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Antonio R. Villaraigosa

Mayor, City of Los Angeles

Board of Harbor
Commissioners

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Geraldine Knatz, Ph.D.

Executive Director

October 8, 2009

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Ms. Sharon Gin, City Clerk's Office

SUBJECT: PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH
EAGLE MARINE SERVICES

Pursuant to Section 653 (a) of the City Charter, enclosed for your approval is proposed Third Amendment to Permit No. 733 with Eagle Marine Services, which was adopted by the Board of Harbor Commissioners at its meeting held August 13, 2009.

RECOMMENDATION:

That the City Council, subject to approval of the Mayor, approve proposed Third Amendment to Permit No. 733 between the City of Los Angeles Harbor Department and Eagle Marine Services.

Respectfully submitted,

ROSE M. DWORSHAK
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilwoman Hahn, encs.
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Tricia Carey, Legislative Representative, encs.
Christine Yee Hollis, CLA, encs.
Alvin Newman, CAO, encs.
Jenny Chavez, CD 15, encs

RECOMMENDATION APPROVED
AND RESOLUTION NO. 09-6790 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

August 13, 2009

Rose M. Dwarshak
SECRETARY



Executive Director's
Report to the
Board of Harbor Commissioners

8-13-09
13

DATE: AUGUST 6, 2009

FROM: REAL ESTATE DIVISION

SUBJECT: RESOLUTION NO. 09-6790 - PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

SUMMARY:

Board Order No. 09-7000, adopted June 18, 2009, exempts terminal operators from items 520 and 550-033 of the Port of Los Angeles (POLA) Tariff No. 4 (Tariff), Section Five, "Transferred Merchandise – Wharfage" for a period of one year commencing July 1, 2009, and ending June 30, 2010. In addition, the exemption allows an increase in the number of exempt waterborne containers from 200 to 500 per week and requires terminal operators to provide the Los Angeles Harbor Department (Harbor Department) the number of containers to be considered under this exemption. Permit No. 733 (Permit) with Eagle Marine Services (EMS) does not allow subsequent POLA Tariff amendments to affect the terms of the Permit. In order to allow this exemption to apply to EMS's Permit, a Third Amendment to the Permit is required. The proposed Third Amendment will allow EMS to enjoy identical relief as provided by the POLA Tariff amendment.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Third Amendment to the Permit, which allows an exemption on wharfage on "Transfer Merchandise – Wharfage" for the period of July 1, 2009 through June 30, 2010. All other terms and conditions of the Agreement, as previously amended, shall remain unchanged and unaffected by this Third Amendment;
2. Direct the Board Secretary to transmit the Third Amendment to the City Council for approval pursuant to City Charter 653(a);
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Third Amendment upon approval by City Council; and
4. Adopt Resolution No. 09-6790.

SUBJECT: RESOLUTION NO. 09-6790 - PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

DISCUSSION:

1. On August 19, 2000, October 23, 2002, and February 26, 2003, the Board of Harbor Commissioners (Board) approved temporary orders for initial trial periods of 90 days for a reduced transferred merchandise rate in the POLA Tariff, Item 550-033. The Board subsequently approved a permanent order in October 2004, amending the POLA Tariff, Item 550-033. The current assessed fee is \$71.66 per container for merchandise transferred from another port to the POLA with a volume not to exceed 200 containers per alliance, per seven-day period.
2. On June 11, 2009, the Board approved Permanent Order No. 09-7000 amending POLA Tariff No. 4 that exempted wharfage on transferred merchandise commencing July 1, 2009, and ending June 30, 2010. Additionally, the Order increased the quantity of containers allowed under this exemption from 200 to 500 waterborne containers per week. As part of this Third Amendment, terminal operators shall provide the number of containers of transferred merchandise discharged at the Port of Long Beach (POLB) and transported by rail out of a POLA on-dock rail facility, as well as containers of transferred merchandise discharged at the POLA and transported by rail out of a POLB on-dock rail facility.
3. Due to a provision in the Permit, the exemption will not apply to EMS. In order to equalize the effects of the exemption on all Harbor Department terminal operators, a Third Amendment to the Permit is recommended so that EMS will have identical relief as provided by the POLA Tariff exemption.
4. Approving this Third Amendment provides no economic benefit to the Harbor Department and will exempt certain POLA Tariff fee collections. The proposed amendment is an "interim solution" that may provide alliance members with operational efficiencies and cost savings.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an amendment to an existing Permit between the Harbor Department and EMS. The amendment will exempt EMS from provisions set forth in the POLA Tariff, Section 5, consistent with previously approved Board Order No. 09-7000 and would allow EMS to benefit from an existing financial incentive program aimed at maintaining existing intermodal container volumes at various Port container terminals consistent with current permit conditions. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

