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RECOMMENDATION APPROVED;  
RESOLUTION 21-9750 ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS

January 14, 2021

  
AMBER M. KLESGES  
Board Secretary



Executive Director's  
Report to the  
Board of Harbor Commissioners

DATE: DECEMBER 15, 2020

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 21-9750 - APPROVE  
ELEVENTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE  
SERVICES, LTD.

**SUMMARY:**

Staff requests approval of the Eleventh Amendment to Permit No. 733 (Permit) with Eagle Marine Services, Ltd. (EMS) to effect two material changes to the Permit: 1) change the name of the tenant from Eagle Marine Services, Ltd. to Fenix Marine Services, Ltd. (FMS); and 2) add 0.69 acres of land currently occupied by EMS under revocable permits into the Permit premises.

The 0.69 acres will be incorporated into the Permit at the same fixed monthly rent of \$6,788.97 (\$81,467.64 annually) as currently paid by EMS under the revocable permits, and will be subject to annual Consumer Price Index (CPI) increases effective January 1, 2021, in addition to a five-year compensation reset, effective January 1, 2022.

**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(f) of the Los Angeles City CEQA Guidelines;
2. Approve the Eleventh Amendment to Permit No. 733 with Fenix Marine Services, Ltd.;
3. Direct the Board Secretary to transmit the Eleventh Amendment to Permit No. 733 to City Council for approval pursuant to Charter Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Eleventh Amendment upon approval by City Council; and
5. Adopt Resolution No. 21-9750.

## SUBJECT: ELEVENTH AMENDMENT TO PERMIT NO. 733

DISCUSSION:

Background – The Permit, as amended, grants EMS the use of 291.31 acres at Berths 302-305 for cargo handling operations for a term of 50 years expiring on September 9, 2043.

EMS' current premises under the Permit are comprised of two areas, which are subject to the following compensation in Compensation Year (CY) 2020:

1. MAG Area: 261.03 acres are subject to a Minimum Annual Guarantee (MAG) of \$213,909.71 per acre for MAG revenue of \$55,836,852 per year, and TEU charges based on a sliding scale; and
2. Non-MAG Area: 30.28 acres are subject to a fixed rental amount of \$3,197,062 million per year, adjusted by annual CPI.

In addition to the premises covered under the Permit, EMS occupies 0.69 acres of land under revocable permits near the main gate entrance to the EMS terminal to accommodate a security system that is required by U.S. Customs and Border Protection.

The purpose of the amendment is to effect the following material changes to the Permit: 1) change the name of the tenant from Eagle Marine Services, Ltd. to Fenix Marine Services, Ltd.; and 2) add the 0.69 acres currently occupied by EMS under revocable permits into the Permit premises.

These items are discussed in more detail below:

1. Name Change

*Background on EMS entity:* Eagle Marine Services, Ltd. has been a tenant of the City of Los Angeles Harbor Department since Permit No. 733 became effective on September 10, 1993. At that time, EMS was a wholly-owned subsidiary of American President Lines, Ltd., and American President Lines, Ltd. was the guarantor to Permit No. 733.

In 1997, Neptune Orient Lines (NOL) purchased American President Lines, Ltd., and, in June 2016, CMA CGM S.A. (CMA CGM) acquired NOL thereby taking control of EMS in the acquisition. Following CMA CGM's acquisition of NOL, both the permittee, EMS, and the guarantor, American President Lines, Ltd., continued to be 100 percent-owned by subsidiaries within CMA CGM's corporate hierarchy.

On December 1, 2017, CMA CGM sold an effective 90 percent interest in EMS to Fin Topco Partnership LP, an entity which is wholly-owned by EQT Infrastructure III and P5 Infrastructure. Additionally, in 2017, the name of the guarantor, American President Lines, Ltd., was changed to American President Lines, LLC. As a result of these transactions, CMA CGM continues to effectively own a 100 percent interest in the guarantor to Permit No. 733, American President Lines Ltd. (now American President Lines, LLC), while owning only an effective 10 percent interest in the underlying permittee, EMS.

