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**RECOMMENDATION APPROVED;
RESOLUTION 18-8408 (PERMIT 916) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS**

DECEMBER 18, 2018

Amber M. Klesges

AMBER M. KLESGES

Board Secretary



Executive Director's

Report to the

Board of Harbor Commissioners

DATE: DECEMBER 5, 2018

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 18-8408 - APPROVE PERMIT NO. 916
WITH SHELL OIL COMPANY

SUMMARY:

Staff requests approval of Permit No. 916 with Shell Oil Company (Shell) for a term of 30 years to succeed Permit No. 634. Permit No. 916 will grant Shell the right to use City of Los Angeles Harbor Department (Harbor Department) property consisting of 11.57 acres at Berths 167-169 in Wilmington for the construction, operation, and maintenance of a marine oil terminal and storage tanks. The Final Environmental Impact Report (EIR) describing this project was certified by the Board of Harbor Commissioners (Board) on August 23, 2018.

Permit No. 916 is necessary to comply with the Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) project, which is intended to protect public health, safety, and the environment. Shell's annual fixed rental compensation for land rent was increased to \$1,589,160.00 on February 12, 2018 (\$397,290 per quarter) and will be increased by Consumer Price Index (CPI) on February 12, 2019. The annual compensation for land rent will continue as of the effective date of the new permit, plus all tolls and charges pursuant to Tariff No. 4, based on the land market value of \$40 per square foot and Board policy of 10 percent rate of return on land (plus February 2019 CPI adjustment) with a 50 percent discount for subsurface rights. Land rent will be adjusted annually by the Consumer Price Index (CPI-U), Los Angeles-Long Beach-Anaheim.

Minimum wharf rent is set at \$900,000 per year, per berth. Wharf rent will expire when the Harbor Department achieves its target rate of return of 12 percent on the Harbor Department's investment of \$7,500,000. Shell will also be responsible for all costs associated with maintenance and operation of the premises except maintenance dredging and rock slope maintenance. The Harbor Department will be financially responsible for the costs of maintenance dredging and maintenance of the rock slope.

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(i) of the Los Angeles City CEQA Guidelines;

SUBJECT: APPROVAL OF PERMIT NO. 916 WITH SHELL OIL COMPANY

2. Approve Permit No. 916 with Shell Oil Company;
3. Direct the Board Secretary to transmit Permit No. 916 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. 916 upon Board approval contingent upon approval by City Council; and
5. Adopt Resolution No. K 8408.

DISCUSSION:

Background: Permit No. 916 (Transmittal 1) will grant Shell the right to use Harbor Department property (land, subsurface land, and water areas) consisting of 11.57 acres at Berths 167-169 in Wilmington (Transmittal 2) for the construction, operation, and maintenance of a marine oil terminal and storage tanks. Permit No. 916 will supersede Permit No. 634 upon execution. Permit No. 634 currently has approximately four years remaining on the term, with an expiration date of February 11, 2023. Shell has been in operation at Mormon Island since 1923 as a marine oil terminal.

Permit No. 916 is necessary to comply with MOTEMS. MOTEMS 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 167-169 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 deemed that the existing wharf needed to 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 new MOTEMS compliant loading platforms and a mooring system for Shell's first berth is estimated to cost \$33,136,410. Shell 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; however, should the costs exceed \$33,136,410, the Harbor Department will be responsible for any overage.

Staff has reached the proposed agreement with Shell to implement the MOTEMS wharf improvement project. The Board approved the CEQA assessment on August 23, 2018. The summary of the terms and conditions of the proposed 30-year permit for the continued operation of the Berths 167-169 marine oil terminal, tank farm, and underground pipelines is stated below:

SUBJECT: APPROVAL OF PERMIT NO. 916 WITH SHELL OIL COMPANY

Proposed Permit

Term. 30 years.

Compensation.

1. Land Rent. Shell's annual fixed rental compensation for land rent was increased to \$1,589,160 on February 12, 2018 (\$397,290 per quarter) and it will be increased by CPI-U on February 12, 2019. The annual fixed rental compensation for land rent will continue as of the effective date of the new permit, plus all tolls and charges pursuant to Tariff No. 4, based on the land market value of \$40 per square foot and Board policy of 10 percent rate of net return on land, (plus February 2019 CPI adjustment) 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. Wharf rent will expire when the Harbor Department achieves its target rate of return of 12 percent on the Harbor Department's investment of \$7.5 million.
3. Annual CPI Adjustments. Following the effective date, fixed rent and wharf rent will be adjusted annually based on the percentage increase in the CPI-U.
4. Five-Year Adjustments of Land Rent. Pursuant to the City Charter Section 607, the 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 40 feet for the respective berths. Shell shall be responsible for all other maintenance including the wharf structure.

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

Proposed Deviation from Standard Permit Terms

1. The proposed permit includes the elimination of the minimum wharf rent obligation when the Harbor Department achieves its target rate of return of 12 percent on the Harbor Department's investment of \$7.5 million. This is currently estimated to occur between years 8 to 11 depending on volume throughput and related tariff changes paid by Shell. Shell's actual tariff charges are projected to be well in excess of their minimum wharf rent as the past three years annual tariff revenue has averaged \$2.59 million. Therefore, removing the minimum wharf rent after the Harbor Department achieves the desired rate of return should not result in actual revenue loss to the Harbor Department.

SUBJECT: APPROVAL OF PERMIT NO. 916 WITH SHELL OIL COMPANY

2. Shell proposes to have one wharf constructed immediately and has the option to have a second wharf constructed within five years if business demands exceed capacity. Shell's minimum annual wharf rent for one wharf will be \$900,000 (second wharf will increase the minimum to \$1,800,000). Shell's exercise of its option to build the second wharf would be subject to review by the Harbor Department based on conditions outlined in the Permit, and Board approval of an amendment to the Permit.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of Permit No. 916 with Shell for a term of 30 years, which is an activity for which the underlying project has been previously assessed in the Berths 167-169 [Shell] Marine Oil Terminal Wharf Improvements Project (SCH# 2015061102), which was certified by the Board of Harbor Commissioners on August 23, 2018. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA under Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed Permit No. 916 would ensure that the Harbor Department continues to receive current annual fixed rental compensation for land rent in effect since February 12, 2018. Effective February 12, 2019, the new fixed compensation for land rent will increase by CPI. The proposed new Permit obligates the Harbor Department to invest \$7,500,000 for the MOTEMS improvement and Shell to invest \$25,636,410. Proposed compensation will meet the Board policy rate of return for land and improvements. In addition to minimum land rent and wharf rent, Shell will also be subject to Tariff No. 4 tolls, charges, and any future annual CPI adjustments. During Fiscal Year 2018, Shell paid compensation of \$3,077,840 (\$1,758,974 in wharfage and \$1,318,866 in land rent) under existing Permit No. 634.

As per the terms of proposed Permit No. 916, Shell will be responsible for all costs associated with maintenance and operation of the premises except maintenance dredging and rock slope maintenance. The Harbor Department will be financially responsible for the costs of maintenance dredging and maintenance of the rock slope which are estimated to be approximately \$200,000 in aggregate over 10 years.

DATE: DECEMBER 5, 2018

PAGE 5 OF 5

SUBJECT: APPROVAL OF PERMIT NO. 916 WITH SHELL OIL COMPANY

CITY ATTORNEY:

Permit No. 916 has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Permit
2. Site Map



MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

FIS Approval: 
CA Approval: 



FOR MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

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