

0150-12407-0000

T R A N S M I T T A L

TO Eugene D. Seroka, Executive Director Harbor Department	DATE 10/27/2023	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**RESOLUTION NO. 23-10168 AND PROPOSED THIRD AMENDMENT TO
PERMIT NO. 907 BETWEEN THE HARBOR DEPARTMENT AND SSA PACIFIC, INC.
TO EXTEND THE TERM BY FIVE YEARS AND ADJUST COMPENSATION**

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.


MAYOR
(Chris Thompson for)

Attachment
MWS/PJH/JVW:SHF:10240001t
CAO 649-d

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: September 13, 2023

CAO File Nos. 0150-12407-0000

Council File No.

Council District: 15

To: The Mayor

From: Matthew W. Szabo, City Administrative Officer

Reference: Correspondence from Los Angeles Board of Harbor Commissioners (Board) dated April 27, 2023 regarding April 27, 2023 Board Resolution; referred by the Mayor for report on April 28, 2023

Subject: **RESOLUTION NO. 23-10168 AND PROPOSED THIRD AMENDMENT TO PERMIT NO. 907 BETWEEN THE HARBOR DEPARTMENT AND SSA PACIFIC, INC. TO EXTEND THE TERM BY FIVE YEARS AND ADJUST COMPENSATION**

RECOMMENDATIONS

1. Approve Los Angeles Harbor Department (Port) Resolution No. 23-10168 which authorizes the proposed Third Amendment to Permit No. 907 between the Port and SSA Pacific, Inc. to extend the term by five years from November 1, 2022 through October 31, 2027, with adjusted first year minimum revenues of \$463,176.85 and a minimum of \$2,459,068.81 over the extended five-year term;
2. Adopt the April 27, 2023 Board of Harbor Commissioners findings that:
 - a. the proposed action is categorically exempt from the requirements of California Environmental Quality Act (CEQA) under Article III Class 1(14) of the Los Angeles City CEQA Guidelines; and
 - b. the expected rate of return of 4.9 percent is reasonable given the seasonal use of Berths 53-55 and adjacent property due to the unique nature of the break-bulk fruit operations, the high-paying seasonal jobs created by this operation, the need for such a facility at the Port of Los Angeles to support the domestic market in the west coast, the existing condition and limitation of the property, and the ability to use the premises during the off-season for other temporary uses;
3. Authorize the Port Executive Director, or designee, to execute the proposed amendment, already approved as to form by the City Attorney, and return the Resolution to the Port for further processing, including Council consideration.

SUMMARY

The Los Angeles Board of Harbor Commissioners (Board) requested approval of its April 27, 2023 Resolution Nos. 23-10168 (Attachment 1) which authorizes the proposed Third Amendment to

Permit No. 907 (Permit) between the Los Angeles Harbor Department (Port) and SSA Pacific, Inc. to extend the term by five years from November 1, 2022 through October 31, 2027 for a total Permit term of 15 years, with one mutual option to extend by an additional five years; and adjust compensation. The proposed compensation adjustments will result in the Port to receive more than \$461,176.85 in the first year and a minimum of \$2,459,068.81 over the five-year extended period.

The Board found the expected rate of return of 4.9 percent, although below the Board's current targeted rate of 11.03 percent for the Permit premises, is reasonable given the seasonal use of Berths 53-55 and adjacent property due to the unique nature of the break-bulk fruit operations, the high-paying seasonal jobs created by this operation, the need for such a facility at the Port of Los Angeles (POLA) to support the domestic market in the west coast, and existing condition and the limitation of the property. Furthermore, the Port will be able to increase its rate of return by utilize the premises during the seven months of off-season for other temporary uses.

The Permit grants SSA preferential use of Berths 53-55 and adjacent wharf at the POLA from December 1st through April 30th of each year, and defined warehouse and office spaces with ten parking spaces all year for handling fresh fruit and vegetables primarily from Chile.

The proposed amendment has been approved as to form by the City Attorney. Pursuant to Charter Section 606, Council approval is required because the cumulative permit term exceeds five years. Our Office has reviewed the request and recommends approval.

BACKGROUND

Stevedoring Services of America, a Washington corporation currently known as SSA Pacific, Inc. (SSA), began handling fruits and vegetables, primarily from Chilean, at the POLA in May 1991 under a Preferential Berth Assignment (PBA), then under Permit No. 714 from November 1999 through October 2009 as approved by the Board (Order No. 6713) and Council (C.F. 01-0232). From November 2009 through October 2012, SSA was on a month-to month status under the same terms and conditions contained in Permit No. 714.

