

0150-06030-0016

TRANSMITTAL

TO Eugene D. Seroka, Executive Director Harbor Department	DATE 11/13/2024	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

RESOLUTION NO. 24-10427 AND PROPOSED TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE SERVICES, LTD. TO ACCOMMODATE THE HARBOR DEPARTMENT'S CONSTRUCTION OF THE BERTHS 302-305 ON-DOCK RAIL YARD EXPANSION PROJECT IN THE PORT OF LOS ANGELES

Transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.



MAYOR

(Carolyn Webb de Macias for)

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: October 28, 2024

CAO File No. 0150-06030-0016
Council File No.
Council District: 15

To: The Mayor



From: Matthew W. Szabo, City Administrative Officer

Reference: Correspondence from the Harbor Department dated September 5, 2024; Resolution No. 24-10427 from the Board of Harbor Commissioners adopted at its September 5, 2024 meeting; referred by the Mayor for a report on September 5, 2024

Subject: **RESOLUTION NO. 24-10427 AND PROPOSED TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE SERVICES, LTD. TO ACCOMMODATE THE HARBOR DEPARTMENT'S CONSTRUCTION OF THE BERTHS 302-305 ON-DOCK RAIL YARD EXPANSION PROJECT IN THE PORT OF LOS ANGELES**

RECOMMENDATIONS

1. Approve Los Angeles Harbor Department (Harbor Department) Resolution No. 24-10427 which authorizes the proposed Twelfth Amendment to Permit No. 733 between the Harbor Department and Fenix Marine Services, Ltd., to accommodate the Harbor Department's construction of the Berths 302-305 On-Dock Rail Yard Expansion Project in the Port of Los Angeles;
2. Adopt the September 5, 2024 Board of Harbor Commissioners findings that the proposed action is an activity for which the underlying project 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; and
3. Authorize the Harbor Department Executive Director, or designee, to execute the proposed Amendment, already approved as to form by the City Attorney, and return the Resolution to the Harbor Department for further processing, including Council consideration.

SUMMARY

The Los Angeles Board of Harbor Commissioners (Board) requests approval of its September 5, 2024 Resolution No. 24-10427 (Attachment 1) which authorizes the approval of the proposed Twelfth Amendment to Permit No. 733 (Amendment) between the Los Angeles Harbor

Department (Harbor Department) and Fenix Marine Services, Ltd. (FMS) for the Harbor Department to perform construction of the Berths 302-305 (also known as Pier 300) On-Dock Rail Yard Expansion Project (Project). The proposed Project will add five loading/unloading tracks to the FMS Terminal located at Pier 300. The additional tracks will increase on-dock rail yard capacity and enable more cargo to be loaded onto trains via the on-dock rail yard within the terminal.

The proposed Amendment will make various changes to the terms in Permit No. 733 (Permit), which are necessary for the Harbor Department to undertake construction of the Project. Updated terms include defining the Project scope, adjusting the size and location of the premises during and after construction of the Project, modifying rent provisions, adding potential rent credits and damages clauses, increasing the premises size upon Project completion with fixed rent, and adding Project-specific indemnity provisions. All other terms and conditions of the Permit remain unchanged.

The total potential costs associated with the Project are \$64,930,000 and includes construction costs of \$51,900,000. The remaining other costs of \$13,030,000 are attributable to rent credits and potential liquidated damages. Funding to address these costs includes \$37,378,743 in State and Federal grants secured by the Harbor Department, \$10,230,000 in rent credits and \$2,800,000 in potential liquidated damages to FMS, with the remaining \$14,521,257 in Project-related costs being paid by the Harbor Department. The grants contain performance commencement and completion requirements. Liquidated damages are payable to FMS for increased operating expenses due to construction and if construction is delayed beyond the agreed upon deadline. Construction of the Project is expected to be 24 months and the timeline for completion is September 2027.

The Office of the City Attorney has reviewed and approved the proposed Amendment to Permit No. 733 as to form and legality. Pursuant to Charter Section 606, Council approval is required due to the term exceeding five years. Our Office has reviewed the request and recommends approval.

BACKGROUND

Fenix Marine Services, Ltd. (FMS): FMS is a major container shipping tenant with approximately 1,000 employees. Revenue to the Harbor Department from the Permit since FMS's tenancy in 1997 is over \$1.47 billion.