SUBJECT: RESOLUTION NO. 09-6790 - PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

ECONOMIC BENEFITS:

This Board action will have no direct employment impact in our five-county region.

FINANCIAL IMPACT:

Approval of the proposed Third Amendment would exempt EMS from this POLA Tariff provision for the one-year period referenced herein. Should EMS incur transferred merchandise wharfage charges during this time frame, the Harbor Department could forgo a maximum revenue amount equal to 26,000 containers (= 500 containers/week x 52 weeks) at a rate dependent on a commodity and freight basis (which is known only at the time such cargo arrives).

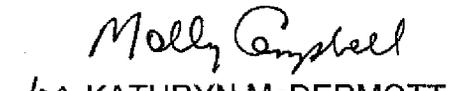
CITY ATTORNEY:

The Office of the City Attorney has approved the proposed Temporary Order, the proposed Permanent Order, and the Ordinance as to form.

TRANSMITTALS:

1. POLA Tariff Section Five "Transferred Merchandise – Wharfage"
2. Permanent Order 09-7000
3. Permit No. 733, Sec 2(c); Sec 4(a); Exhibit "B"
4. Third Amendment


MICHAEL J. GALVIN II
Director of Marketing


for KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

THIRD AMENDMENT TO
PERMIT NO. 733
EAGLE MARINE SERVICES, LTD.

Permit No. 733 granted to EAGLE MARINE SERVICES, LTD. is hereby amended a third time as follows:

Notwithstanding the provisions of Section 2(c), Section 4(a) and Exhibit "B" of the Agreement, commencing on July 1, 2009 and terminating on June 30, 2010, Tenant's obligation to pay City wharfage on "Transferred Merchandise," meaning merchandise received at a municipal wharf or wharf premises by land transportation and subsequently removed from municipal wharf or municipal wharf premises by land transportation, shall be calculated with reference to Item 520 and Item 550-033, adopted by Board on June 18, 2009 pursuant to Order No. 09-7000, and attached hereto as Exhibit "A."

All other terms and conditions of the Agreement, as previously amended, shall remain unchanged and unaffected by this Third Amendment.

CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest _____
Board Secretary

Dated: 8/11/09

EAGLE MARINE SERVICES, LTD.,
a Delaware corporation

By *Nathanial Seeds*
Nathanial Seeds, Vice President
(Print/Type Name and Title)

Attest *Timothy S. McElroy*
Timothy S. McElroy
(Print/Type Name and Title)
Sr. Director Network

APPROVED AS TO FORM
[Signature], 2009
CARMEN A. TRUTANICH, City Attorney

By *[Signature]*
STEVEN Y. OTERA, Deputy

SYO/dls
7/9/09

ORDER NO. 09-7000

An Order of the Board of Harbor Commissioners of the City of Los Angeles amending Port of Los Angeles Tariff No. 4, Items 520 and 550-033, Transferred Merchandise - Wharfage.

THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LOS ANGELES DOES HEREBY ORDER AS FOLLOWS:

Section 1. The Port of Los Angeles Tariff No. 4, adopted July 12, 1989, by Order No. 5837, and Ordinance No. 165,789, adopted April 10, 1990, as amended, is further amended as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

Section 2. The Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section I of the Los Angeles City CEQA guidelines.

