

0150-06030-0013

TRANSMITTAL

TO Eugene D. Seroka, Executive Director Harbor Department	DATE MAR 30 2017	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

PROPOSED TENTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

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



Ana Guerrero

MAYOR

RHL:ABN:10170101t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: March 30, 2017

CAO File No. 0150-06030-0013

Council File No.

Council District: 15

To: The Mayor

From: Richard H. Llewellyn, Jr., Interim City Administrative Officer

Reference: Correspondence from the Harbor Department dated March 1, 2017; referred by the Mayor for report dated March 6, 2017

Subject: **PROPOSED TENTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES**

RECOMMENDATION

That the Mayor:

1. Approve Harbor Department (Port) Board of Harbor Commissioners Resolution No. 17-8059 authorizing the proposed Tenth Amendment to Permit No. 733 with Eagle Marine Services; and,
2. Return the document to the Port for further processing, including Council consideration.

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 17-8059 authorizing the Tenth Amendment (Amendment) to Permit No. 733 (Permit) with Eagle Marine Services, LTD (EMS). The proposed Amendment will be approved for five years retroactively beginning in January 2017 through December 2021. In 1993, EMS entered into the Permit as a terminal operator with the Port of Los Angeles (POLA) for 30 years. EMS was a terminal operating subsidiary of the shipping line American President Lines (APL). In June 2016, CMA CGM, a France-based shipping company, acquired and took control of APL and EMS. CMA CGM now controls strategic decision-making and capital investment, while EMS continues to be the Permit holder and operator of the facility. The Permit with EMS is on approximately 261 acres of POLA property on and contiguous to Pier 300. In addition, EMS occupies approximately 30.28 acres granted under a Space Assignment and 0.69 acres granted under Revocable Permits.

In October 2016, the Council approved the Ninth Amendment with EMS with the following provisions (C.F. 09-2522): 1) Extended the lease agreement by 16 years, from 2027 to 2043, for a total term of 50 years (from 1993 to 2043), which is the maximum time allowed by the City Charter (CS) Section 607; and 2) the Addendum to the Final Environmental Impact Report (EIR), previously approved in 2012. The extension allowed EMS additional time to compete for cargo by making longer term commitments with shipping lines, recapturing potential investments, and maintaining financial stability and a revenue stream for the Port. The extension has produced container volume throughput of 2.4 million TEUs (Twenty-foot equivalent units) per year. Throughput includes the charge for moving a container through the POLA berths.

The proposed Tenth Amendment will provide for those increases in compensation from the current levels. The reset in the compensation is for a five-year term beginning in January 2017 through December 2021. The Port and EMS agreed to revisit the compensation provisions of the Permit at a future date. The goal for the Port and EMS was to ensure that additional container volume would come to the POLA's Pier 300 facility. The revised compensation structure was negotiated based on a gain share basis (shared participation) pursuant to existing market conditions, below is a summary of the proposed Amendment (See Attachment for a more detailed explanation):

- Incorporate the Space Assignment area at a fixed annual rent and Consumer Price Index (CPI);
- Increase the Minimum Annual Guarantee (MAG) payment that EMS (tenant) must make to the Port each year on volume-based charges per acre of the 261.03 acres of land;
- Grant EMS the right to negotiate for two additional POLA properties as part of the Permit;
- Incorporate the application of any requested General Rate Increase (GRI) to Tariff No. 4; and,
- Release of the legal claim filed by EMS against the Port over development of other properties.

The Port states that the proposed Amendment is in the best interest of the POLA. The Amendment will increase overall ROR rates from approximately 8.1 percent to 10.21 percent. Although higher than the current levels, the ROR rates generated by the revisions and increases in the Amendment will remain lower than the ROR percentages set forth in the Port's Leasing Policy. The Port's Leasing Policy specifies a target ROR rate of 10 percent on land and 12 percent on improvements, for a combined target ROR rate of approximately 11 percent. According to the Port, the projected ROR is reflected of the current market due to an economic downturn. The shipping industry began the consolidation of shipping lines and formation of alliances. The alliance model can potentially remove a vessel owner's discretion to send cargo to a subsidiary terminal (such as EMS). This shift in business methodology has required port clients to compete for cargo that was formerly guaranteed to them. The Port believes that EMS offers strong strategic and economic value to the POLA. The proposed Amendment will help the Port to meet its strategic objectives, strengthen its economic value by increasing annual cargo volume and revenue to the POLA, increase MAG revenue, improve borrowing capacity, and resolve potential litigation by the release of a pending claim from EMS against the Port.

The Port Director of Environmental Management states that the properties have been assessed in the Final EIR and Addendum to the Final EIR (in October 2016). Any future acreage that may be acquired or developed that has not been assessed in the Addendum would be subject to further California Environmental Quality Act review. Pursuant to CS 606, unless Council disapproves a proposed contract that is longer than five years within 30 days after submission, the contract will be deemed approved. The City has approved the proposed Amendment and Resolution as to form and legality.

FINANCIAL IMPACT STATEMENT

The Port states that 30.28 acres of land leased by EMS-leased includes a flat rental charge of \$3 million per year, with a Rate of Return of 10.21 percent, and annual CPI increases. The rental amount of annual throughput will increase to a total of approximately 60 million TEUs over the life of the Agreement for an estimated total of \$2.1 billion. As of January 2017, the proposed MAG will increase to \$52,206,000 per year or an increase of \$12,149,902 and \$56,384,480 per year. Subsequent MAG payments and revenue will be subject to the provisions of the Permit.

ATTACHMENT

The proposed Tenth Amendment will provide for those increases in compensation from the current levels. EMS Terminal under Permit 733 is the second highest revenue generating tenant at the POLA. The reset in the compensation is for a five-year term beginning in January 2017 through December 2021. The Port and EMS agreed to revisit the compensation provisions of the Permit at a future date.

- Incorporate the Space Assignment area at a fixed annual rent and Consumer Price Index (CPI) adjustments. Includes 30.28 acres of land of EMS-leased land at a flat rental charge of \$3 million per year, with a Rate of Return (ROR) of 10.21 percent, and annual CPI increases. The 30.28 acres are excluded from the MAG and TEU per acre volume calculations;
- Increase the Minimum Annual Guarantee (MAG) payment that EMS (tenant) must make to the Port each year on volume-based charges per acre of the 261.03 acres of land. The minimum guarantee is the amount you agreed to pay for leasing property. The current MAG is \$40,056,098 per year. The proposed MAG will increase to \$200,000 per acre as of January 2017, which will result in \$52,206,000 per year or an increase of \$12,149,902. In January 2019, the MAG will be subject to an annual CPI increase until the amount reaches \$216,000 per year or \$56,384,480 per year. Subsequent MAG increases will be subject to the provisions of the Permit;
- Grant EMS the right to request and negotiate for two separate properties: 1) Have the right to request the development of 41 existing acres adjacent to the EMS property until December 2025. Thereafter, the Port will notify EMS within six months if it wants to keep the property; and 2) develop up to 35 acres in future as-to be-determined future acreage;
- Incorporate the application of any requested General Rate Increase (GRI) to "Merchandise Not Otherwise Specified" pursuant to Tariff No. 4 rates (rules and regulations) after January 2020;
- Release of the legal claim filed by EMS against the Port over the development of other properties. In 2013, EMS filed a claim, which is precursor to a potential lawsuit against the Port; because they felt that the expansion rights in the original Permit were not honored. The Amendment will replace the Permit provision and release the Port from all rights to the underlying claim.