On July 27, 1993, Council approved the June 30, 1993 Board action (Order No. 6177) authorizing the original Permit with FMS for the operation of a containerized cargo marine terminal facility (C.F. 93-1302). The Permit was dated September 10, 1993, but specified that the term would expire 30 years after tenant occupation of the premises, which began on June 9, 1997, making the original permit expire on June 8, 2027. FMS had use of Berths 302-305 in the Port of Los Angeles (Port), consisting of approximately 4,025 linear feet of water frontage and approximately 230 acres of backlands. Since that time, and via multiple amendments to the original agreement, the FMS terminal space has been revised and expanded and now consists of 292 acres of land with wharf water frontage and on-dock rail. In 2016, the term of the Permit was extended to 50

years, and amended to start from the original Permit date, authorizing a new expiration date of September 9, 2043 (C.F. 99-2210, 09-2522).

Premises: The premises, also referred to as Pier 300, currently comprises 292 acres of Harbor Department property on Terminal Island located at 614 Terminal Way, San Pedro, CA 90731, including Berths 302-305. The proposed Amendment will add 10.08 acres of rail area upon Project completion for a new total of 302.08 acres. Refer to Figure 1 below and Transmittals 1 and 3 in the Attachment for pre- and post-construction maps of the premises.

**Figure 1: Fenix Marine Services, Ltd. Terminal at Berths 302-305
(Pre-Construction) (Post-Construction)**



Note: Pictures are not to scale. Refer to Transmittals 1 and 3 in Attachment 1 for actual Figures.

There have been a total of 11 amendments to the Permit since its inception conveying various administrative, name-change, boundary, compensation, and other substantive terms to the agreement such as expansion of FMS's terminal facility that are summarized in this report and detailed in Attachment 1. The ninth amendment, approved by the Board at their October 24, 2016 meeting via Resolution No. 16-8009, extended the Permit term by 16 years for a total term of 50 years, for the maximum time allowed by City Charter Section 607 at that time. The current expiration of September 9, 2043, remains unchanged by the Amendment.

On-Dock Rail Yard Expansion Project (Project): The Project will add five new on-dock rail tracks, increasing the total tracks from nine to fourteen, which will enable more cargo to be loaded onto trains via the on-dock rail yard within the terminal. This will result in an increase of on-dock capacity of approximately 520,000 twenty-foot equivalent units (TEUs) per year. The expansion will aid in shifting container loading from off-dock railyards, 27 miles away, to the on-dock facility, reducing up to 2,000 truck trips per day on key freight routes, which will enhance safety and reduce emissions in disadvantaged and low-income communities.

Project Funding: The total potential costs associated with the Project are \$64,930,000 and

includes Project costs of \$51,900,000 of which \$37,378,743 will be funded through two State and Federal grants. The Harbor Department will provide its own funds for the remaining \$14,521,257 in Project-related costs. In addition, there are additional associated costs including \$10,230,000 in rent credits the Harbor Department will pay to FMS, as well as potential payment of liquidated damages in the form of rent credits not-to-exceed \$2,800,000, with up to \$1,800,000 for delays to the construction timeline, and up to \$1,000,000 to cover any incremental increase in rail operating costs due to Project construction. The potential total cost to the Harbor Department is \$27,551,257 and the total grants and maximum Harbor provided funds is \$64,930,000.

Grant Requirements – The two grants totaling \$37,378,743 will offset the majority of the project costs but have commencement and completion performance requirements. On September 23, 2021, the Board approved Resolution No. 21-9901 to accept a grant award in the amount of \$19,194,000 from the California Transportation Commission and California Department of Transportation for their Trade Corridor Enhancement Program (TCEP). The TCEP grant requires commencement by January 1, 2025 otherwise grant funds will be forfeited. On August 11, 2022, the Board approved Resolution No. 22-10044 to accept a grant award in the amount of \$18,184,743 from the U.S. Department of Transportation for their FY 19 Port Infrastructure Development Program (PDIP). Under this PDIP grant, construction of the Project must be completed by September 2027.

Table 1 below summarizes the Project’s Costs, funding, awarded grant information, and a description of the associated Harbor Department costs including rent credits and potential liquidated damages for the Berths 302-305 On-Dock Rail Yard Expansion Project:

Table 1: Berths 302-305 On-Dock Rail Yard Expansion Project Costs and Funding Resolution No. 24-10427; Permit No. 733 with Fenix Marine Services, Ltd.				
Item and Description	TCEP Grant	PDIP Grant	Harbor Dept. Est. Costs	Total
Project Costs	\$19,194,000	\$18,184,743	\$14,521,257	\$51,900,000
Rent Credits to FMS	N/A	N/A	\$10,230,000	\$10,230,000
Liquidated Damages to FMS in rent credits if Project construction extends deadline	N/A	N/A	\$1,800,000	\$1,800,000
Liquidated Damages to FMS in rent credits to cover increase in rail operating costs due to Project construction	N/A	N/A	\$1,000,000	\$1,000,000
Total Potential Funding and Costs	\$19,194,000	\$18,184,743	\$27,551,257	\$64,930,000