SSA's operations at Berths 53-55 are generally limited to fruit and vegetable cargo because the wharf cannot handle heavy-lift operations. It is a seasonal business conducted during winter and early spring to supplement the domestic market in the Southern California regions and beyond, and provide high-paying seasonal jobs in the local area. The supply chain financials are sustainable at the current annual volumes, but any significant decline could cause unsustainable supply chain economics. The operational seasons are as follows:

Season	Period	Duration
Fruit season	December 1 – April 30	Five months
Off-season	May 1 – November 30	Seven months

Original Permit No. 907 – The Board and Council approved the original Permit with SSA on September 4, 2014 and November 14, 2014 (C.F. 14-1532), respectively, to allow preferential use of approximately 14.72 acres of property located at Berths 53-55 and adjacent wharf and backland

for handling fresh fruit and vegetable cargo during the fruit season each year, as well as the exclusive use of defined office space and warehouse spaces all year. The Permit was for a term of five years, retroactive from November 1, 2012 through October 31, 2017, with a one-year renewal option.

Prior Amendments – The First Amendment reduced the property size by 0.76 acres in January 2017. The Second Amendment was approved by the Board on May 18, 2017 and by Council on August 25, 2017 (C.F. 14-1532-S1) to extend the Permit term by an additional five years from November 1, 2017 through October 31, 2022, and reset compensation.

Current Proposed Third Amendment – The proposed amendment adds five years to the Permit from November 1, 2022 through October 31, 2027, for a total term of 15 years, with one mutual option to extend the term by an additional five years, and reset compensation.

Environment - SSA plans to convert all their diesel forklifts to battery electric in the 2023-24 season, reduce vessel calls to 19 vessels per year from 24 calls today, and will ensure that their fumigation meets the modified operations plan presented to the U.S. Department of Agriculture and other stakeholders.

Compensation - Under the Permit, a Minimum Annual Guarantee (MAG) consists of the following elements: (i) a negotiated rate per acre per year for Berths 53-55 and adjacent wharf and backland during the fruit season and (ii) the Tariff rates of the defined office and warehouse spaces, with (iii) all rates reduced by 25 percent due to the condition of the premises and the load limits on the wharf. The original MAG was set based on estimated minimum volumes expected from fruit growers for the seasonal business. A MAG is subject to annual increases based on the Consumer Price Index (CPI) with a floor and a cap percentage as negotiated and approved by the Board. The compensation resets occur every five years as follows:

Effective November 1 (Year)	MAG	Annual CPI Floor - Cap
Original Permit (2012)	\$340,204.00	0% - 2%
Second Amendment (2017)	\$410,749.00	0% - 2%
Proposed Third Amendment (2022)	\$463,176.85	3% - 5%

The total compensation includes the following:

- Base rent - The greater of the MAG or the cumulative wharfage and dockage charges as set forth in Port's Tariff No. 4 during the fruit season.
- Additional rent – Any Tariff charges incurred for non-fruit or vegetable cargo operations, if any, during the off-season.

Under the proposed amendment, the MAG will be subject to annual increases with a floor of three percent and a cap of five percent, in comparison with the existing floor of zero and a cap of two percent. The first year minimum revenues of \$463,176.85 will result in a minimum total of \$2,459,068.81 to the Port over the proposed five-year extended period, based on three percent annual increase.

Furthermore, the Port will be able to increase revenues by renting a portion of the premises during

the seven-month off-season to temporary users.

Deviations from the Port's Leasing Policy:

1. Rate of Return – The Board's current targeted rate of return for the premises, a blended rate on land and improvements, is 11.03 percent. The projected return rate for the proposed amendment is 4.9 percent during the fruit season. Despite of the projected deficiency, the Board considered the proposed rate as reasonable given the abovementioned justifications in the Summary of this report.
2. Environmental Obligations – By approving the Permit in 2014, the Board and Council had previously determined that it was reasonable for the Port to assume the liability for the condition of the premises other than for contamination caused by SSA or its affiliates. The improvements on the premises are the property of the Port; and there is no environmental baseline report for the premises. Additionally, SSA has been a tenant in good standing since 1999.

Transfer of Majority Shares of SSA's Upstream Parent – Separately on April 27, 2023, the Board approved the transfer of majority shares (control) of FRS Capital Corp. (FRS) from current shareholder to Blackstone Infrastructure Partners, L.P. FRS indirectly owns 100 percent of the equity interest of SSA. This transfer has no impact on SSA's financial obligations, or SSA fulfilling its obligations under the Permit No. 907.

CITY COMPLIANCE

California Environmental Quality Act (CEQA) – On April 27, 2023, the Board determined that the proposed action is categorically exempt from requirements of the CEQA pursuant to Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

The City Attorney has reviewed and approved the proposed amendment as to form. Pursuant to Charter Section 606, Council approval is required because the permit term exceeds five years.

FISCAL IMPACT STATEMENT

Approval of the proposed Third Amendment to Permit 907 between the Harbor Department (Port) and SSA Pacific, Inc. will increase the Minimum Annual Guarantee (MAG) by five percent from \$441,120.81 to \$463,176.85 during the first year which will result in a minimum of \$2,459,068.81 over the five-year extended period, payable to the Port. The recommendations in this report and proposed actions comply with the Port's Financial Policies, with exception of a projected rate of return of 4.9 percent that is lower than Board's current targeted 11.03 percentage for the premises. The Board found the lower rate of return to be justified and reasonable. There is no impact on the City's General Fund.

Attachment 1 – April 27, 2023 Harbor Board report, Resolution 23-10168