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Antonio R. Villaraigosa

Mayor, City of Los Angeles

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Sung Won Sohn, Ph.D.

Geraldine Knatz, Ph.D.

Executive Director

December 6, 2011

Honorable Members of the  
City Council of the  
City of Los Angeles

CD No. 15

Attention: Ms. Sharon Gin, City Clerk's Office

**SUBJECT: CHARTER SECTION 606 – PROPOSED FIFTH AMENDMENT TO  
PERMIT NO. 827 WITH APM TERMINALS PACIFIC, LTD. –  
TRANSFERRED MERCHANDISE - WHARFAGE**

Transmitted herewith, pursuant to Section 606 of the City Charter, is a copy of a Board report, assigned Resolution No. 11-7210, approving the Fifth Amendment to Permit No. 827 with APM Terminal Pacific, Ltd, implementing the provisions of the Tariff No. 4, Items 520 and 550-033, as amended and approved by the Board of Harbor Commissioners on June 16, 2011 and City Council on August 17, 2011.

**RECOMMENDATION:**

The City Council, subject to approval of the Mayor, approve the Fifth Amendment to Permit No. 827 with APM Terminals Pacific, Ltd., and return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

KORLA G. TONDREAULT  
Commission Secretary

cc: Trade, Commerce & Tourism Committee  
Councilman Rosendahl, encls.  
Councilman LaBonge, encls.  
Councilman Garcetti, encls.  
Alvin Newman, CAO, encls.  
Christine Yee Hollis, CLA, encls.  
Pamela Finley, Mayor's office, encls.  
Lisa Schechter, CD4  
Robert Henry, encls.

RECOMMENDATION APPROVED AND  
RESOLUTION NO. 11-7210 ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's  
Report to the

Board of Harbor Commissioners

October 20, 2011

*Karla S. Tondreau*  
SECRETARY

DATE: OCTOBER 5, 2011

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. 11-7210 – PROPOSED FIFTH AMENDMENT  
TO PERMIT NO. 827 WITH APM TERMINALS PACIFIC, LTD. –  
TRANSFERRED MERCHANDISE – WHARFAGE

**SUMMARY:**

On June 16, 2011, the Board of Harbor Commissioners (Board) approved temporary and permanent Orders to amend Port of Los Angeles (POLA) Tariff No. 4 (Tariff), Items 520 and 550-033, exempting the assessment of wharfage charges on qualifying Transferred Merchandise for the one-year period of July 1, 2011 through June 30, 2012 (Board Order Nos. 11-7081 and 11-7082, respectively). However, compensation terms of Permit No. 827 do not allow APM Terminals Pacific, Ltd. (APMT) to participate in such an exemption unless the permit is amended.

The proposed change contains language that allows the Transferred Merchandise wharfage exemptions to apply to Permit No. 827 under any future Tariff amendments for such exemptions upon written notice from the Executive Director at his or her sole discretion.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the Fifth Amendment to Permit No. 827 with APM Terminals Pacific Ltd., implementing the provisions of Tariff No. 4, Items 520 and 550-033, as amended and approved by the Board on June 16, 2011 and City Council on August 17, 2011;
2. Direct the Board Secretary to transmit the amendment to City Council for approval, pursuant to Section 606 of the City Charter;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the Fifth Amendment upon approval by City Council; and
4. Adopt Resolution No. 11-7210.

SUBJECT: PROPOSED FIFTH AMENDMENT TO PERMIT NO. 827 WITH APMT

**DISCUSSION:**

Transferred Merchandise is merchandise received at a municipal wharf or wharf premise by land transportation and subsequently removed from a municipal wharf or wharf premise by land transportation. On June 16, 2011, the Board approved temporary and permanent Orders to amend the POLA Tariff to exempt wharfage on qualifying Transferred Merchandise for the period of July 1, 2011 through June 30, 2012.

The City Council subsequently approved the Tariff amendment and the associated Ordinance, with an effective date of October 1, 2011. The required California Association of Port Authorities review and approval process has also been completed.

As indicated at the time of the Board's approval, APMT's Permit No. 827 overrides elements of the Tariff, including amendments. Therefore, its permit requires an amendment under separate action in order to effectuate the Transferred Merchandise wharfage exemption.

The proposed Fifth Amendment (Transmittal 1) will provide a benefit to merchandise discharged off a vessel at the Port of Long Beach, trucked to a POLA container terminal to be transported by rail to an inland destination. With the approval of this Fifth Amendment, the Board would continue to provide Common Carriers (Carriers), operating vessels in an alliance with other Carriers' operational efficiency, resulting in additional cost savings to the Carriers. Maximizing the use of on-dock rail, and avoiding the drayage of containers to the Union Pacific Railroad or Burlington Northern Santa Fe off-dock rail yards in Long Beach and Los Angeles, also minimizes air pollution and improves air quality in the San Pedro Bay. The proposed Fifth Amendment to Permit No. 827 is recommended for approval to implement the recently amended Tariff provisions under Items 520 and 550-033.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a Fifth Amendment to Permit No. 827 with APMT to implement the provisions of Tariff Items 520 and 550-003, which exempt the assessment of wharfage on qualifying Transferred Merchandise. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from 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 direct employment impact for the five-county region.