Current Proposed Twelfth Amendment: The proposed Amendment, approved by the Board on September 5, 2024, makes the following notable Project-specific changes to the Permit, which are necessary for the Harbor Department to undertake construction, and are detailed in Attachment 1:

- 1) Defines the Project scope;
- 2) Temporarily removes approximately 23 acres of the premises, in a phased manner, during the 24-month Project construction period, and provides substitute premises adjacent to the terminal totaling approximately 21 acres;
- 3) Adds Project-specific indemnity provisions;

- 4) Increases the premises size from 292 acres to 302 acres at Project completion;
- 5) Designates the rail added under the Project as a new parcel at a new fixed rent rate; and,
- 6) Modifies rent provisions and adds potential rent credits related to the Project.

The Harbor Department intends to make improvements on FMS' premises through the Project. While FMS's rights to the premises are non-exclusive, the Permit does not provide the Harbor Department with the unilateral right to remove portions of the premises for purposes of constructing the Project. Therefore, the proposed Amendment is required to accommodate the Harbor Department's construction of the Project while FMS maintains operations during construction.

Compensation: The Permit between the Harbor Department and FMS currently requires payment to the Port of approximately \$62.93 million a year for a Minimum Annual Guarantee (MAG) Area of 261.03 acres of the premises at a rate of \$241,082 per acre, and \$4.36 million a year for a fixed rent area of 30.97 acres of the premises. The proposed Amendment adds 10.08 acres of rail area upon completion of the Project at a fixed rent rate of \$80,000 per acre, with \$806,400 expected in Year 1. The current 30.97 acres and proposed 10.08 acres of fixed rent areas are both subject to annual adjustments in accordance with the Consumer Price Index (CPI).

Once the Project is complete, the Harbor Department will own an asset with a 50-year life. Upon Permit expiration in 2043, Harbor Department staff estimates that the constructed asset will still have more than half of its useful life available for use.

CITY COMPLIANCE

California Environmental Quality Act (CEQA) – On September 5, 2024, the Board determined that the proposed action is an activity of approving an Amendment to a Permit for which the underlying project has been previously assessed in Addendum 2 to the Berth 302-306 Container Terminal Final Environmental Impact Report (SCH#2009071031), which was considered by the Board on May 20, 2021. 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.

The Office of the City Attorney has reviewed and approved the proposed Amendment to Permit No. 733 as to form and legality. Pursuant to Charter Section 606, Council approval is required due to the term exceeding five years. Our Office has reviewed the request and recommends approval.

FISCAL IMPACT STATEMENT

Approval of the proposed Twelfth Amendment to Permit No. 733 between the Harbor Department and Fenix Marine Services, LTD. (FMS) will enable the Harbor Department to undertake construction of the Berths 302-305 On-Dock Rail Yard Expansion Project (Project). The total Project cost is \$51,900,000, of which, \$37,378,743 will be funded through State and Federal grants secured by the Harbor Department. The Harbor Department will be financially responsible for up to \$27,551,257 in costs including \$14,521,257 of Project-related costs in excess of grant

funds, rent credits to FMS not-to-exceed \$10,230,000, and liquidated damages to FMS in the form of rent credits not-to-exceed \$2,800,000. These costs are budgeted and will be expended through the Harbor Revenue Fund 702 potentially over four fiscal years: FY 2024-25 through FY 2027-28. Compensation under provisions of the Permit for the current premises remain unchanged with a MAG revenue of \$62.93M per year and a Fixed Rent revenue of \$4.36M annually, subject to annual adjustments based on the CPI. The proposed Amendment will add additional Fixed Rent revenue, subject to annual CPI adjustments, of \$806,400 in Year 1 after the Project is completed, which is estimated to be in 2027. All receipts will be deposited in the Harbor Revenue Fund 702. The recommendations in this report and proposed actions comply with the Harbor Department's Financial Policies. There is no impact on the City's General Fund.

Attachment 1 – Harbor Department Correspondence dated September 5, 2024; Proposed Resolution No. 24-10427, Harbor report dated August 27, 2024, and proposed Twelfth Amendment to Permit No. 733

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