**SUBJECT: ELEVENTH AMENDMENT TO PERMIT NO. 733**

*Current Action:* On September 14, 2018, staff received notice from EMS that it had changed its name to Fenix Marine Services, Ltd. Following review of documents and other background materials concerning the transactions that led to this purported name change, and analyzing those facts in the context of the Permit's assignment provision, staff determined that, on balance, since the entity that is the "tenant" remained the same before and after the analyzed transactions (other than the name change), the appropriate manner in which to process this recommendation is through a name change, not an assignment or transfer. To help safeguard against any lapses in protections provided to the Harbor Department as a result of those transactions, the amendment requires FMS to assume each and every of the rights, duties, liabilities and obligations under the Permit which arose prior to the effective date of the proposed Eleventh Amendment. This covenant makes FMS responsible retrospectively for all matters under the Permit previously the responsibility of EMS, and, functionally, places the Department in the same position it would have been in following Board review and approval of a transfer or an assignment.

Bringing this Amendment forward was delayed due to the tenant being in arrears on its rent obligations. Rent was brought current as of September 2020. As such, staff is recommending Board approval of the Eleventh Amendment which effects the name change. Taking this action aligns the identity of the operator as the named tenant under Permit No. 733. As noted above, FMS covenants to accept all responsibilities of EMS pre-dating the effective date of the 11th Amendment.

At a later date, staff will bring forth a recommendation for Board consideration which will address the applicability of the existing guaranty to Permit No. 733 and the name change of the guarantor.

**2. Proposed Addition of Revocable Permit Areas**

EMS currently occupies 0.69 acres of land under revocable permits for use as a non-exclusive right-of-way for the Optical Character Recognition system, and to accommodate a secondary Radiation Portal Monitor system, as required by U.S. Customs & Border Protection.

The proposed amendment will incorporate this area into the Permit premises as depicted in the attached Site Map (Transmittal 1), thereby consolidating the existing leases into one agreement and addressing the tenant's name change that would have otherwise required a separate action under the revocable permits. Compensation will remain at the same fixed monthly rent as currently paid by EMS under the revocable permits and will be subject to annual CPI increases effective January 1, 2021, in addition to a five-year compensation reset effective January 1, 2022.

Upon approval of this action, the revocable permits would be terminated, resulting in a net neutral change to the size of the area currently occupied by Fenix.

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Material terms of the proposed Eleventh Amendment (Transmittal 2) are as follows:

Key Terms	Current	As Proposed
Permittee	Eagle Marine Services, Ltd.	Fenix Marine Services, Ltd.
Premises	291.31 acres	292 acres (with the addition of 30,072 square feet (Ancillary Area) previously covered under Revocable Permits)
Permitted Use	Cargo handling operations	Ancillary Area may only be used for purposes of accommodating a security system required by U.S. Customs and Border Protection
Termination Rights	None	Ancillary Area may be deleted from the Premises by either party with 30 days' written notice
Compensation	<p><u>MAG Area</u> (261.03 acres): \$213,909.71/acre/year +TEU charges</p> <p><u>Non-MAG Area</u> (30.28 acres): \$3,197,062/Year +CPI</p>	<p><u>MAG area</u>: No change</p> <p><u>Non-MAG Area</u>: No Change</p> <p><u>Ancillary Area</u>: \$81,467/year + CPI</p>
Insurance	Standard insurance language as of the effective date of the Permit (1993)	Updates the insurance language to reflect current boilerplate provisions, adds railroad protective liability insurance

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the approval of the Eleventh Amendment to Permit No. 733 with FMS to change the name of the tenant from EMS to FMS and to consolidate 0.69 acres of land under existing revocable permits into the Permit premises, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Approval of the proposed Eleventh Amendment will facilitate an administrative name change, as well as incorporate an additional 0.69 acres into the premises covered under the Permit. As of October 1, 2020, the 0.69 acres proposed for inclusion generate \$6,788.97 per month in revocable permit revenues. Under the proposed amendment, the monthly rent associated with the 0.69 acres will remain at \$6,788.97 per month through December 31, 2020 and will be subject to annual CPI increases effective January 1, 2021, in addition to a five-year compensation reset effective January 1, 2022.

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**CITY ATTORNEY:**

The Eleventh Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Site Map
2. Eleventh Amendment

FIS Approval: 

CA Approval: 

*Marisa L. Katnich*  
MARISA L. KATNICH  
Director, Cargo & Industrial Real Estate

  
MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

  
EUGENE D. SEROKA  
Executive Director

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