SUBJECT: PROPOSED FIFTH AMENDMENT TO PERMIT NO. 827 WITH APMT

**FINANCIAL IMPACT:**

The estimated forgone Transferred Merchandise revenue for Fiscal Year 2011/2012 is estimated at \$106,000, based on the projected annual Transferred Merchandise TEUs for the terminal. There is no expected impact to the adopted revenue budget, as this proposal was anticipated and included in the adopted budget.

**CITY ATTORNEY:**

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

**TRANSMITTAL:**

- 1. Fifth Amendment to Permit No. 827

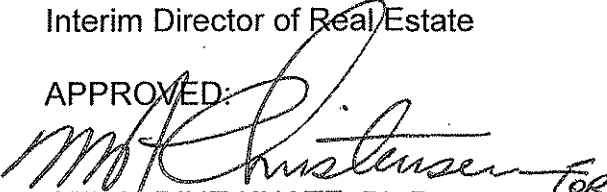
FIS Approval: AK (initials)

City Attorney: AK (initials)

  
 KARL K.Y. PAN  
 Interim Director of Real Estate

For   
 KATHRYN McDERMOTT  
 Deputy Executive Director

APPROVED:

  
 GERALDINE KNATZ, Ph.D.  
 Executive Director

KM:KP:RG:mmm  
 Author: R. Globus  
 BL395mm APMT Amendment

ORDER NO. 11 - 7082

A permanent Order of the Board of Harbor Commissioners of the City of Los Angeles amending the Port of Los Angeles Tariff No. 4.

THE BOARD OF HARBOR COMMISSIONERS OF THE CITY OF LOS ANGELES DOES HEREBY ORDER AS FOLLOWS:

Section 1. The Port of Los Angeles Tariff No. 4, adopted July 12, 1989, by Order No. 5837, and Ordinance No. 165,789, adopted April 10, 1990, as amended, is further amended as set forth in Exhibit "A", attached hereto and incorporated herein by reference.


Section 2. The Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section I of the Los Angeles City CEQA guidelines.

Section 3. The Board Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners and shall cause the same to be published once in a daily newspaper printed and published in the City of Los Angeles, to take effect prior to adoption by Ordinance for a period not to exceed 90 days pursuant to Charter Section 653(b).

Section 4. The Board Secretary shall transmit to the City Council for approval the Order and Ordinance approving the amendment to Tariff No. 4 pursuant to City Charter Section 653(a).

Section 5. The Board Secretary shall execute the proposed Board Order and Ordinance amending Tariff No. 4, and upon its publication, transmit the Order and Ordinance to the Chief Wharfinger for implementation of the tariff change and posting the amended Tariff No. 4 to the Port's website as regulated by the Federal Maritime Commission.

I HEREBY CERTIFY THAT the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held on June 16, 2011

  
ROSE M. DWORSHAK  
Acting Board Secretary

APPROVED AS TO FORM

June 16, 2011  
CARMEN A. TRUTANICH, City Attorney

By   
JANET KARKANEN, Deputy

EXHIBIT A

Work of Department  
[illegible]

FIFTH AMENDMENT TO  
PERMIT NO. 827  
APM TERMINALS PACIFIC, LTD.

Permit No. 827 granted to APM TERMINALS PACIFIC, LTD. is hereby amended a fifth time as follows:

Notwithstanding any of the provisions of Section 3 of the Agreement to the contrary, and notwithstanding Exhibit "B" of the Agreement, commencing on July 1, 2011 and terminating on June 30, 2012, Tenant's obligation to pay City wharfage on "Transferred Merchandise," meaning merchandise received at a municipal wharf or wharf premises by land transportation and subsequently removed from municipal wharf or municipal wharf premises by land transportation, shall be calculated with reference to Item 520 and Item 550-033, adopted by Board on June 16, 2011 pursuant to Order No. 11-7082, and attached hereto as Exhibit "A." Following June 30, 2012, should City amend Item 520 and/or Item 550-033 through action by both Board and Council, Executive Director may, in his or her sole and absolute discretion, and upon written notice to Tenant, apply such amendments to the Agreement, such that wharfage on "Transferred Merchandise" on and following the date designated by Executive Director in his or her written notice shall be calculated with reference to such subsequent amendments of Item 520 and/or Item 550-033.

