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RECOMMENDATION APPROVED AND
RESOLUTION 16-8009 (PERMIT 733) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

October 24, 2016



AMBER M. KLESGES
Board Secretary



Executive Director's

Report to the

Board of Harbor Commissioners

DATE: OCTOBER 17, 2016

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 16-8009 - APPROVE NINTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES, LTD.

SUMMARY:

Staff recommends that the Board of Harbor Commissioners ("Board") approve a proposed Ninth Amendment to Permit No. 733, as amended ("Permit"), with Eagle Marine Services Ltd. ("EMS"). This Amendment would extend the term of the Permit by 16 years, from the existing end date in 2027 to a new end date in 2043. The proposed extension would result in an overall term of 50 years, and therefore, requires that the Permit be approved with findings that it is in the best interest of the City of Los Angeles in accordance with the City Charter. The proposed Permit has been assessed pursuant to the California Environmental Quality Act (CEQA) and analyzed in detail in the Addendum to the 2012 Final Environmental Impact Statement/Environmental Impact Report for the Berths 302-306 [APL] Container Terminal Project, ("Final EIR") attached for the Board's consideration. The Addendum and the 2012 EIR have been made publicly available and are posted on the Harbor Department's website.

This Amendment will change some terms of the existing Permit, most notably to authorize up to 2.4 million twenty foot equivalent unit (TEUs) that is substantially downsized as compared to the 3.2 million TEUs approved in the Final EIR. The Permit would also apply Tariff No. 4 in a manner to broaden the applicability of the Tariff beyond the scope provided by the original terms of the Permit, as amended. Finally, as a result of the extension of term, and the resultant total throughput of 2.4 million TEU's, projected revenue from this facility will grow from \$900 million (NPV of \$692 million) at the end of the existing term in 2026 to a projected revenue of \$2,555 million (or \$1,375 million NPV) by 2043.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Consider the Addendum to the certified 2012 Final Environmental Impact Report along with the 2012 Final Environmental Impact Statement/Environmental Impact Report in relation to the terms of the proposed Ninth Amendment to Permit No. 733;
2. Find that, in accordance with the provisions of the California Environmental Quality Act Guidelines Section 15164, the proposed Ninth Amendment to Permit No. 733 will not result in any new significant environmental effects or any substantially more severe effects than previously analyzed in the certified 2012 Final Environmental Impact Report;

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3. Authorize the Environmental Management Division to file a Notice of Determination with the Los Angeles County Clerk and the Los Angeles City Clerk;
4. Approve the Ninth Amendment to Permit No. 733 with Eagle Marine Services, Ltd., with the finding that such Amendment is in the best interest of the City of Los Angeles, including the attached revised Mitigation Monitoring and Reporting Program and the Environmental Compliance Plan;
5. Direct the Board Secretary to transmit the Ninth Amendment to the City Council for approval pursuant to Charter Sections 606 and 607(a) of the City Charter, noting that, under Section 607(a) of the Charter, extending the term of the Permit to 50 years requires approval with findings that doing so is in the best interest of the City of Los Angeles, pursuant to a two-thirds vote by City Council, or a three-fourths vote by City Council over Mayoral veto;
6. Authorize the Executive Director to execute and the Board Secretary to attest to the Ninth Amendment upon approval by City Council; and
7. Adopt Resolution No. 116-8009.

Background - The Permit between the Harbor Department and EMS, a wholly owned subsidiary of American President Lines, Inc. (APL), became effective on September 10, 1993 and since has been amended eight times. In 1997, NOL, a Singapore-based shipping company, purchased APL for \$825 million. NOL was owned by Temasek Holdings Private Limited, an investment company wholly owned by the Singapore government.

EMS currently occupies the area on and around Pier 300 depicted as "Current Premises" in the drawing attached hereto as Transmittal 1. In addition to the Premises entitled under the Permit, the Harbor Department issued EMS a Space Assignment (Transmittal 2) to entitle EMS to use approximately 30 acres adjacent to the Permit premises as terminal backland.

Similar to Pier 400, Pier 300 possesses substantial acreage and berthing depths of -50 feet making it capable of handling the largest container vessels in use, as well as superior on-dock rail facilities, and excellent freeway access. Access to Pier 300 is navigationally unconstrained by bridges or other limitations, in contrast to numerous other container terminals in the San Pedro Bay complex. These factors make Pier 300 one of the Harbor Department's most important assets and one of the world's most valuable container cargo handling terminals.