~~Section 3. The Board Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners and shall cause the same to be published once in a daily newspaper printed and published in the City of Los Angeles.~~

Section 4. Pursuant to Charter Section 653(a), this amendment to the Tariff shall become effective when this Order is approved by the City Council by Ordinance; provided, however, pursuant to Charter Section 653(b), this Order shall be effective prior to approval by Ordinance for a period not to exceed 90 days from the date of its adoption by the Board of Harbor Commissioners.

I HEREBY CERTIFY THAT the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held on June 18, 2009.

Rose M. Dworshak
ROSE M. DWORSHAK
Acting Board Secretary

APPROVED AS TO FORM

June 29, 2009
ROCKARD J. DELGADILLO, City Attorney

By *T. Hogan*
TIMOTHY A. HOGAN, Assistant

TAH:cp
6/3/09

EXHIBIT A

SECTION FIVE - Continued WHARFAGE - Continued	Item No.
<p style="text-align: center;">TRANSFERRED MERCHANDISE</p> <p>(a) Transferred merchandise is merchandise received at municipal wharf or wharf premise by land transportation and subsequently removed from municipal wharf or wharf premise by land transportation.</p> <p>(b) Transferred merchandise shall be assessed wharfage on the same basis as merchandise moving by vessel subject to the two exceptions noted below.</p> <p>Exception 1: In the event merchandise is transferred from the premises of one municipal wharf to another for delivery to a land vehicle (including rail) or vessel, a single wharfage charge only will be assessed.</p> <p>[+] Exception 2: Some terminal operators serve vessels which are members of an alliance whose vessels call at several ports. As used in this Tariff item, the term "alliance" means a formal contract among several carriers to share terminal and vessel space. Such terminal operators may handle transferred merchandise from alliance members who dray such merchandise from other ports.</p> <p>Terminal operators falling under either of the two foregoing exceptions shall have the option of paying charges to the City on such transferred merchandise handled at the Port of Los Angeles in one of the two following ways:</p> <ol style="list-style-type: none"> 1. The terminal operator may pay the City 100% of the applicable wharfage rate for Cargo N.O.S. per kiloton or cubic meter (see Item 550-001) and such transferred merchandise charge shall not count toward the terminal operator's minimum annual guarantee (MAG) or be revenue shared or count toward "efficiency criteria" except to the extent terminal operator's agreement with the City so allows. The term "efficiency criteria" refers to agreement revenue sharing provisions based on revenue tons per acre or the number of twenty-foot equivalent units (TEU) or containers handled. *2. Alternatively, merchandise handled by the terminal operator commencing July 1, 2009, and ending on June 30, 2010, and subject to the conditions below, if the terminal operator has submitted a written request to the Executive Director and the Executive Director grants such request in writing, the terminal operator may be exempted from paying wharfage on such merchandise (see Item 550-033) per container, loaded or empty, and such merchandise shall not count toward the terminal operator's MAG, or be revenue shared, or count toward the terminal operator's "efficiency criteria" except to the extent the terminal operator's agreement with the City so allows. At the sole discretion, the Executive Director may revoke the permission for the terminal operator to handle transferred merchandise at a flat fee upon providing the terminal operator 72 hours' notice. 	<p>[R] 520</p>

See Item 10 for explanation of abbreviations and symbols.

Correction No.	Order No. Ordinance No.	Adopted Adopted	EFFECTIVE:
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Exhibit "A"