All other terms and conditions of the Agreement, as previously amended, shall remain unchanged and unaffected by this Fifth Amendment.

Dated: \_\_\_\_\_

CITY OF LOS ANGELES, by its  
Board of Harbor Commissioners  
By \_\_\_\_\_  
Executive Director

Attest \_\_\_\_\_  
Board Secretary

Dated: Sept 9 2011

APM TERMINALS PACIFIC, LTD.  
By [Signature]  
ALAN McCOCKIE Senior VP  
(Print/Type Name and Title)

Attest [Signature]  
HYUN JUNG YOON, GM Finance  
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY  
\_\_\_\_\_, 2011  
CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By [Signature]  
Steven Y. Otera, Deputy

SYO/cp  
8/5/11

TRANSMITTAL 1

Exhibit "A"

PORT OF LOS ANGELES -- TARIFF NO. 4		Tenth Revised Page ..... 52 Cancels Ninth Revised Page ..... 52
SECTION FIVE -- Continued WHARFAGE -- Continued		Item No.
WHARFAGE RATES -- Continued	Rates in Cents Per KT or M-3 Unless Otherwise Indicated Below (See Item 510)	550-
<p>Rates apply on all trades (See Item 100 [o], [p], and [q]) except Hawaii or as noted in individual items.</p> <p>* Transferred Merchandise (Subject to Notes 1 through 8)</p> <p>Note 1: Subject to provisions of Tariff No. 4, Item 520.</p> <p>Note 2: No wharfage shall be assessed under this item commencing July 1, 2011, and ending on June 30, 2012.</p> <p>Note 3: Terminal operator must provide a written request to use this item and the Executive Director will grant written approval.</p> <p>Note 4: The Executive Director can revoke permission for the terminal operator to handle transferred merchandise on 72 hours' notice to the terminal operator.</p> <p>Note 5: Container movements from the Port of Long Beach are restricted to alliance partners' merchandise only, covering a volume not to exceed 500 containers per alliance, per seven-day period.</p> <p>Note 6: Each terminal operator shall provide on a monthly basis, commencing July 1, 2011, to the Port of Los Angeles alliance partner container numbers of units that were discharged from a vessel calling at the Port of Long Beach and transported by rail from a wharf premises in the Port of Los Angeles.</p> <p>Note 7: Each terminal operator shall provide on a monthly basis, commencing July 1, 2011, to the Port of Los Angeles alliance partner container numbers monthly of units that were discharged from a vessel calling at the Port of Los Angeles and transported by rail from a wharf premises in the Port of Long Beach.</p> <p>Note 8: The Port reserves the right to audit the data provided in Note 6 and Note 7 above and may amend its' determination at the exclusive discretion of the Executive Director.</p> <p>The factors the Executive Director may consider in deciding whether to grant a flat fee under Item 520, Exception 2, include, but are not limited to:</p> <ol style="list-style-type: none"> <li>(1) Whether the transferred merchandise has been generated from a carrier which is an alliance member of the terminal operator's customers;</li> <li>(2) Whether and how the handling of the transferred merchandise in the Port of Los Angeles will impact other terminals in the Port;</li> <li>(3) Whether allowing such handling will assist rail carriers in minimizing traffic along intermodal routes;</li> <li>(4) Whether the terminal operator making the request is current in all its obligations to the Port; and</li> <li>(5) Such other factors as may be presented to the Executive Director based on the unique facts of each case. The Executive Director may further constrict the hours of operation noted above upon first providing the terminal operator 24 hours' notice.</li> </ol>	<p>Per Container \$0.00</p>	<p>[C][R] 033</p>
See Item 10 for explanation of abbreviations and symbols.		
Correction No. ....	Order No. .... Ordinance No. ....	Adopted Adopted
		EFFECTIVE:

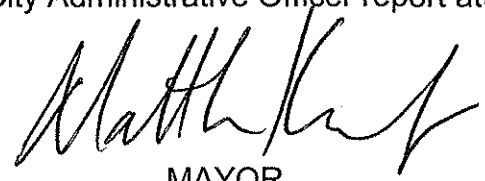
0150-09263-0002

**TRANSMITTAL**

TO Geraldine Knatz, Ph.D., Executive Director Harbor Department	DATE  NOV 30 2011	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED FIFTH AMENDMENT TO PERMIT NO. 827 WITH APM  
TERMINALS PACIFIC, LTD FOR TRANSFERRED MERCHANDISE-WHARFAGE**

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

  
MAYOR

MAS:ABN:10120050t



REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

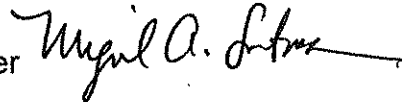
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Date: November 28, 2011

