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Antonio R. Villaraigosa

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Geraldine Knatz, Ph.D.

Executive Director

December 2, 2010

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

CD No. 15

Attention: Mr. Adam Lid, City Clerk's Office

SUBJECT: CHARTER SECTION 606 – FIFTH AMENDMENT TO PERMIT NO.
733 WITH EAGLE MARINE SERVICES, LTD.

Transmitted herewith, pursuant to Charter Section 606 of the City Charter, is a copy of a Board report, assigned Resolution No. 10-7007, approving proposed Fifth Amendment to Permit No. 733 granted to Eagle Marine Services, Ltd.

RECOMMENDATION:

The City Council, subject to approval of the Mayor, approve the proposed Fifth Amendment to Permit No. 733, with Eagle Marine Services, Ltd., which implements the provisions of POLA Tariff No. 4, Section Three, "Transferred Merchandise – Wharfage" as amended by the Board of Harbor Commissioners on June 17, 2010, and return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,


ROSE M. DWORSHAK
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilwoman Hahn, encs.
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Legislative Representative, encs.
Alvin Newman, CAO, encs.
Christine Yee Hollis, CLA, encs.
Jenny Chavez, CD 15, encs.

RECOMMENDATION APPROVED
AND RESOLUTION NO. 10-7007 ADOPTED
BY THE BOARD OF HARBOR COMMISSIONERS

September 27, 2010

Rose M. Swarshak
SECRETARY



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: SEPTEMBER 7, 2010

FROM: REAL ESTATE DIVISION

SUBJECT: RESOLUTION NO. 10-7007 - PROPOSED FIFTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

SUMMARY:

On June 17 2010, the Board of Harbor Commissioners (Board) approved an amendment to Tariff No. 4 exempting terminal operators from Items 520 and 550-033 of the Port of Los Angeles (POLA) Tariff No. 4 (Tariff), Section Three, "Transferred Merchandise – Wharfage" for the one-year period extending from July 1, 2010 through June 30, 2011 (Board Order No. 10-7055). Permit No. 733 with Eagle Marine Services (EMS) does not allow POLA Tariff amendments to affect the terms of the Permit. Therefore, in order for the amended Tariff provisions to apply to EMS, an amendment to Permit No. 733 is required. The proposed Fifth Amendment to Permit No. 733 would apply the recently amended Tariff, Section Three, "Transferred Merchandise – Wharfage" provisions to EMS.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Fifth Amendment to Permit No. 733 with EMS, which implements the provisions of Tariff, Section Three, "Transferred Merchandise – Wharfage" as amended by the Board on June 17, 2010;
2. Direct the Board Secretary to transmit the Fifth Amendment to the 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. 10-7007.

DISCUSSION:

Transferred merchandise is merchandise discharged off a vessel at one port and transported by land to another port. To improve operational efficiencies and better utilize the on-dock rail at existing terminals, and avoid the drayage of containers to off-dock rail yards, on June 17, 2010, the Board approved an amendment to the POLA Tariff. That amendment exempted wharfage on transferred merchandise for the period

SUBJECT: PROPOSED FIFTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES

of July 1, 2010 through June 30, 2011, increased the quantity of containers allowed under this exemption from 200 to 500 waterborne containers per week, and required that terminal operators provide the number of containers of transferred merchandise discharged at the Port of Long Beach (POLB) and transported by rail out of a POLA on-dock rail facility, as well as containers of transferred merchandise discharged at POLA and transported by rail out of a POLB on-dock rail facility. The City Council subsequently approved the Tariff amendment and the associated Ordinance, with an effective date of September 9, 2010. The required California Association of Port Authorities (CAPA) review and approval process has also been completed.

As indicated at the time of the Board's approval of the Tariff amendment, some terminal operator permits override elements of the Tariff, including amendments. Therefore, such Permits would need to be amended under separate action in order to effectuate the transferred merchandise wharfage exemption. Permit No. 733 with EMS is such a Permit.

The proposed Fifth Amendment to Permit No. 733 is recommended in order to make the recently amended Tariff, Section Three, "Transferred Merchandise - Wharfage" provisions applicable to EMS.

ENVIRONMENTAL ASSESSMENT:

The proposed action is an amendment to Permit No. 733 with EMS to implement the transferred merchandise wharfage exemption under Tariff No. 4. The permit amendment would not involve any expansion of use beyond current operations. As such, 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 III Class 1(14) of Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no direct employment impact in the five-county region.

FINANCIAL IMPACT:

For the period the proposed Fifth Amendment is to be in effect, specifically the Fiscal Year 2010/2011 period. The Harbor Department's estimated forgone shipping revenue associated with the enactment of the Fifth Amendment is \$90,241.

