

9
9.5.24

RECOMMENDATION APPROVED;
RESOLUTION 24-10427 (PERMIT 733) ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

September 5, 2024
AM KLESGES
AMBER M. KLESGES
Board Secretary



DATE: AUGUST 27, 2024

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. 24-10427 - APPROVE TWELFTH
AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE SERVICES,
LTD.

SUMMARY:

Staff requests approval of the Twelfth Amendment (Amendment) to Permit No. 733 (Permit) with Fenix Marine Services, Ltd. (FMS) which is necessary for the City of Los Angeles Harbor Department (Harbor Department) to undertake construction of the Berths 302-305 On-Dock Rail Yard Expansion Project (Project). The proposed Project will add five loading/unloading tracks to the FMS terminal located at Pier 300, which will increase on-dock railyard capacity and enable more cargo to be loaded onto trains via the on-dock railyard within the terminal.

The 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 Amendment makes the following notable changes to the Permit: 1) defines the Project scope; 2) temporarily removes approximately 23 acres of the premises for the duration of the 24-month construction period and provides substitute premises adjacent to the terminal; 3) modifies rent provisions and adds potential rent credits and damages clauses, all related to the Project; 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 rate; and 6) adds Project-specific indemnity provisions.

The Harbor Department will be financially responsible for potentially \$27,551,257 in costs, summarized as follows: payment of the \$14,521,257 in remaining costs related to the Project; providing rent credits in the amount of \$10,230,000; providing an additional rent credit not-to-exceed \$1,000,000 arising from increased FMS operating costs during construction; as well as for payment of liquidated damages not-to-exceed \$1,800,000 to FMS resulting from Project construction delays.

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 Twelfth Amendment to Permit No. 733 with Fenix Marine Services, Ltd.;

SUBJECT: TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE

3. Direct the Board Secretary to transmit the Twelfth 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 Twelfth Amendment upon approval by City Council; and
5. Adopt Resolution No. 24-10427.

DISCUSSION:

Background – The Permit, as amended, grants FMS the use of 292 acres at Berths 302-305 for cargo handling operations for a term of 50 years expiring on September 9, 2043. The FMS premises are comprised of 292 acres of backland, an on-dock rail facility and three berths (Transmittal 1).

FMS' current premises under the Permit are comprised of two areas, which are subject to the following compensation in Compensation Year (CY) 2023:

1. MAG Area: 261.03 acres are subject to a Minimum Annual Guarantee (MAG) of \$241,082 per acre for MAG revenue of \$62,929,634 per year, and TEU charges based on a sliding scale; and
2. Fixed Rent/Non-MAG Area: 30.97 acres are subject to a fixed rental amount of \$4,358,432 per year, adjusted by the year-over-year change in annual CPI.

Project and Property Requirements – The Harbor Department intends to construct certain improvements on FMS' premises which will add five new on-dock rail tracks, which will increase the total tracks from nine to 14. While FMS' 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 Twelfth Amendment is required to accommodate the Harbor Department's construction of the Project while FMS maintains operations during construction.

Grants – Pursuant to the Port Infrastructure Development Program, the U.S. Department of Transportation Maritime Administration, awarded the Harbor Department a grant in the amount of \$18,184,743 for the Project, which was approved and accepted by the Board at its August 11, 2022, Board meeting. Under that grant, construction must be completed by September 2027.

Further, pursuant to the Trade Corridor Enhancement Program, the California Transportation Commission and California Department of Transportation, awarded the Harbor Department a grant in the amount of \$19,194,000, which was approved and accepted by the Board at its September 23, 2021, Board meeting. Under that grant, construction of the Project must commence by January 1, 2025, or the grant funds will be forfeited.

The deadlines imposed by the grants make approval of this Twelfth Amendment critical to safeguard the full amount of the grants dedicated to this infrastructure project.

SUBJECT: TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE

Project Benefits - This Project would deliver substantial benefits to goods movement at the Port of Los Angeles by enhancing efficiency and capacity, by adding five new tracks to the existing FMS terminal railyard, resulting in an increase of on-dock capacity of about 520,000 TEUs per year. Further, this expansion aids 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 such as Interstate-710, Interstate-110, and State Route 47. This decrease in truck traffic will enhance safety and reduce emissions in disadvantaged and low-income communities. Finally, the Project's integration with the Alameda Corridor, a critical freight rail artery, will further ensure that goods are moved more rapidly, safely, and cost-effectively across the nation, reinforcing the economic competitiveness of the U.S. freight sector.

Proposed Amendment – As noted above, the Twelfth Amendment is required to accommodate the Harbor Department's construction of the Project while FMS maintains operations during construction.

The Amendment makes the following notable changes to the Permit: 1) defines the Project scope; 2) temporarily removes approximately 23 acres of the premises, in a phased manner, for the duration of the 24-month construction period and provides substitute premises adjacent to the terminal; 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 rate; and 6) modifies rent provisions and adds potential rent credits, all related to the Project.