CAO File No.  
Council File No.  
Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Harbor Department dated October 24, 2011; referred by the Mayor for report on October 28, 2011

Subject: **PROPOSED FIFTH AMENDMENT TO PERMIT NO. 827 WITH APM TERMINALS PACIFIC, LTD FOR TRANSFERRED MERCHANDISE-WHARFAGE**

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### SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 11-7210 authorizing the Fifth Amendment (Amendment) to Permit No. 827 (Agreement) with APM Terminals Pacific, Ltd (APMT). APMT is a terminal operator at the Port of Los Angeles (POLA). The proposed Amendment will allow a previously approved exemption from having to pay the stipulated container fees (wharfage charges) under Tariff No. 4, Items Nos. 520 and 550-033, "Transferred Merchandise-Wharfage," to be applied to this Agreement. In addition, the proposed Amendment contains language that allows wharfage exemptions to apply to the Agreement under any future Tariff Amendments upon written notice from the Port Executive Director.

### BACKGROUND

In 2009, the Board approved an Amendment to Tariff No. 4, Section Five on "Transferred Merchandise-Wharfage" as a result of actions requested by vessel carriers that load and unload merchandise at the POLA and Port of Long Beach (POLB) terminals. The carriers (shipping vessels operators) formulated a partnership with each other to share vessel space, increase efficiency and reduce supply chain costs. The Port worked with the carriers by developing incentives for containerized cargo merchandise for participating tenants to maintain their intermodal container business. According to the Port, the movement of containerized cargo through the POLA supports thousands of direct and indirect jobs in Los Angeles and the five-county region.

In June 2010, the Board approved an additional Tariff Amendment to improve Port operations and promote better use of on-dock rail services at its existing terminals by exempting wharfage charges on transferred merchandise. The Port projected that the proposed quantity of cargo containers will increase from 200 to 500 waterborne containers per week between the POLA and POLB. The Port charges a wharfage fee for each container when the container is discharged from a vessel, for example, in the POLB and transported to and railed-out from an on-dock facility within the POLA.

Pursuant to Tariff No. 4, Items Nos. 520 and 550-033, the Port waives those container fees from participating tenant agreements by exempting the assessment of wharfage on the transferred merchandise for one year as an incentive to encourage the use of rail car for intermodal merchandise that departs from the POLA.

## **PROPOSED AMENDMENT**

Currently, the APMT Agreement stipulates that all containers processed at the terminal will be charged a per container charge rate as defined in Permit No. 827. The definition of "transferred merchandise" is merchandise enclosed in intermodal cargo containers that is received and discharged off a vessel at one port and transported by land to another port. (Intermodal transportation uses more than one means of conveyance, such as by truck and rail, to transport the containers.)

The proposed Amendment will allow APMT the same authority as other qualifying terminal operators, which provides for the exemption of qualifying "transferred merchandise" under Tariff No. 4, Items Nos. 520 and 550-033. The proposed exemption for Permit No. 827 will be applied for a period of one-year, retroactive from July 1, 2011 through June 30, 2012. Additionally, the Amendment allows the exemption to apply to the Permit under any future Tariff amendment upon written notice from the Port Executive Director.

The Port has estimated that it would forego shipping revenue of approximately \$106,000 during fiscal year 2011-12, based on qualifying containers handled by APMT.

## **CITY COMPLIANCE ISSUES**

The proposed Amendment has been approved as to form and legality by the City Attorney. In accordance with Charter Section 606, the Council must approve the proposed contract amendment since the term of Permit 827 exceeds five years. The Port Director of Environmental Management has determined that the proposed action is an Amendment to the existing Agreement and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2 (f), of the Los Angeles City CEQA Guidelines.

## **RECOMMENDATION**

That the Mayor:

1. Approve the Harbor Department (Port) Resolution No. 11-70210 authorizing the Fifth Amendment to Permit No. 827 with APM Terminals Pacific, LTD to provide the waiver of the container fee for the terminal operator under Tariff No. 4, Items Nos. 520 and 550-033, "Transferred Merchandise-Wharfage", retroactive from July 1, 2011 through June 30, 2012, and allow the wharfage exemptions to apply to the Agreement under any future Tariff Amendments upon written notice from the Port Executive Director; and
2. Return the document to the Port for further processing, including Council consideration.

## **FISCAL IMPACT STATEMENT**

Approval of the Harbor Department request to amend Permit No. 827 with the APM Terminals Pacific, LTD will waive container fees from June 30, 2011 through June 30, 2011, and the Port could forgo a potential revenue amount of approximately \$106,000. The proposed amendment will not impact the City General Funds and the City Financial Policies are not applicable.

## **TIME LIMIT FOR COUNCIL ACTION**

Pursuant to 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.

*MAS:ABN:10120050*