PORT OF LOS ANGELES – TARIFF NO. 4		Eighth Revised Page 52 Cancels Seventh Revised Page 52	
SECTION FIVE – Continued WHARFAGE -- Continued			Item No.
WHARFAGE RATES – Continued		Rates in Cents Per KT or M-3 Unless Otherwise Indicated Below (See Item 510)	550-
Rates apply on all trades (See Item 100 [o], [p], and [q]; except Hawaii or as noted in individual items.			
<p>[A] Transferred Merchandise (Subject to Notes 1 through 8)</p> <p>Note 1: Subject to provisions of Tariff No. 4, Item 520.</p> <p>*Note 2: No wharfage shall be assessed under this item commencing July 1, 2009, and ending June 30, 2010.</p> <p>Note 3: Terminal operator must provide a written request to use this item and the Executive Director will grant written approval.</p> <p>Note 4: The Executive Director can revoke permission for the terminal operator to handle transferred merchandise on 72 hours' notice to the terminal operator.</p> <p>*Note 5: Container movements from the Port of Long Beach are restricted to alliance partners' merchandise only, covering a volume not to exceed 500 containers per alliance, per seven-day period.</p> <p>+Note 6: Each terminal operator shall provide on a monthly basis, commencing August 1, 2009, to the Port of Los Angeles alliance partner container numbers of units that were discharged from a vessel calling at the Port of Long Beach and transported by rail from a wharf premises in the Port of Los Angeles.</p> <p>+Note 7: Each terminal operator shall provide on a monthly basis, commencing August 1, 2009, to the Port of Los Angeles alliance partner container numbers monthly of units that were discharged from a vessel calling at the Port of Los Angeles and transported by rail from a wharf premises in the Port of Long Beach.</p> <p>+Note 8: The Port reserves the right to audit the data provided in Note 6 and Note 7 above and may amend its' determination at the exclusive discretion of the Executive Director.</p> <p>*The factors the Executive Director may consider in deciding whether to grant an exemption under Item 520, Exception 2, include, but are not limited to:</p> <p>(1) Whether the transferred merchandise has been generated from a carrier which is an alliance member of the terminal operator's customers;</p> <p>(2) Whether and how the handling of the transferred merchandise in the Port of Los Angeles will impact other terminals in the Port;</p>		<p>*Per Container \$0.00 (Cont.)</p>	<p>[R][C] 033 (Cont.)</p>
See Item 10 for explanation of abbreviations and symbols.			
Correction No.	Order No. Ordinance No.	Adopted Adopted	EFFECTIVE:

Exhibit "A"

PORT OF LOS ANGELES - TARIFF NO. 4		Second Revised Page52-A Cancels First Revised Page52-A	
SECTION FIVE - Continued WHARFAGE - Continued			Item No.
WHARFAGE RATES - Continued Rates apply on all trades (See Item 100 [o], [p], and [q]; except Hawaii or as noted in individual items.		Rates in Cents Per KT or M-3 Unless Otherwise Indicated Below (See Item 510)	550-
<p>(Transferred from Sixth Revised Page 52)</p> <p>Item 033 - Continued</p> <p>+ (3) Whether allowing such exemption of wharfage otherwise payable to the City, would result in a diversion of an alliance partner service to another port;</p> <p>(4) Whether allowing such handling will assist rail carriers in minimizing traffic along intermodal routes;</p> <p>(5) Whether the terminal operator making the request is current in all its obligations to the Port; and</p> <p>(6) Such other factors as may be presented to the Executive Director based on the unique facts of each case. The Executive Director may further constrict the hours of operation noted above upon first providing the terminal operator 24 hours' notice.</p>		*Per Container \$0.00	[R][C] 033
See Item 10 for explanation of abbreviations and symbols.			
Correction No.	Order No. Ordinance No.	Adopted Adopted	EFFECTIVE:

ORDINANCE NO. _____

An Ordinance approving Order No. 09-7000 of the Board of Harbor Commissioners of the City of Los Angeles, amending the Port of Los Angeles Tariff No. 4, Items 520 and 550-033, Transferred Merchandise - Wharfage.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. That Order No. 09-7000, passed and adopted by the Board of Harbor Commissioners of the City of Los Angeles on the 18th day of June, 2009, amending Port of Los Angeles Tariff No. 4, be and the same is hereby ratified, confirmed, and approved, which Order is in words and figures as follows, to wit:

ORDER NO. 09 - 7000

An Order of the Board of Harbor Commissioners of the City of Los Angeles amending the Port of Los Angeles Tariff No. 4, Items 520 and 550-033, Transferred Merchandise - Wharfage.

**THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF
LOS ANGELES DOES HEREBY ORDER AS FOLLOWS:**

Section 1. The Port of Los Angeles Tariff No. 4, adopted July 12, 1989, by Order No. 5837, and Ordinance No. 165,789, adopted April 10, 1990, as amended, is further amended as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

Section 2. The Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section I of the Los Angeles City CEQA guidelines.

Section 3. The Board Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners and shall cause the same to be published once in a daily newspaper printed and published in the City of Los Angeles.

Section 4. Pursuant to Charter Section 653(a), this amendment to the Tariff shall become effective when this Order is approved by the City Council by Ordinance; provided, however, pursuant to Charter Section 653(b), this Order shall be effective prior to approval by Ordinance

for a period not to exceed 90 days from the date of its adoption by the Board of Harbor Commissioners.

I HEREBY CERTIFY THAT the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held on *July 18, 2009*
Rose M. Dworshak
ROSE M. DWORSHAK
Acting Board Secretary

Sec. 2. Any person, firm or corporation who violates or knowingly aids or abets a violation of any of the provisions of said Order respecting rules, regulations, rates or charges shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by a fine in a sum not exceeding One Thousand Dollars (\$1,000.00), or by imprisonment in the County jail for not more than six (6) months, or by both such fine and imprisonment.

Sec. 3. That, pursuant to the provisions of Section 653 of the City Charter, the Board of Harbor Commissioners shall have the power to suspend, modify, or amend temporarily any of the rules or regulations, or any of the rates, tolls, or charges prescribed by the aforesaid Order of the Board of Harbor Commissioners for periods not exceeding ninety (90) days, and shall have power to place in effect for a like period of time any temporary rule or regulation, or rate, toll or charge for the Harbor District.

Sec. 4. The City Clerk shall certify to the passage of this Ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to City Hall; one copy on the bulletin board located at the Main Street entrance to City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By Timothy A. Hogan
TIMOTHY A. HOGAN, Assistant

Date: June 29, 2009

File No. _____

drawing is attached as Exhibit "A" and incorporated by reference into this Agreement. City shall complete the design and construction of certain improvements upon the Premises for Tenant's use, as identified and described in Section 5 of this Agreement and referred to collectively as the "City Improvements." The exact acreage of the Premises will be determined upon completion of final designs for the City Improvements. Upon completion of such designs, a revised drawing showing the actual number of acres included in the Premises shall be prepared by the Harbor Engineer and marked Exhibit "A-1." Exhibit "A-1" shall be attached to this Agreement and incorporated herein by reference and shall thereupon be substituted for Exhibit "A." The "minimum annual guarantee ("MAG")" and "compensation breakpoints ("Breakpoints")," set forth in Section 4 of this Agreement shall be adjusted accordingly to reflect the actual acreage of the Premises. The Premises shall include the City Improvements upon completion, and all other structures owned by or under the control of the Board within said parcels which are made available for Tenant's use, whether on or below the surface, and such structures as City may construct for Tenant.

2 (c) Applicability of Tariff No. 4. It is the intent of the parties that Tenant's obligations and responsibilities, including its obligation to pay compensation to City for the use of the Premises, shall be as prescribed in this Agreement and shall not be subject to the provisions of City's Tariff except as expressly provided in this Agreement. Exhibit "B," which is attached to this Agreement and is incorporated by reference herein, lists all provisions of City's Tariff No. 4 which shall be applicable and supplemental to the terms and conditions of this Agreement. Sections Four and Five of the Tariff, governing Dockage and Wharfage, are appended to Exhibit "B" in their entireties, and are incorporated by reference herein. In the event that the provisions of City's Tariff No. 4, other than Sections Four and Five, which are incorporated herein are subsequently amended, modified, superseded or repealed by City, such changes in these provisions shall likewise be incorporated into this Agreement upon the effective date thereof; provided, however, that the provisions governing dockage and wharfage set forth in Sections Four and Five of Tariff No. 4, in effect as of April 30, 1993, shall not be subject to any subsequent amendment, modification, revision, reissue or repeal which may be enacted by City, as further provided in Section 4(a) of this Agreement. In the event of any conflict between the provisions of this Agreement and the provisions of the Tariff, as it presently exists or as it may subsequently be changed, this Agreement shall at all times prevail.