- Project scope: The Harbor Department will construct the scope outlined below, in accordance with the project description submitted to the grant awarding state and federal agencies.
- Indemnity: Because the Harbor Department's contractor and FMS will interface on the terminal, the parties agreed to a Project-specific indemnity provision, which temporarily removes the Project area during construction, from the tenant's indemnity obligations.
- Premises:
 - Project Area/Substitute Premises (Transmittal 2): To minimize the impact to terminal capacity that may result from the removal of the portion of the premises for constructing the Project, the Harbor Department will make available a substitute area adjacent to the terminal. The substitute premises is comprised of three areas totaling approximately 21 acres:
 - 10 acres, which was improved by FMS at its cost
 - 10 acres unimproved, to be improved by FMS, subject to a rent credit
 - 1.3 acres, unimproved, to be improved by FMS, subject to a rent credit
 - Premises at Project Completion (Transmittal 3): The increase in the size of the premises arises from FMS exercising its rights under the Tenth Amendment to modify the premises to include a portion of the 41-acre area at Rear Berths 305-306. Under this action, FMS requested to reconfigure

SUBJECT: TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE

Parcel 1 of the MAG Area to incorporate 10 acres of the 41-acre area and requested to designate the new rail area as a separate parcel at a fixed rate. As a result of these changes, the total size in premises is increasing from 292 acres to 302 acres. As shown below, the effect of this reconfiguration of Parcel 1 is net neutral with respect to MAG Area.

- **Rent and Rent Credits:** During Construction, FMS will continue to pay a MAG for 261.03 acres. As noted below, FMS is eligible for rent credits for various items related to the Project. At Project completion, MAG area will remain 261 acres at the then-MAG, and the new Rail Area will be comprised of 10 acres at a fixed rate of \$80,000/acre/year.

Provided below are the details on the material terms of the Amendment (Transmittal 4):

<u>Term</u>	<u>Description</u>															
Premises	<table><tr><th></th><th><u>Current</u></th><th><u>Project Completion</u></th></tr><tr><td>MAG Area</td><td>261</td><td>261</td></tr><tr><td>Rail Area</td><td>0</td><td>10</td></tr><tr><td>Fixed Rent</td><td>31</td><td>31</td></tr><tr><td>Total Acreage</td><td>292</td><td>302</td></tr></table>		<u>Current</u>	<u>Project Completion</u>	MAG Area	261	261	Rail Area	0	10	Fixed Rent	31	31	Total Acreage	292	302
	<u>Current</u>	<u>Project Completion</u>														
MAG Area	261	261														
Rail Area	0	10														
Fixed Rent	31	31														
Total Acreage	292	302														
Project Scope	i) five new loading tracks; ii) reuse of three existing tracks, and ancillary rail improvements; iii) handling of contaminated soil, storm drain and low impact development, grading and paving, and waterline relocation; and iv) electrical improvements including high mast lighting, power distribution and communication conduit for the railyard expansion.															
Project Duration	24 months															
Project Area Boundaries	23 acres. Construction limits to be removed in phases per an agreed upon plan.															
Substitute Premises	20 acres at rear Berths 305-306. <ul style="list-style-type: none">• 10 acres of the site was paved by FMS at its cost; the remaining 10 acres will be paved by FMS subject to a rent credit. 1.3 acres at Earle Street for a substitute access path <ul style="list-style-type: none">• 1 acre will be paved by FMS, subject to a rent credit.															

SUBJECT: TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE

Rent Credits	Not to exceed \$10,230,000		
Liquidated Damages Owed to Tenant	<ul style="list-style-type: none"> \$20,000 per each day in form of a rent credit if the Project is not complete by the substantial completion deadline, not to exceed \$1.8M Up to \$1M in the form of a rent credit to cover any incremental increase in rail operating costs arising solely from the Project construction 		
Liquidated Damages Owed to Harbor Department	<ul style="list-style-type: none"> \$10,000 per each day, or portion thereof, for tenant's failure to vacate the Project area, not to exceed \$900,000. 		
Annual Guaranteed Rent (2027)		<u>Without Project</u>	<u>With Project</u>
	MAG Area	\$62.93M	\$62.93M
	Fixed Rail Area	N/A	\$00.80M ¹
	Fixed Rent Area	\$04.91M	\$04.91M
	Total	\$67.84M	\$68.64M
¹ New rent category. Increases annually by the year-over-year change in CPI.			
Indemnity	Project-specific indemnity provision, which temporarily removes the Project area during construction, from the tenant's indemnity obligations.		

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the Amendment to the Permit with FMS; which is an activity 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 under Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Amendment to Permit No. 733 with FMS will enable the Harbor

SUBJECT: TWELFTH AMENDMENT TO PERMIT NO. 733 WITH FENIX MARINE

Department to undertake construction of the Project.

The Harbor Department will be financially responsible for potentially \$27,551,257 in costs, summarized as follows:

Project Cost	\$51,900,000
Less: Grants	(\$37,378,743)
Equals: Project Cost, net of Grants	\$14,521,257
Plus: Development Rent Credits	\$10,230,000
Plus: Potential Operating Expense Credits (NTE)	\$1,000,000
Plus: Potential Liquidated Damages (NTE)	\$1,800,000
Equals: Total Harbor Department Costs	\$27,551,257

If the proposed Amendment is approved, the Harbor Department will not only gain access to the premises for construction activities, but it will also receive rail rent on 10 acres of land in the amount of \$807,000 in Year 1. Furthermore, after the Project is completed, the Harbor Department will own an asset with a 50-year life. Upon lease expiration in 2043, staff estimates that the constructed asset will still have more than half of its useful life available for use.

CITY ATTORNEY:

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

TRANSMITTALS:

1. Site Map
2. Project Map
3. Premises Map at Project Completion
4. Twelfth Amendment

FIS Approval: *JS*
CA Approval: *JC*

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

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Erica M. Calhoun for

EUGENE D. SEROKA
Executive Director

EDS:MLK:SB:db
Author: Marisa Katnich
BL1048db Fenix 12th Amend