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RECOMMENDATION APPROVED;
RESOLUTION 21-9918 (Lease 915) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

November 4, 2021

C. Bubic
for AMBER M. KLESGES
Board Secretary



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: OCTOBER 26, 2021

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 21-9918 – APPROVE THIRD AMENDMENT TO
LEASE NO. 915 WITH SAN PEDRO PUBLIC MARKET, LLC

SUMMARY:

Staff requests approval of the proposed Third Amendment (Third Amendment) to Lease No. 915 (Lease) between the City of Los Angeles Harbor Department (Harbor Department) and San Pedro Public Market, LLC (SPPM). The Third Amendment proposed changes to the Lease includes, but is not limited to, the following: 1) approval of a new option period that would extend the entire option period; 2) approval of the development name change from San Pedro Public Market to West Harbor; 3) approval of five construction change order requests; 4) modification of the City Improvements section of the Lease to include reimbursement of costs for SPPM's purchase of sewer pump station and electrical infrastructure equipment; 5) revisions to the assignment for security purposes section; and 6) incorporation of revised Exhibits, C-2, F-2, G(a) and H(a) which reflect modifications to maps and schedules. The Third Amendment is not anticipated to have an additional financial impact on the Harbor Department, as the Harbor Department will continue to be responsible for funding of \$1,657,976 related to equipment and City Improvements.

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 has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;
2. Approve the proposed Third Amendment to Lease No. 915 with San Pedro Public Market, LLC;
3. Direct the Board Secretary to transmit the Third Amendment to Lease No. 915 to the City Council pursuant to Charter Section 607;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment to Lease No. 915 upon approval by City Council;
5. Authorize Executive Director to approve final loan documents; and
6. Adopt Resolution No. 21-9918.

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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 (Premises) in San Pedro (Transmittal 1). The Los Angeles City Council (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.

In November 2019, the Board approved the First Amendment (First Amendment) to the Lease amending the term to 66 years and adjusting the option period to 48 months, during which time 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 (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 have met respective investment and construction obligations.

The Third Amendment (Transmittal 2) proposes the following updates and changes to the Lease:

Option Period - SPPM shall have the right to a fourth option extension period. The first, second and third Option Extensions, which have already been exercised, gave SPPM an additional six (total of 18) months extension to the original Option Period. The fourth Option Extension gives SPPM an additional six (6) months extension to the Option Period subject to evidence of completion of Financing Milestone One referenced in the proposed Third Amendment, which requires commencement of debt financing marketing for the Tenant Improvements. SPPM has commenced debt financing marketing and Milestone One has been completed.

Lessee Name or Mark - Under Section 17.2 of the Lease, the City shall have the right to approve names and marks coined or created by Lessee for use on the Premises to ensure that use of the Premises is consistent with that of a public venue leased by a governmental entity. The Lessee is requesting approval of the proposed change of the development name from "San Pedro Public Market" to "West Harbor." The Lessee has requested to change the name to assist in marketing the development as a larger regional draw and attraction. Use of the new "West Harbor" also resolves other intellectual property issues between SPPM with third parties. This development name change does not result in a change of the Lessee in this Lease nor is there a change in corporate structure for SPPM.

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City Improvements – As part of City's obligations under the Lease, City was responsible for the construction and installation of the sewer lift station estimated to cost [\$2,003,552]. The First Amendment conveyed responsibility of the sewer lift station to SPPM with SPPM responsible for the development, design, and construction of the sewer lift station. City, in turn, would dedicate the originally allocated [\$2,003,552] for the sewer lift station to other City Improvements in coordination with SPPM. The Second Amendment included language to reflect SPPM's upgrades to the electrical service.

The Third Amendment acknowledges that costs expended by City as part of City Improvements made as a result of requests by the Lessee. These improvements include adding vaults, modification of promenade light poles, relocation of HDPE storm drain, relocation of backflow preventer, irrigation timers, and dust control totaling a cost of \$345,576. The Lessee acknowledges and agrees that the expanded City Improvements have been constructed and completed, and the \$345,576 cost would be credited to the \$2,003,552 total not to exceed amount for expanded scope of City Improvements pursuant to Section 6.1.1 of the Lease. The credit for expanded change orders leaves the total not to exceed amount at \$1,657,976.