CITY ATTORNEY:

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

DATE: SEPTEMBER 7, 2010

PAGE 3 OF 3

SUBJECT: PROPOSED FIFTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE
MARINE SERVICES

TRANSMITTAL:

1. Fifth Amendment


MICHAEL J. GALVIN II
Director of Real Estate

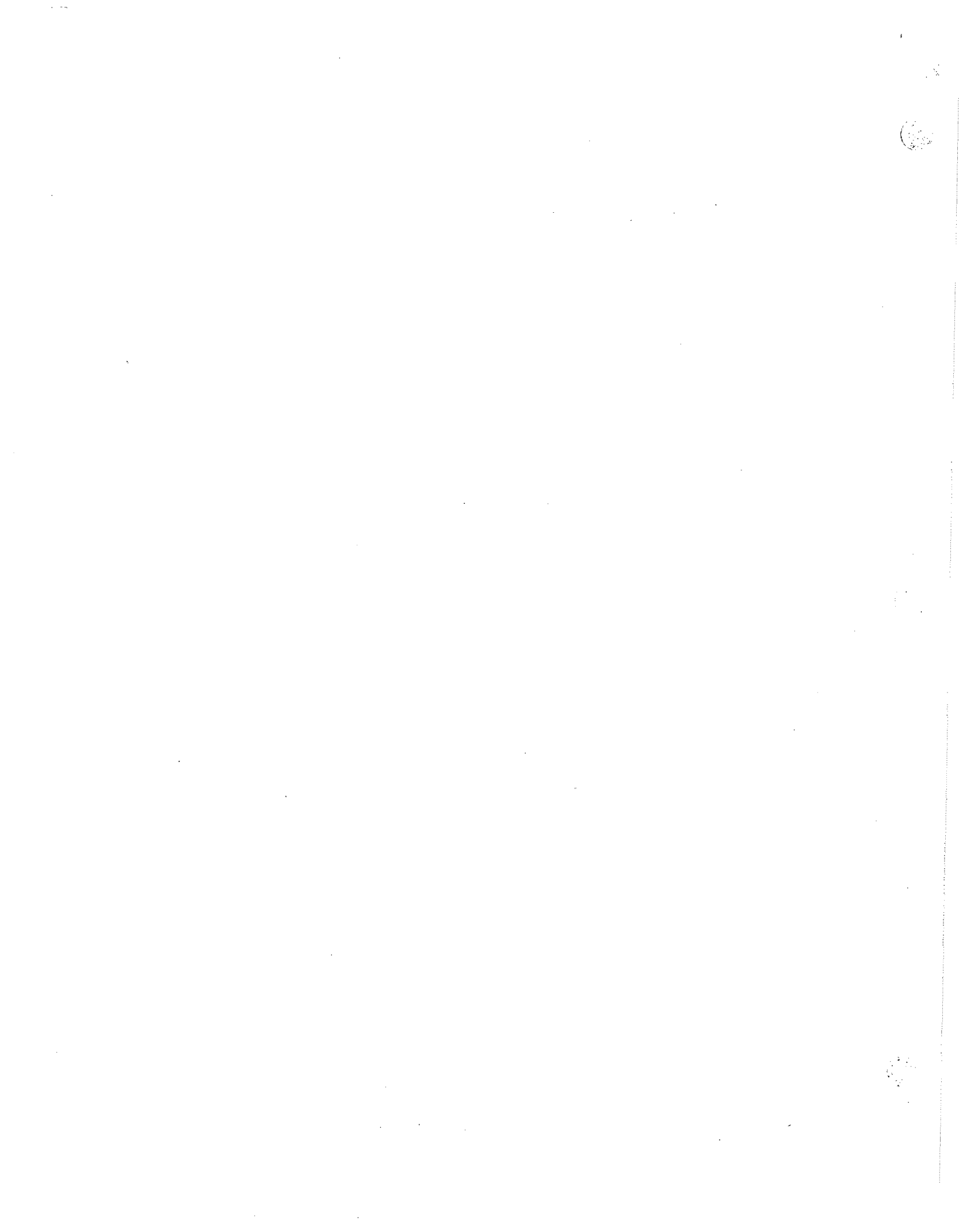
FIS Approval: eg (initials)


KATHRYN McDERMOTT
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

MJG:KC:raw
Author: K. Caughlin
BL354raw EMS 5th Amend



FIFTH AMENDMENT TO
PERMIT NO. 733
EAGLE MARINE SERVICES, LTD.

Permit No. 733 granted to EAGLE MARINE SERVICES, LTD. is hereby amended a fifth time as follows:

Notwithstanding the provisions of Section 2(c), Section 4(a) and Exhibit "B" of the Agreement, commencing on July 1, 2010 and terminating on June 30, 2011, 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 18, 2009 pursuant to Order No. 09-7000, and attached hereto as Exhibit A.