A "Final Environmental Impact Statement/Environmental Impact Report for the Berths 302-306 [APL] Container Terminal Project," (SCH No: 2009071021) was certified in 2012 to permit a substantial expansion project ("Approved Expansion Project") at EMS' premises at Berths 302-306 (Final EIR). Subsequent to the certification of the Final EIR, EMS and the Harbor Department entered into negotiations to modify Permit No. 733 to authorize the expansion project. During negotiations between EMS and the Harbor Department, four cranes were installed at Berths 302-305 in 2013.

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The Harbor Department continued discussions intended to finalize the necessary documents, including an amendment of the Permit, to facilitate design, construction and operations. From 2012 until 2015, EMS considered several project scopes, but ultimately the parties were unable to reach agreement.

In June 2016, the Marseilles, France-based shipping company, CMA CGM S.A. ("CMA CGM"), acquired EMS' ultimate parent company, Singapore-based Neptune Orient Lines ("NOL"), and its direct, upstream parent, American President Lines ("APL").¹ CMA CGM now controls strategic decision-making and capital investment at the premises covered by the Permit and the Space Assignment and has confirmed that, while EMS will continue to be the operator and to operate, it has no desire at this time to move forward with the expansion project assessed and certified in the Final EIR. Rather, EMS has requested to operate at a throughput level of up to 2.4 million TEUs per year, substantially below the levels studied in the 2012 Final EIR, while obtaining a 16-year extension of the Permit ("Proposed Revised Project"). The only other project component being considered is the replacement of eight existing cranes at the site.

The Ninth Amendment (Transmittal 3) seeks to supplement the term such that it extends to the maximum period allowed by City Charter – 50 years – measured from September 10, 1993, the date the Permit became effective.

Staff believes that the substance of the proposed Ninth Amendment offers strong strategic and economic value to the Harbor Department. Additional term is appropriate to allow EMS a period of operations to recapture any potential investment it may make and ensure that the significant revenue to the Harbor Department, as well as the significant number of living-wage jobs created through the operation of the terminal, continues well into the future.

It should be noted that current market dynamics have eradicated the former certainty terminals possessed concerning an effectively guaranteed amount of cargo they would handle simply because their parent companies would route vessels they owned or controlled to their subsidiaries' facilities. The alliance model, in which multiple vessel owners will pool assets and agree on their deployment based on negotiated agreements, largely removes a vessel owner's discretion to send cargo to a subsidiary terminal. This shift has required terminals to compete for cargo formerly guaranteed to them, and in so doing has made it increasingly important that they efficiently manage their facilities and plan for operational certainty that can be continued for years.

The proposed extension of term would facilitate EMS' ability to compete for cargo in this new marketplace by giving them the opportunity to make longer term commitments to shipping lines in order to secure their prospective business at the terminal. The 11 years of remaining term (2016 to 2027) are insufficient to allow CMA CGM to amortize any potential investment necessary. Extending the Permit by an additional 16 years provides the time necessary to undertake the necessary strategic planning, implement the results, and operate the terminal in order to obtain a reasonable return on investment. Subject to the requirements of applicable law and the changing market dynamics, this Ninth Amendment creates the potential for increased efficiency in Pier

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300, which augments the capability of EMS and the economic return on investment to the Harbor Department.

Finally, the Harbor Department's Tariff No. 4 ("Tariff"), which is intended to comprise the compendium of rates and regulations applicable to all users of facilities, will be implemented. The Harbor Department from time to time substitutes application of targeted contract provisions in place of Tariff items, in recognition of shared commercial interests. A prominent example of this appears in the Harbor Department's container terminal permits where, in many cases, the wharfage and dockage sections of the Tariff are exempted from application in favor of contract language requiring tenants to pay a scheduled rate per-TEU, the amount of which decreases as throughput increases, therefore establishing a sliding rate scale that incents growth in throughput, which benefits both the tenant and the Harbor Department.

The Tariff is also intended to be a living document, subject to revision and supplementation in accordance with the City's Charter and Administrative Code. This allows the Harbor Department to subject port users to new regulations if enacted pursuant to applicable law. Examples include post-9/11, when a host of security regulations were implemented in the Tariff as a result of newly enacted Homeland Security legislation and in the Clean Truck Program, the bulk of which was implemented through amendments of the Tariff.

Uniquely to this Permit, it was established that the 1993 provisions of the wharfage and dockage sections of the Tariff governed regardless of subsequent amendments of the Tariff, and limited the applicability of the Tariff to the provisions specifically identified in the Permit. The net effect of these features was to create an outlier in relation to both rent structure and Tariff applicability. This Amendment will address the Permit provision which limits the imposition of updated Tariffs. EMS will continue to be charged 50% of the wharfage and dockage rates set forth in the 1993 Tariff for non-containerized cargo and for vessels that berth but do not load/unload. Beyond that, the Ninth Amendment makes applicable to EMS all non-economic Tariff items, thus eliminating the outlier status of the Permit relative to other Tariff provisions appearing in Harbor Department long-term leases in the container terminal sector.