(d) Tenant's Option to Return Parcel(s). At any time during the the term of this Agreement, Tenant may at its option elect to vacate and return to City either or both of Parcels Nos. 3 and 5 (\pm 35 acres), provided that City is given at least twelve (12) months written notice in advance. If Tenant elects to return such parcel(s) to City, the MAG and the Breakpoints, defined in Section 4 of this Agreement, shall be adjusted to reflect the decrease in acreage and prorated for any period less than one year during which Tenant continued to occupy such parcel(s) pursuant to the provisions of Section 4. City may thereafter grant the use of the parcel(s) returned by Tenant to any third party; provided, that before City enters into any proposed agreement assigning the use of such parcel(s) to any third party for a period in excess of three (3) years, City shall offer Tenant in writing a right of first refusal to reacquire the returned parcel(s), on the terms and conditions of this Agreement in effect as of the date such parcel(s) are restored to Tenant. Subject to the rights which

Harbor Engineer's permit or the load limits shown in Exhibit "D". No loading in the remainder of the assigned Premises shall be such as to damage paving or underground utilities. If City discovers that overloading by Tenant exists, upon receipt of notice thereof from City, Tenant shall immediately correct the condition and shall be responsible for and shall indemnify the City for any damage arising therefrom.

(g) Wilmington Truck Route. It is recognized by both parties that Tenant does not directly control the trucks serving the terminal. However, Tenant will make its best effort to notify truck drivers, truck brokers and trucking companies, that trucks serving the terminal must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached hereto and marked Exhibit "C," which may be modified from time to time at the sole discretion of the Executive Director with written notice to Tenant.

(h) Tenant to Supply Necessary Labor and Equipment. Tenant shall at its own cost and expense, provide all tackle, gear and labor for the berthing and mooring of vessels of its invitees at the berths and shall provide at its own expense, such appliances and employ such persons as it may require for the handling of goods, wares and merchandise; provided, however, that nothing contained herein shall prevent Tenant from using such appliances as may be installed by City at the berths upon the payment to City of all applicable charges.

Section 4. Compensation.

From and after the Occupancy Date, as defined in Section 9(d) of this Agreement, Tenant shall pay compensation to City for the use of the Premises as provided in this Section. As used in this Agreement, the term "compensation year" shall mean "calendar year." If the Occupancy Date occurs on or between January 1st and June 30th (referred to in this Section as the "First Half"), the initial compensation year shall begin on January 1 of the same calendar year, and the compensation payable by Tenant pursuant to the following subsections (a), (b) and (c) shall be reduced in proportion to the expired part of the year. If the Occupancy Date occurs on or between July 1st and December 31st (referred to in this Section as the "Second Half"), the first compensation year shall begin on January 1 of the following calendar year, and compensation payable for the first partial year of occupancy, shall be reduced in proportion to the expired part of the calendar year. Except as provided in this Agreement, Tenant's obligation to pay all compensation required hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any set-off, counterclaim, recoupment, defense or other right which Tenant may have against City. Compensation shall be payable as provided in this Section based on City accounting records of verified billed amounts.

(a) Wharfage and Dockage. Tenant shall pay to City wharfage and dockage charges upon Tenant and its invitees accruing at the Premises in the amounts set forth below in subsections (b) and (c) of this Section.

