant (i.e., Mortimer and Wallace) to the former Union Pacific Railroad San Pedro Branch line which is a backup to the Alameda Corridor. There is also an access road, comparable to the area licensed to SCE, as noted above. The spur track areas consist of 23,871 square feet, and the access road area allotted to the Harbor Department is 30,240 square feet.

Term Extension - Both areas are licensed for a term of twenty-five years, effective May 1, 1998, through April 30, 2023, and subject to termination with twelve-months' notice. As approved in 1998, the term for Agreement No. 2012 is fixed. Because the underlying instrument is a license and not a lease, there is no mechanism for a holdover tenancy.

SCE desires to maintain business operations at the SCE Licensee Area, and the Harbor Department seeks to retain continued access to the adjacent rail corridor. It thus benefits the parties to execute into the First Amendment to extend the term for five years to allow all provisions and conditions of the agreement to continue without interruption.

After discussions concerning an extension to the license, SCE transmitted to the Harbor Department a First Amendment to Agreement No. 2012 to extend the term; however, the amendment was received too close to the expiration date without sufficient time for the Harbor Department to secure City of Los Angeles (City) approvals (i.e. Board, City Council). Staff initially operated under the assumption that the reciprocal license could continue under a traditional holdover tenancy arrangement while staff worked to secure City approvals, but later discovered that a periodic tenancy is not possible under a license. As such, under this action, the parties would retroactively extend the term, effective April 30, 2023.

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As approval and ratification of the First Amendment is being sought retroactive to its effective date of April 30, 2023, the parties entered into an interim extension letter agreement to memorialize the parties' intent to extend the term and abide by the provisions of Agreement No. 2012 while approval, ratification and execution of the First Amendment is pursued from the Board and City Council. Staff weighed the alternative approach of a new successor reciprocal contract between the parties in lieu of the approach proposed herein, but such option would cause a lapse in license rights and obligations, require more time and possibly protracted negotiations. To preserve the rights and obligations inherent within Agreement No. 2012, staff recommends a five-year extension of Agreement No. 2012 commencing May 1, 2023, which will ensure rail access rights at the HD Licensee Area.

Financial Analysis - As noted above, there is no compensation required by either party, due to the reciprocal nature of the agreement which consists of trading comparable access/connectivity rights as opposed to a spatially proportionate 1:1 transfer of property rights. As such, a traditional approach to valuation was not used to determine the financial impact of this First Amendment. However, there is equitable value in use conferred to each licensee based on respective commercial needs satisfied by ongoing operations conducted at the properties.

First Amendment - Under the proposed First Amendment (Transmittal 2), the expiration date would change from April 30, 2023, to April 30, 2028. All other terms, conditions and obligations would remain unchanged.

Board Approval and Ratification - This action recommends that the Board and City Council approve and ratify the First Amendment to Agreement No. 2012 retroactive to April 30, 2023, and extend the term to April 30, 2028. Since Agreement No. 2012 expired on April 30, 2023, the Board and City Council may decide to approve and ratify the First Amendment in their sole discretion. Under established municipal law, the Board and City Council are not required, but may, in their sole discretion, legally ratify the proposed amendment after-the-fact, if it could have originally authorized such contracts at the inception. The ratification may be considered retroactive and thus date from the time the contract was first entered into. (McQuillin, The Law of Municipal Corporations, § 29:115, 3d ed.) Here, the Board and City Council acting together, had the authority on September 30, 1998, to have approved Agreement No. 2012 with a 30-year term of May 1, 1998, to April 30, 2028.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a First Amendment to Agreement No. 2012 with SCE and the Harbor Department to extend the term by five years, which is an activity involving the amendment of any agreement to use an existing structure or facility involving negligible or no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

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FINANCIAL IMPACT:

Approval of the proposed First Amendment would extend Agreement No. 2012 by five years, from twenty-five years currently to thirty years, as proposed. Under the proposed First Amendment, Agreement No. 2012 would expire on April 30, 2028, rather than April 30, 2023.

Approval of the proposed First Amendment will not have a financial impact on the Harbor Department. Currently, based on the reciprocal exchange of property rights and mutual benefits conferred under the terms of Agreement No. 2012, no compensation is remitted to either party by the other. If the proposed First Amendment is approved, Agreement No. 2012 would continue in effect on the same terms and conditions, without compensation exchanged between the Harbor Department and SCE through April 30, 2028.

CITY ATTORNEY:

The proposed First Amendment to Agreement No. 2012 has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. First Amendment

FIS Approval: *MB*
CA Approval: *JC*

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APPROVED:

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