

0150-04589-0007

TRANSMITTAL

TO Eugene D. Seroka, Executive Director Harbor Department	DATE APR 16 2015	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED FOURTH AMENDMENT TO PERMIT NO. 787
WITH YANG MING MARINE TRANSPORT CORPORATION**

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


MAYOR

(Ana Guerrero)

MAS:ABN:10150080t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: April 8, 2015

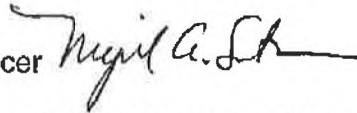
CAO File No. 0150-4589-0007

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated March 3, 2015; referred by the Mayor's Office dated March 5, 2015

Subject: **PROPOSED FOURTH AMENDMENT TO PERMIT NO. 787 WITH YANG MING MARINE TRANSPORT CORPORATION**

SUMMARY

The Harbor Department (Port) and Board of Harbor Commissioners (Board) request approval of Resolution No. 15-7765 authorizing a proposed Fourth Amendment (Amendment) to Permit No. 787 (Permit) with Yang Ming Marine Transport Corporation (Yang Ming). The proposed Amendment will authorize the receipt of revenue under the Permit from loading and discharging of cargo containers from all of Yang Ming controlled containers to apply toward its agreed upon Minimum Annual Guarantee (MAG) levels with Port of Los Angeles (POLA) for 2014 and future years, subject to approval by the Port Executive Director. The Port states that selective larger vessels and higher number of cargo containers controlled by Yang Ming are subsequently loaded and discharged from its vessels docking at the adjacent China Shipping Holding Company (China Shipping), because it has a larger terminal area. The proposed Amendment will count containers controlled by Yang Ming calling at China Shipping terminal toward the MAG levels in the Permit between Yang Ming and the POLA. If cargo containers from Yang Ming, which are handled at the China Shipping terminal, do not meet the MAG requirements in the future, Yang Ming will be responsible for any shortfall.

BACKGROUND

The Permit with Yang Ming grants non-exclusive use of approximately 186 acres of land for container terminal operations at Berths 121-131. Yang Ming and China Shipping currently lease separate Port-owned terminals that are adjacent to one another (C.F. 09-1872-S1). The two terminals established a cooperative arrangement in order to obtain a volume discount on the cargo containers being processed in their respective Port-leased terminals. The companies were not seeking to combine the two terminals into a single terminal or merge the current two separate agreements into a single agreement. The cooperative agreement consolidated the two terminals to include certain activities such as exchanging and using support resources, intermodal rail facilities, and providing Port-related discounts to the combined number of cargo containers processed under the cooperative arrangement. Under the agreement, Yang Ming and China Shipping were allowed to calculate the amount of the discounts on the total number of twenty-foot equivalent units (TEUs) cargo containers

processed through the terminals. A TEU is a standing unit of measure for intermodal cargo containers, used for cargo capacity in containers ships and Port-owned terminals.

FOURTH AMENDMENT WITH YANG MING

The Port states that Yang Ming and China Shipping remain separately responsible for the individual MAG obligation imposed by their respective Permits. Yang Ming has limited berth space and crane sizes available and cannot efficiently handle larger ships and cargo containers at its terminal. When that happens, Yang Ming requests to use the much larger China Shipping terminal. In 2014, Yang Ming had eight larger vessels that loaded and discharged TEU containers at China Shipping. This included two vessels with a capacity of 8,500 TEU containers and six vessels with a capacity of 6,600 TEU containers. Pursuant to its Permit, Yang Ming is required to send all its containers through POLA facilities, which they complied with by sending the larger container vessels to the adjacent China Shipping terminal. Yang Ming attempted to pay the applicable TEU charges to the POLA under its Permit. However, since Yang Ming was loading and discharging containers from larger vessels at China Shipping's terminal, Yang Ming has not been able to meet its 2014 MAG goals.

The result of having send vessels to the China Shipping terminal caused Yang Ming to not meet its 2014 MAG levels. The Port states that under the Permit if the Tenant (Yang Ming) has not generated sufficient TEU charges to pay the agreed upon MAG amount by the end of each compensation period, the Tenant will have to pay additional sums to make up for the MAG deficiency. In 2014, the MAG deficiency by Yang Ming was estimated at \$4,553,381. Under the current Permit, enforcement would require the Port to charge and invoice Yang Ming for the estimated \$4,553,381 shortfall. The shortfall is due to the need for Yang Ming having to dock larger vessels at the China Shipping terminal instead of its own terminal. Yang Ming has requested, with the consent of China Shipping, that the Port combine the MAG for both terminals to avoid this compensation deficiency. The proposed Amendment will allow for TEU revenue generated from containers loaded and discharged from Yang Ming controlled vessels calling at the adjacent China Shipping terminal to count toward Yang Ming's MAG compensation goals for 2014 and all future years, subject to approval of the Port Executive Director.

Yang Ming and China Shipping are two of the POLA's long term customers. As a result, the Port states the proposed Amendment is a reasonable business decision that will assist in accommodating larger vessels and number of cargo containers that are currently berthing at the terminals. According to the Port, the TEU container charges will be counted at both terminals under their individual permits, but the TEU charges generated from vessels controlled by Yang Ming, but handled at China Shipping, will count toward the agreed upon MAG levels for Yang Ming. The Port states that the action relates to a billing and accounting matters under the proposed Amendment. This proposed action will not change the volume of containers handled through either container terminal facility.

The City Attorney has approved the proposed Amendment as to form. In accordance with Charter Section 606, Council approval of the proposed Amendment is required. The Port Director of Environmental Management has determined that the proposed activity for the Amendment 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.

RECOMMENDATION

That the Mayor approve the Harbor Department (Port) Board of Harbor Commissioners' Resolution No. 15-7765 authorizing a proposed Fourth Amendment (Amendment) to Permit No. 787 with Yang Ming Marine Transport Corporation to allow revenue from the twenty-foot equivalent units (TEUs) cargo containers to apply toward its agreed upon Minimum Annual Guarantee (MAG) with the Port of Los Angeles (POLA) for the 2014 and all future years, subject to approval from the Port Executive Director, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

The Harbor Department (Port) states that if Yang Ming Marine Transport Corporation (Yang Ming) does not generate sufficient cargo container charges to pay the agreed upon Minimum Annual Guarantee (MAG) amount by the end of each compensation period, the Tenant will have to pay additional sums to make up for the MAG deficiency under its Permit with the Port. Currently, Yang Ming's terminal is unable to efficiently handle larger vessels and container numbers and has had to load and discharge containers from larger vessels to the adjacent China Shipping Holding Company terminal which can accommodate larger vessels and addition cargo containers. As a result, Yang Ming has had a shortfall in its MAG levels with the Port. Enforcement of the current Permit would require the Port to charge and invoice Yang Ming for the estimated \$4,553,381 shortfall in 2014. The proposed Fourth Amendment allows revenue associated with containers loaded and unloaded from vessels controlled by Yang Ming at the adjacent terminal to apply toward the MAG with Yang Ming during 2014 and future years, upon approval by the Port Executive Director. There is no impact to the City General Fund.

TIME LIMIT FOR COUNCIL ACTION

In accordance with Charter Section 606, "Process for Granting Franchises, Permits, Licenses and Entering into Leases," unless Council takes action disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.