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RECOMMENDATION APPROVED;
RESOLUTION NO. 15-7765 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

February 19, 2015



AMBER M. KLESGES
Board Secretary



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: FEBRUARY 5, 2015

FROM: REAL ESTATE

**SUBJECT: RESOLUTION NO. 15-7765 - PROPOSED FOURTH AMENDMENT
OF PERMIT NO. 787 WITH YANG MING MARINE TRANSPORT
CORPORATION**

SUMMARY:

Permit No. 787 between the City of Los Angeles Harbor Department (Harbor Department) and Yang Ming Marine Transport Corporation (Yang Ming) grants use of approximately 186 acres at Berths 121-131 for container operations. The proposed Fourth Amendment to Permit No. 787 allows revenues associated with containers loaded and/or discharged from vessels controlled by Yang Ming at the adjacent China Shipping terminal to apply toward the Minimum Annual Guarantee (MAG) for the Yang Ming permit during calendar year (CY) 2014, and future compensation years, until rescinded in writing by the Executive Director.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Approve the Fourth Amendment to Permit No. 787 with Yang Ming Marine Transport Corporation;
2. Direct the Board Secretary to transmit to the City Council for approval the Fourth Amendment of Permit No. 787 pursuant to City Charter 606;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Fourth Amendment of Permit No. 787; and
4. Adopt Resolution No.: 15-7765

DISCUSSION:

Background and Context – Permit No. 787 between the Harbor Department and Yang Ming grants use of approximately 186 acres at Berths 121-131 for container operations. The Yang Ming and China Shipping terminals are adjacent to each other.

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On March 11, 2011, the Board approved amendments to Permit No. 787 with Yang Ming and Permit No. 999 with China Shipping allowing container volume throughput at each terminal to be deemed combined for purposes of jointly determining the China Shipping and Yang Ming terminals' Twenty Foot Equivalent (TEU) rate. China Shipping and Yang Ming remain separately responsible for the individual MAG obligation imposed by their respective permits.

Due to the limited berth draft and crane sizes available at the Yang Ming terminal, larger-sized container vessels are more effectively and efficiently handled at the China Shipping terminal. During CY 2014, eight Yang Ming controlled vessels were handled at the adjacent China Shipping terminal. Two were a capacity of 8,500 TEU chartered vessels and six were a capacity of 6,600 TEU vessels and could not be handled at the Yang Ming terminal.

As a condition of Permit No. 787, Yang Ming is required to send all containers it controls through Port of Los Angeles facilities. With regard to the vessels described above, Yang Ming complied with this permit requirement by sending vessels to the adjacent China Shipping terminal. While the Harbor Department received the applicable TEU charges for the containers carried on these vessels, China Shipping paid such charges under its permit. The result of having sent vessels to the China Shipping terminal caused Yang Ming to not meet its 2014 MAG, as illustrated below.

Revenue Stream	Yang Ming	China Shipping	Total
TEUs	\$20,873,592.67	\$42,988,226.69	\$63,861,819.36
Non-Container	\$11,956.83	\$3,750.52	\$15,707.35
MAG Deficiency	\$4,553,381.06	-	\$4,553,381.06
Total	\$25,438,930.56	\$42,991,977.21	\$68,430,907.77

Permit No. 787, Section 4(e)(4), provides that "if Tenant has not generated sufficient TEU charges to pay City the MAG by the end of each compensation period (MAG Deficiency), tenant shall within thirty (30) days of the end of each compensation period pay such additional sums as are necessary to assure that City has been paid the MAG."

Yang Ming has on numerous occasions advised the Harbor Department of the desire to combine the MAG of both terminals. On prior occasions, staff requested Yang Ming to obtain agreement from China Shipping to do so. In a letter to the Harbor Department dated October 24, 2014, Yang Ming advised of the need to combine the MAG for the China Shipping and Yang Ming permits (No. 999 and No. 787, respectively). This letter was signed by representatives of China Shipping, Yang Ming, and Ports America.

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This Fourth Amendment solely addresses administration of Permit No. 787's compensation provision and implements a new method of counting containers for purposes of assessing Yang Ming's compliance with its MAG obligation. It does not address or impact operational aspects of either the Yang Ming or China Shipping premises. Specifically, the Fourth Amendment allows TEU revenues generated from containers loaded and/or discharged of Yang Ming controlled vessels calling at the adjacent China Shipping terminal to count toward the Yang Ming MAG for CY 2014, and future compensation years, until rescinded in writing by the Executive Director. Effectively, the TEU charges covered by this Fourth Amendment are double-counted, in that the charges are counted for purposes of both China Shipping's and Yang Ming's MAGs under their individual permits. The effect of this double-counting has been mitigated by limiting the TEU charges generated from vessels controlled by Yang Ming but handled at China Shipping's premises to an amount not to exceed the MAG overage, if any, generated by China Shipping in a given compensation year.

Approval of the Fourth Amendment to Permit No. 787, as an accounting matter, will allow, as described in detail above, TEU charges paid in connection with Yang Ming controlled vessels handled at the China Shipping terminal to be counted against Yang Ming's MAG, with the condition that the Yang Ming MAG deficiency is capped at the China Shipping terminal's MAG overage. This action does not change the volume of containers handled through either container terminal facility.

Staff is recommending amending Permit No. 787 to effect this change.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an amendment to Permit No. 787 with Yang Ming to allow for vessel calls made by Yang Ming controlled vessels at the adjacent China Shipping terminal in 2014 to be applied toward Yang Ming's MAG. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment impact.

FINANCIAL IMPACT:

Enforcement of current permit terms would require the Harbor Department to invoice Yang Ming for the \$4,553,381 shortfall. Approving the proposed Fourth Amendment to Permit No. 787 (Transmittal 1) will count containers controlled by Yang Ming calling at the China Shipping terminal during CY 2014, and future compensation years until rescinded in writing by the Executive Director, towards Yang Ming's MAG and will result in the Harbor Department not invoicing Yang Ming for the MAG shortfall that would occur otherwise. In the future, if Yang Ming's TEUs handled at the China Shipping terminal does not reach or meet Yang Ming's MAG requirements, Yang Ming will be responsible for any shortfall.

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CITY ATTORNEY:

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

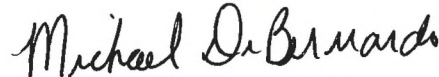
TRANSMITTAL:

1. Fourth Amendment



JACK C. HEDGE
Director of Real Estate

FIS Approval: MB (initials)
CA Approval: [Signature] (initials)



MICHAEL DiBERNARDO
Marketing and Customer Relations

APPROVED:



EUGENE D. SEROKA
Executive Director

ES:MD:JH/EC:raw
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BL517raw Yang Ming 4th Amend