(1) Wharfage. Wharfage is the charge assessed upon Tenant and its invitees against merchandise for passage onto, over, through or under wharves or wharf premises, or between vessels or overside vessels (to or from barge, lighter or water) when berthed at wharves or wharf premises, or when moored in a slip adjacent to a wharf or wharf premise, as set forth more fully in Section Five of Tariff No. 4, attached to this Agreement and incorporated herein as part of Exhibit "B". For purposes of this Agreement, wharfage shall not be assessed on container cranes and terminal operating equipment (excluding empty cargo containers) received at the Premises for use in Tenant's operation of the Premises, nor upon any merchandise generally exempted under the provisions of the Tariff. Wharfage shall be charged at the rates and according to the provisions established and in effect as of April 30, 1993 pursuant to Tariff No. 4, Section Five. Wharfage rates set forth therein shall continue to apply for the duration of the term of this Agreement and shall not be subject to any increase or decrease which may be enacted by City, and all other provisions set forth therein shall continue to apply for the duration of the term of this Agreement, without regard to any revision, modification, amendment, reissue or repeal which may be enacted by City.

(2) Dockage. Dockage is the charge assessed upon Tenant and its invitees against vessels for berthing at the Premises or for mooring to another vessel so berthed, as set forth more fully in Section Four of Tariff No. 4, attached to this Agreement and incorporated herein as part of Exhibit "B." Dockage shall be charged at the rates and according to the provisions established and in effect as of April 30, 1993 pursuant to Tariff No. 4, Section Four. Dockage rates set forth therein shall continue to apply for the duration of the term of this Agreement and shall not be subject to any increase or decrease which may be enacted by City, and all other provisions set forth therein shall continue to apply for the duration of the term of this Agreement without regard to any revisions, modification, amendment or reissue, or repeal which may be enacted by City.

(3) "Compensation" Defined. The total amount of compensation from wharfage and dockage charges Tenant is required to pay to City during each compensation year is referred to in this Section 4 as "Compensation."

(b) Minimum Annual Guarantee. Commencing on the Occupancy Date and thereafter at the beginning of each compensation year during the term of this Agreement, Tenant guarantees to City a minimum annual payment, which is referred to in this Agreement as the "minimum annual guarantee" or "MAG." The MAG is the aggregate minimum annual payment of wharfage and dockage charges, as specified above in subsection (a), which Tenant must make to City each year for the use of the Premises. Only wharfage and dockage, and no other tariff charges or other monies payable to City pursuant to this Agreement, shall be counted toward the MAG.

(1) Calculation of the MAG. The MAG shall be calculated upon a cost per acre basis of One Hundred Thirteen Thousand Dollars (\$113,000) per acre. It is assumed that the total acreage of the Premises at the commencement of this Agreement shall be two hundred twenty five and eight-tenths (225.8) acres. If the actual acreage varies from this amount, as

Exhibit "B"

**PORT OF LOS ANGELES TARIFF NO. 4
(Effective: July 1, 1990)**

All provisions of Port of Los Angeles Tariff No. 4. which are listed herein below and attached to this Exhibit "B" are incorporated by reference into Agreement No. 733, granted by the City of Los Angeles to Eagle Marine Services, Inc., as though fully set forth in the Agreement. Unless otherwise specified by reference to tariff items, the entire Section is included.

- | | | |
|-----|------------------|--|
| 1. | Section 1 | Definitions |
| 2. | Section 2 | General Rules and Regulations
(excluding Item 205) |
| 3. | Section 3 | Pilotage |
| 4. | Section 4 | Dockage |
| 5. | Section 5 | Wharfage |
| 6. | Section 6 | Passenger Fees |
| 7. | Section 8 | Space Assignment |
| 8. | Section 9 | Container Cranes |
| 9. | Section 10 | Berth Assignments |
| 10. | Section 12 | Water and Electricity |
| 11. | Section 14 | Cargo Handling |
| 12. | Section 16 | General Rules and Regulations -
Vessels |
| 13. | Section 17 | General Rules and Regulations -
Hazardous |
| 14. | Section 18 | General Rules and Regulations -
Miscellaneous
(excluding Items 1800, 1803, 1805,
1810 and 1815) |

RECEIVED
OFFICE OF
SECRETARY
09 OCT 08 PM 2:23
CITY OF LOS ANGELES
BOARD OF HARBOR
COMMISSIONERS

0150-06030-0006		
TRANSMITTAL		
TO Geraldine Knatz, Ph.D., Executive Director Harbor Department	DATE OCT 07 2009	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT 15
<p>PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES</p> <p>Transmitted for further processing and Council consideration. See the City Administrative Officer report attached.</p> <p style="text-align: center;">MAYOR </p>		
MAS:ABN:10100045t		