Recommended Actions

The following is a brief recap of actions recommended to the Board regarding the Addendum to the Final EIR (Transmittal 4) and the Permit provisions being amended, as they appear in the Permit.

1. Consider Addendum to the Final EIR

The Addendum has been prepared pursuant to CEQA and focuses on the incremental changes between the 2012 Approved Expansion Project and Proposed Revised Project. Specifically, the Addendum assesses any new significant impacts or an increase in severity of previously identified impacts that would occur as a result of the Proposed Revised Project pursuant to CEQA Guidelines Section 15162 – 15164. The Addendum concludes there are no new significant impacts or an increase in severity in impacts and an Addendum is appropriate pursuant to CEQA.

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2. Extend the Permit Expiration Date from June 2027 to September 2043

The Ninth Amendment will add 16 years to the Permit term, by conditionally extending the expiration date from June 9, 2027 to September 10, 2043. Such extension will result in the maximum term allowed by Section 607(a) of the Charter, which is 50 years.²

As set forth in the Revised MMRP and the Addendum, mitigation measures have been revised to track the change in timing between the 2012 Approved Expansion Project and the Revised Proposed Project. All mitigation measures will become conditions of the Ninth Amendment to Permit No. 733.

3. Apply Tariff to EMS in a Manner Consistent with Other Container Terminals

This Amendment will address the Permit provision which limits the imposition of updated Tariffs. EMS will continue to be charged 50 percent of the wharfage and dockage rates set forth in the 1993 Tariff for non-containerized cargo and for vessels that berth but do not load/unload. Beyond that, the Ninth Amendment makes applicable to EMS all non-economic Tariff items relative to other Harbor Department long-term lease documents in the container terminal sector.

ENVIRONMENTAL ASSESSMENT:

The Addendum has been prepared pursuant to CEQA and focuses on the incremental changes between the 2012 Final EIR for the Approved Expansion Project and the Proposed Revised Project. Specifically, the Addendum assesses any new significant impacts or an increase in severity of previously identified impacts that would occur as a result of the Proposed Revised Project. According to Section 15164(a) of the state CEQA Guidelines, the lead agency will prepare an Addendum to a previously certified EIR if changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent or supplemental EIR have occurred. The Director of the Environmental Management Division has determined that the conditions in Section 15161 have not been met and, therefore, an Addendum is the appropriate document. An Addendum does not need to be circulated for public review but can be included in or attached to the EIR. Based on the finding of the Addendum, the proposed action will not result in any new significant environmental effects or any substantially more severe effects than previously analyzed and, therefore, does not trigger any of the conditions calling for the preparation of a subsequent or supplemental EIR. All previously approved mitigation measures are incorporated into the proposed permit amendment with the timing adjusted based on the new date of Lease Amendment Agreement. The Addendum, along with the Final EIR/EIS, have been made publicly available and are posted on the Harbor Department's website.

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FINANCIAL IMPACT:

The EMS Terminal is the Harbor Department's second highest revenue generating tenant, producing an average revenue to the Department of \$55.7 million annually over the past ten completed calendar years. Based on a CMA-CGM TEU projection that grows to an allowable maximum of 2.4 million TEUs in 2020 combined with estimated rate increases provided in the mechanical rate increase mechanism in the permit, a term extension of 16 years will increase undiscounted net operating revenue by \$1,581 million (or by \$653 million Net Present Value). The estimated Minimum Annual Guaranty obligation will increase by an undiscounted \$859 million (or by \$355 million Net Present Value). Return over the extended term will attain the Harbor Department's target rate. However, if not extended beyond the current termination date, return will fall slightly short partially due to \$35 million recently invested by the Harbor Department in Alternative Maritime Power facilities.

CITY ATTORNEY:

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

TRANSMITTALS:

- 1. Current Premises Map
- 2. Space Assignment
- 3. Ninth Amendment
- 4. Addendum to the 2012 Final EIR


 JACK C. HEDGE
 Director of Cargo Industrial Real Estate

APPROVED:

For 
 EUGENE D. SEROKA
 Executive Director

FIS Approval:  (initials)
 CA Approval:  (initials)


 MICHAEL DIBERNARDO
 Deputy Executive Director