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

CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest _____
Board Secretary

EAGLE MARINE SERVICES, LTD.,
a Delaware corporation

Dated: _____

By Nathanial Seeds
Nathanial Seeds, Vice President
(Print/Type Name and Title)

Attest Eric R. Swett
Eric R. Swett, Assoc. Gen. Counsel
(Print/Type Name and Title)

APPROVED AS TO FORM

6/9/10, 2010
CARMEN A. TRUTANICH, City Attorney

By Steven Y. Otera
STEVEN Y. OTERA, Deputy

SYO/dls
8/9/10

ORDER NO. 09-7000

An Order of the Board of Harbor Commissioners of the City of Los Angeles amending Port of Los Angeles Tariff No. 4, Items 520 and 550-033, Transferred Merchandise - Wharfage.

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.~~

Section 4. Pursuant to Charter Section 653(a), this amendment to the Tariff shall become effective when this Order is approved by the City Council by Ordinance; provided, however, pursuant to Charter Section 653(b), this Order shall be effective prior to approval by Ordinance for a period not to exceed 90 days from the date of its adoption by the Board of Harbor Commissioners.

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 18, 2009

Rose M. Dworshak
ROSE M. DWORSHAK
Acting Board Secretary

APPROVED AS TO FORM

June 29, 2009
ROCKARD J. DELGADILLO, City Attorney

By *T. Hogan*
TIMOTHY A. HOGAN, Assistant

TAH:cp
6/3/09

EXHIBIT A

Exhibit "A"

SECTION FIVE - Continued WHARFAGE - Continued	Item No.
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TRANSFERRED MERCHANDISE

(a) Transferred merchandise is merchandise received at municipal wharf or wharf premise by land transportation and subsequently removed from municipal wharf or wharf premise by land transportation.

(b) Transferred merchandise shall be assessed wharfage on the same basis as merchandise moving by vessel subject to the two exceptions noted below.

Exception 1: In the event merchandise is transferred from the premises of one municipal wharf to another for delivery to a land vehicle (including rail) or vessel, a single wharfage charge only will be assessed.

[+] Exception 2: Some terminal operators serve vessels which are members of an alliance whose vessels call at several ports. As used in this Tariff item, the term "alliance" means a formal contract among several carriers to share terminal and vessel space. Such terminal operators may handle transferred merchandise from alliance members who dray such merchandise from other ports.

520

Terminal operators falling under either of the two foregoing exceptions shall have the option of paying charges to the City on such transferred merchandise handled at the Port of Los Angeles in one of the two following ways:

1. The terminal operator may pay the City 100% of the applicable wharfage rate for Cargo N.O.S. per kiloton or cubic meter (see Item 550-001) and such transferred merchandise charge shall not count toward the terminal operator's minimum annual guarantee (MAG) or be revenue shared or count toward "efficiency criteria" except to the extent terminal operator's agreement with the City so allows. The term "efficiency criteria" refers to agreement revenue sharing provisions based on revenue tons per acre or the number of twenty-foot equivalent units (TEU) or containers handled.

*2. Alternatively, merchandise handled by the terminal operator commencing July 1, 2009, and ending on June 30, 2010, and subject to the conditions below, if the terminal operator has submitted a written request to the Executive Director and the Executive Director grants such request in writing, the terminal operator may be exempted from paying wharfage on such merchandise (see Item 550-033) per container, loaded or empty, and such merchandise shall not count toward the terminal operator's MAG, or be revenue shared, or count toward the terminal operator's "efficiency criteria" except to the extent the terminal operator's agreement with the City so allows. At the sole discretion, the Executive Director may revoke the permission for the terminal operator to handle transferred merchandise at a flat fee upon providing the terminal operator 72 hours' notice.

See Item 10 for explanation of abbreviations and symbols.

Correction No.	Order No.	Adopted	EFFECTIVE:
	Ordinance No.	Adopted	

Exhibit "A"

PORT OF LOS ANGELES - TARIFF NO. 4		Eighth Revised Page.....52 Cancels Seventh 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>[A] 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, 2009, and ending June 30, 2010.</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 August 1, 2009, 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 August 1, 2009, 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 an exemption under Item 520; Exception 2, include, but are not limited to:</p> <p>(1) Whether the transferred merchandise has been generated from a carrier which is an alliance member of the terminal operator's customers;</p> <p>(2) Whether and how the handling of the transferred merchandise in the Port of Los Angeles will impact other terminals in the Port;</p>		
<p align="center">*Per Container \$0.00 (Cont.)</p> <p align="center">[C] 033 (Cont.)</p>		
See Item 10 for explanation of abbreviations and symbols.		
Correction No.	Order No. Ordinance No.	Adopted Adopted
		EFFECTIVE:

EXHIBIT "A"

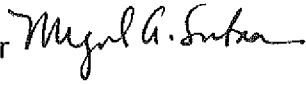
PORT OF LOS ANGELES - TARIFF NO. 4		Second Revised Page.....52-A Cancels First Revised Page52-A
SECTION FIVE - Continued WHARFAGE - Continued		Item No.
WHARFAGE RATES - Continued	Rates in Cents Per KT or M-3 Unless Otherwise Indicated Below (See Item 510)	550-
<p>Rates apply on all trades (See Item 100 [o], [p], and [q]; except Hawaii or as noted in individual items.</p> <p>(Transferred from Sixth Revised Page 52)</p> <p>Item 033 - Continued</p> <p>+ (3) Whether allowing such exemption of wharfage otherwise payable to the City, would result in a diversion of an alliance partner service to another port;</p> <p>(4) Whether allowing such handling will assist rail carriers in minimizing traffic along intermodal routes;</p> <p>(5) Whether the terminal operator making the request is current in all its obligations to the Port; and</p> <p>(6) 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.</p>		
	*Per Container \$0.00	[R] [C] 033
See Item 10 for explanation of abbreviations and symbols.		
Correction No.	Order No. Adopted Ordinance No. Adopted	EFFECTIVE:

RECEIVED
 OFFICE OF
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 10 DEC -2 PM 8:08
 CITY OF SAN FRANCISCO
 BOARD OF PASTOR
 COMMISSIONERS

TRANSMITTAL		0150-06030-0008
TO Geraldine Knatz, Ph.D., Executive Director Harbor Department	DATE NOV 23 2010	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	
<p>PROPOSED FIFTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES</p> <p>Transmitted for further processing and Council consideration. See the City Administrative Officer report attached.</p> <p style="text-align: center;"><i>Gay Williams</i> MAYOR</p> <p>MAS:ABN:10110060t</p>		

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: November 16, 2010
To: The Mayor
From: Miguel A. Santana, City Administrative Officer 
Reference: Transmittal from the Harbor Department dated October 7, 2010; referred by the Mayor for report on October 14, 2010
Subject: **PROPOSED FIFTH AMENDMENT TO PERMIT NO. 733 WITH EAGLE MARINE SERVICES**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 10-7007 authorizing the Fifth Amendment (Amendment) to Permit No. 733 (Agreement) with Eagle Marine Services (EMS). EMS is a terminal operator at the Port of Los Angeles (POLA). The proposed Amendment will extend the Agreement for one additional year and allow the exemption of EMS from having to pay the stipulated container fees under Tariff No. 4, Items Nos. 520 and 550-033, "Transferred Merchandise-Wharfage." 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 additional one year exemption for Permit No. 733 will be retroactive from July 1, 2010 through June 30, 2011. Although the administrative process was not concluded by July 1, 2010, the Port states that since most of the other container terminal operators enjoy this exemption for the entire fiscal year term, EMS should have equalized benefit with other operators.

In 1993, the Board approved the Agreement with EMS to operate containerized cargo on a terminal area within the POLA. The terminal area includes maintenance and repair facilities, on-dock rail services, four service berths, wheeled and grounded operations and an integrated system for vessel, rail and gate operations. In 2009, the Board approved the 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 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 the proposed 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 projects 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. The proposed Amendment will allow this Tariff wharfage fee exemption to continue to apply to EMS.

The Port has estimated that it would forego shipping revenue of approximately \$90,241 during the one-year extension with the enactment of the proposed Amendment. According to the Port, the estimated cost of \$90,241 for FY 2010/2011 is based on qualifying containers handled by EMS during the fiscal year beginning on July 1, 2009.

In accordance with Charter Section 606, the Council must approve the proposed contract amendment. The proposed Amendment has been approved by the City Attorney as to form and is in compliance with City requirements and ordinances. 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 III, Class 1(14), of the Los Angeles City CEQA Guidelines.

RECOMMENDATION

That the Mayor approve the Harbor Department (Port) Resolution No. 10-7007 authorizing the Fifth Amendment to Permit No. 733 with Eagle Marine Services to continue the waiver of the container fee for the terminal operator under Tariff No. 4, Items Nos. 520 and 550-033, "Transferred Merchandise-Wharfage" for one additional year, from July 1, 2010 through June 30, 2011, and 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. 733 with the Eagle Marine Services will waive container fees for one year, from July 1, 2010 through June 30, 2011, and the Port could forgo a maximum revenue amount of approximately \$91,241. 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.