



14-0094

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Eric Garcetti Mayor, City of Los Angeles	Ambassador Vilma S. Martinez President	David Arian Vice President	Patricia Castellanos	Anthony Pirozzi, Jr.	Edward R. Renwick
Board of Harbor Commissioners	Eugene D. Seroka Executive Director				

February 4, 2015

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

CD No. 15

Attention: Mr. Michael Espinosa, City Clerk's Office

SUBJECT: RESOLUTION NO. 14-7737 – ELEVENTH AMENDMENT TO PERMIT NO. 692 WITH YUSEN TERMINALS, INC. INCORPORATING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONTAINER TERMINAL IMPROVEMENTS PROJECT AT BERTHS 212-224

Pursuant to City Charter Section 606, enclosed for your approval is the proposed Eleventh Amendment to Permit No. 692 with Yusen Terminals, Inc. The proposed Permit was approved at the December 18, 2014 meeting of the Board of Harbor Commissioners. There is no impact to the General Fund.

RECOMMENDATION:

1. The City Council approve the proposed Eleventh Amendment to Permit No. 692 between the City of Los Angeles Harbor Department and Yusen Terminals, Inc.;
2. Adopt the determination by the Los Angeles Harbor Department that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(i) of the Los Angeles City CEQA Guidelines; and
3. Return to the Board of Harbor Commissioners for further processing.

Respectfully Submitted,

AMBER M. KLESGES
Commission Secretary

cc: Trade, Commerce, & Tourism Committee
 Councilman Buscaino
 Councilman LaBonge
 Councilman Bonin
 Mandy Morales, Mayor's Office
 Erick Martell, Harbor Legislative Representative

Alvin Newman, CAO
 Lisa Schechter, CD4
 Aaron Gross, Mayor's Office
 Blayne Sutton-Wills, CLA

#12
12-18-14

RECOMMENDATION APPROVED AND
RESOLUTION NO. 14-7737 ADOPTED BY
THE BOARD OF HARBOR COMMISSIONERS



Executive Director's
Report to the
Board of Harbor Commissioners

December 18, 2014

Amber M. Klesges
AMBER M. KLESGES
Board Secretary

DATE: DECEMBER 17, 2014

FROM: REAL ESTATE

SUBJECT: RESOLUTION NO. 14-7737 - PROPOSED
ELEVENTH AMENDMENT TO PERMIT NO. 692 WITH YUSEN
TERMINALS, INC. INCORPORATING THE MITIGATION MONITORING
AND REPORTING PROGRAM FOR THE CONTAINER TERMINAL
IMPROVEMENTS PROJECT AT BERTHS 212-224

SUMMARY:

Permit No. 692 between the City of Los Angeles Harbor Department (Harbor Department) and Yusen Terminals, Inc. (YTI) grants the right to use 224.83 acres at Berths 212-224 for container terminal operations. YTI is the assignee of Nippon Yusen Kaisha and the current tenant of the premises. Permit No. 692 is a 25-year permit, expiring on September 30, 2016, with one ten-year option to renew. The proposed Eleventh Amendment will modify Section 2(a) of the Permit to consolidate all previous changes to the premises, Section 7, Improvements, will be supplemented with new subsections "c", "d", "e", and "f" dealing with additional improvements to be constructed by the Harbor Department within 30 months of the effective date of YTI exercising its ten-year term extension option. The option to extend will result in revenue of approximately \$385 million over the ten year period to 2026. Finally, a new Section 12, "Environmental Compliance" will be added to the permit incorporating the adopted mitigation measures and lease measures of the MMRP.

Recently, the Harbor Department, in conjunction with the U.S. Army Corps of Engineers, completed the Main Channel Deepening project in the vicinity of the YTI Terminal at Berths 212-221, which provides -53 foot (ft.) depths in the Main Channel and turning basins at the Port, thereby accommodating the largest and most modern container ships in service and under construction. However, the YTI Terminal is presently unable to take full advantage of the -53 ft. main channel depth due to wharves at that site which only allow a maximum -45 ft. berth depth.

As such, Resolution Nos. 13-7445 and 13-7450 were adopted by the Board on February 21, 2013, to commence an upgrade project at the YTI Terminal to accommodate these larger ships and take full advantage of the channel deepening in the area.

RECOMMENDATION:

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

1. Approve the Eleventh Amendment to Permit No. 692 with Yusen Terminal, Inc.;

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2. Direct the Board Secretary to transmit the Eleventh Amendment for Permit No. 692 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 Eleventh Amendment upon Board approval contingent upon approval by City Council; and
4. Adopt Resolution No. 14-7737.

DISCUSSION:

Background/Context - On February 21, 2013, the Board adopted Resolution Nos. 13-7445 and 13-7450 to commence the preparation of an Environmental Impact Statement/Environmental Impact Report (EIS/EIR), the primary purpose of which was to enable the upgrade and improvement project of the YTI terminal to accommodate larger ships. The project is expected to cost approximately \$58,370,00 and be completed by May 2017.

The Berths 212-224 YTI Container Terminal Improvements Project will improve the Berths 214-216 wharves and deepen the berth to accommodate container vessels requiring -53 ft. berth depth, thereby providing the YTI Terminal with the ability to accommodate the newest and largest container vessels; improve the Berths 217-220 wharf to accommodate 100-foot gauge gantry cranes; improve the Berths 217-220 wharves and deepen the berth to accommodate container vessels requiring -47 ft. berth depth; provide backland improvements; and add one loading track to YTI's portion of the Terminal Island Container Transfer Facility to increase on-dock rail capacity.