Sewer/Electrical Infrastructure Equipment Purchase – The Third Amendment requires the City to reimburse SPPM up to an amount of \$1,657,976 for SPPM's purchase of a portion of the necessary equipment for the sewer lift station and/or electrical infrastructure. Reimbursement of costs are subject to Lessee complying with conditions including but not limited to the following: complying with City contracting and procurement requirements, agree the equipment is affixed to the property and cannot be removed, documenting all costs and inspections required for the purchase and installation, and equipment purchased and installed must be in accordance with LADWP and LADPW specifications.

Upon exhaustion of the \$1,657,976, City shall have no further obligation to provide any further costs for equipment or City Improvements.

Section 15.8, Assignment for Security Purposes – The proposed Third Amendment revises section 15.8 to address the need to expedite the final construction loan approval by the Harbor Department for the Option Period only. The proposed Third Amendment will allow the Board to approve the assignment to a Leasehold Mortgagee to secure initial financing for improvements on the Premises based on the presentation and Board approval of a final term sheet between the Lessee and the proposed Leasehold Mortgagee. This final term sheet will be presented in a separate Board action.

The final term sheet presented must include all material terms necessary to allow the Board to consider the assignment based on the factors including express description of a fixed amount to be borrowed and collateral securing the monies borrowed, confirmation that the loan documents do not change the rights of the City under the Lease and that any action to foreclose on the interests of the Lessee in the Lease will require delivery of the notice of default to the Harbor Department ten calendar days in advance of any foreclosure sale. Following Board approval of the final term sheet, the Executive Director is delegated the authority to approve the final loan documents provided there is no material difference from the term sheet previously approved by the Board. Any change in the Lessee's obligation to meet the financing obligations will be considered a material

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change and will require new Board approval. Subsequent assignments for security purposes outside of the Option Period shall require Board approval.

Revisions to Exhibits C-2, F-2, G(a), H(a) and AA – Exhibit C-2 is revised to C-2(a) to update existing improvements to include overwater deck and improvements at Berth 74. Exhibit G(a) is revised to G(b), updating the West Harbor/City improvement schedule. Exhibit F-2 is revised to F-2(a) to update the construction and delivery phasing plan. Exhibit H(a) is revised to H(b) to capture additional area of Lessee maintenance responsibility. Lastly, Exhibit AA is added to list sewer and electrical infrastructure equipment to be purchased.

Staff recommends the Board approve the Third Amendment to the Lease to modify terms to extend the option period, acknowledge the development name change from San Pedro Public Market to West Harbor, approve five construction change order requests, revise the City Improvements section to include the scope for the purchase of sewer pump station equipment and infrastructure, revise Section 15.8 to expedite approval of the final construction loan and assignment for security purposes and revise the map and schedule Exhibits.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Third Amendment to Lease No. 915, which is an activity for which the underlying project has been previously assessed in the San Pedro Waterfront Project Environmental Impact Report (SPW EIR) (SCH# 2005061041), which was certified by the Board on September 29, 2009, the Addendum to the SPW EIR for the San Pedro Public Market Project considered by the Board on May 19, 2016, and the Addendum to the SPW EIR for the San Pedro Public Market 2 considered by the Board on November 21, 2019. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA in accordance with Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The changes proposed under the Third Amendment are largely administrative in nature and serve to generally acknowledge development name change to West Harbor, approve five construction change order requests, revise City Improvements section of the Lease to include the scope for the purchase of sewer pump station equipment and infrastructure, and the revision of map and schedule Exhibits.

If the Third Amendment is approved, the Harbor Department will continue to be responsible for \$1,657,976 in future City improvements to be completed in coordination with SPPM.

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CITY ATTORNEY:

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

TRANSMITTALS:

1. Site Map
2. Third Amendment

FIS Approval: MB
CA Approval: SO

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