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: September 18, 2009

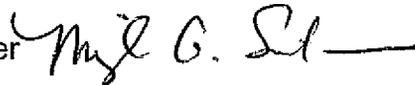
CAO File No. 0150-06030-0006

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Harbor Department dated August 19, 2009; referred by the Mayor for report on August 25, 2009

Subject: **PROPOSED THIRD AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 09-6790 authorizing the Third Amendment (Amendment) to Permit No. 733 (Agreement) with Eagle Marine Services (EMS). EMS is a terminal operator at the Port of Los Angeles (POLA). The proposed Amendment will exempt EMS from container fees under Tariff No. 4, Section Five, Items No. 520 and 550-033, "Transferred Merchandise-Wharfage" (C.F. 09-1670). Transferred merchandise is merchandise enclosed in intermodal cargo containers that is received and discharged off a vessel at one port and transported to and railed-out from an on-dock railway facility of another port. Intermodal transportation uses more than one means of conveyance, such as by truck and rail. The exemption will be for one year, from July 1, 2009 through June 30, 2010.

In 1993, the Board approved the Agreement with EMS to operate containerized cargo on a POLA terminal area that includes approximately 292 land acres. The terminal area includes maintenance and repair facilities, on-dock rail services, four service berths, wheeled and grounded operations and an integrated system for vessel, rail and gate operations.

In June 2009, the Board approved a proposed Tariff No. 4, Section Five amendment on "Transferred Merchandise-Wharfage" as a result of actions requested by vessel carriers that load and unload merchandise at the POLA and Port of Long Beach (POLB) terminals. The carriers formulated a partnership with each other to share vessel space, increase efficiency and reduce supply chain costs. The Port worked with the carriers by developing incentives for containerized cargo merchandise for participating tenants to maintain their intermodal container business. The Port charges a wharfage fee of \$71.66 per container when a container is discharged from a vessel, for example, in the POLB and transported to and railed-out from an on-dock facility within the POLA. Pursuant to Tariff No. 4, Section Five, Items No. 520 and 550-033, the Port waived those container fees from participating tenant agreements by exempting the assessment of wharfage on the transferred merchandise for one year as an incentive to encourage the use of rail car for intermodal

merchandise that departs from the POLA. Since the EMS Agreement does not currently allow the subsequent Tariff amendments to affect the terms of its contract, the proposed Amendment will allow this wharfage fee exemption to apply to this Agreement also. According to the Port, the revenue reduction to implement the proposed Amendment with EMS for the incurred "Transferred Merchandise-Wharfage" for one year could approach approximately \$1.8 million, based on an estimated 26,000 containers at an average wharfage fee of \$71 per container.

In accordance with Charter Section 606, the Council must approve the proposed contract amendment. The proposed Amendment has been approved by the City Attorney as to form and is in compliance with City requirements and ordinances. The Port Director of Environmental Management has determined that the proposed action is an Amendment to the existing Agreement and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

RECOMMENDATION

That the Mayor approve the Harbor Department (Port) Board of Harbor Commissioners Resolution No. 09-6790 authorizing the Third Amendment to Permit No. 733 with Eagle Marine Services (EMS) to waive the container fee for the terminal operator under Tariff No. 4, Section Five, "Transferred Merchandise-Wharfage" for one year, from July 1, 2009 through June 30, 2010, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the Harbor Department request to amend Permit No. 733 with the Eagle Marine Services will waive container fees for one year, from July 1, 2009 through June 30, 2010, and the Port could forgo a maximum revenue amount of approximately \$1.8 million, which is based on an estimated 26,000 containers at an average wharfage fee of \$71 per container. The proposed amendment will not impact the City General Funds and the City Financial Policies are not applicable.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering Into Leases," unless Council takes action disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.