On November 7, 2014, the Board approved the Berths 212-224 YTI Container Terminal Improvements Project, and in a separate action, certified the EIR/EIS, including the errata and all feasible mitigation measures as detailed in the Mitigation Monitoring and Reporting Program (MMRP). The MMRP is designed to ensure compliance and enforcement of mitigation measures and lease measures to reduce or avoid significant environmental impacts. Therefore, a new Section 12, "Environmental Compliance", will be added to the permit incorporating the adopted mitigation measures and lease measures of the MMRP.

Project commencement is contingent upon the effective date of YTI exercising their unilateral ten-year option to extend the permit term. The extension will result in estimated revenue to the Harbor Department with a net present value (NPV) (at a five percent discount rate) of \$385 million, and estimated volume of 18.6 million TEUs. The redevelopment will improve YTI's marine shipping and commerce by allowing YTI to accommodate larger container vessels (up to 13,000 TEUs) and increase terminal capacity from 1,692,000 TEUs to 1,913,000 TEUs annually.

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Aside from mitigation and lease measures that are the responsibility of the Tenant as outlined in the MMRP, the proposed project is the financial responsibility of the Harbor Department. As such, the proposed Eleventh Amendment contains a liquidated damages clause for the failure of the Harbor Department to substantially complete the project improvements within 30 months of the effective date of YTI's option. The amendment outlines certain acceptable delays due to unforeseen circumstances including delays by governmental authorities issuing necessary project permits, labor disputes, and bid protests. The construction schedule estimates project completion 28 months after the effective date of the option.

Liquidated damages under the amendment mean the Tenant will be entitled to a rent credit of \$20,000 per day for each day of delay, subject to a maximum amount of \$1,800,000, plus (a) a reduction in its then current minimum annual guarantee up to 50 percent if the project is delayed up to 45 days and (b) a reduction in minimum annual guarantee of 100 percent if the delay is beyond 45 days. Finally, if substantial completion is not achieved 90 days after the deadline for performance, both parties submit to arbitration. The arbitrator will only review the construction goals enumerated in the amendment to determine if the Harbor Department has made a *good faith effort* to achieve substantial completion. If the arbitrator finds that a *good faith effort has not been made*, YTI would have the ability to cancel its extension (the basis for the extension being the project improvements) and leave.

The contingent liability associated with not delivering the project compared to the threat of overall decline in container volume due to YTI's inability to accommodate larger ships or losing the entire YTI business in 2016 resulted in a negotiation of these terms.

ENVIRONMENTAL ASSESSMENT:

The proposed action includes a permit amendment between Harbor Department and YTI. The proposed action was previously assessed and approved as part of the YTI Container Terminal Improvements Project EIS/EIR certified by the Board on November 7, 2014 (APP # 130204-020) (SCH # 2013041017). Therefore, as an activity for which the underlying project has previously been evaluated for environmental significance and processed according to the requirements of the California Environmental Quality Act (CEQA), the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2 (i) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

The YTI Container Terminal Improvements Project is anticipated to support 750 direct and secondary one-year equivalent construction-related jobs and a net total of 2,241 direct and secondary long-term jobs related to operations.

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FINANCIAL IMPACT:

The current estimated capital cost is approximately \$58,370,000 (to be expended through May 2017). In the event that the improvements are not substantially completed and delivered by the delivery date due to delay caused by the Harbor Department, liquidated damages shall be payable by the Harbor Department in an amount up to (a) \$20,000 per day in rent credit with a max of \$1.8 million, (b) a reduction in the then current MAG up to 50 percent if the delay is up to 45 days, and (c) reduction in the then current MAG of up to 100 percent if the delay is over 45 days until substantial completion is achieved. If after such 90-day period substantial completion has not yet been achieved, the parties may submit to arbitration.

Preliminary analysis indicates that undertaking the proposed Project will conform to the Harbor Department's Board adopted rate of return (ROR) policy. Using a volume increase forecast of 1 percent annually, this project registers an expected 15.89 percent ROR (versus a 10.94 percent hurdle), NPV of anticipated cash flow (at a five percent discount rate) of \$385 million, and anticipated volume over the extended ten-year term of 18.6 million TEUs.

A "worst case" outcome assumes the following:

- YTI is released from its lease obligations under the ten-year extension after 90 days of liquidated damages after non-delivery and vacates the property (effective 2018).
- The Harbor Department has expended the entire \$58.37 million of capital
- The terminal sits vacant for the remainder of the ten-year option period

Under such scenario, the expected ROR is 4.23 percent with an NPV of -\$20 million on volume of 4.2 million TEUs. Assuming that the worst case scenario has a 20 percent probability of occurring, then the simple expected values of the weighted outcome are:

ROR: 13.56 percent, NPV of \$304 million, and volume of 15.7 million TEUs.

Based on the additional throughput capacity created as a result of the proposed project, a deposit to the Port Community Mitigation Trust Fund in the amount of approximately \$773,500 must be made through a separate Board item upon construction contract approval. Aside from mitigation and lease measures that are the responsibility of the tenant as outlined in the MMRP, the proposed project is the financial responsibility of the Harbor Department.

DATE: DECEMBER 17, 2014

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INCORPORATING THE MMRP FOR THE CONTAINER TERMINAL
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CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the Eleventh Amendment as to form and legality.

TRANSMITTALS:

1. Site Map
2. Eleventh Amendment



JACK C. HEDGE
Director of Real Estate

FIS Approval:  (initials)
CA Approval:  (initials)



DAVID L. MATHEWSON
Interim Deputy Executive Director

APPROVED:



EUGENE D. SEROKA
Executive Director

EDS:DM:JH:ST:KK:mmm
Author: Kevin Kim
BL505mm YTI 11th Amendment

THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

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RESOLUTION NO. 1000

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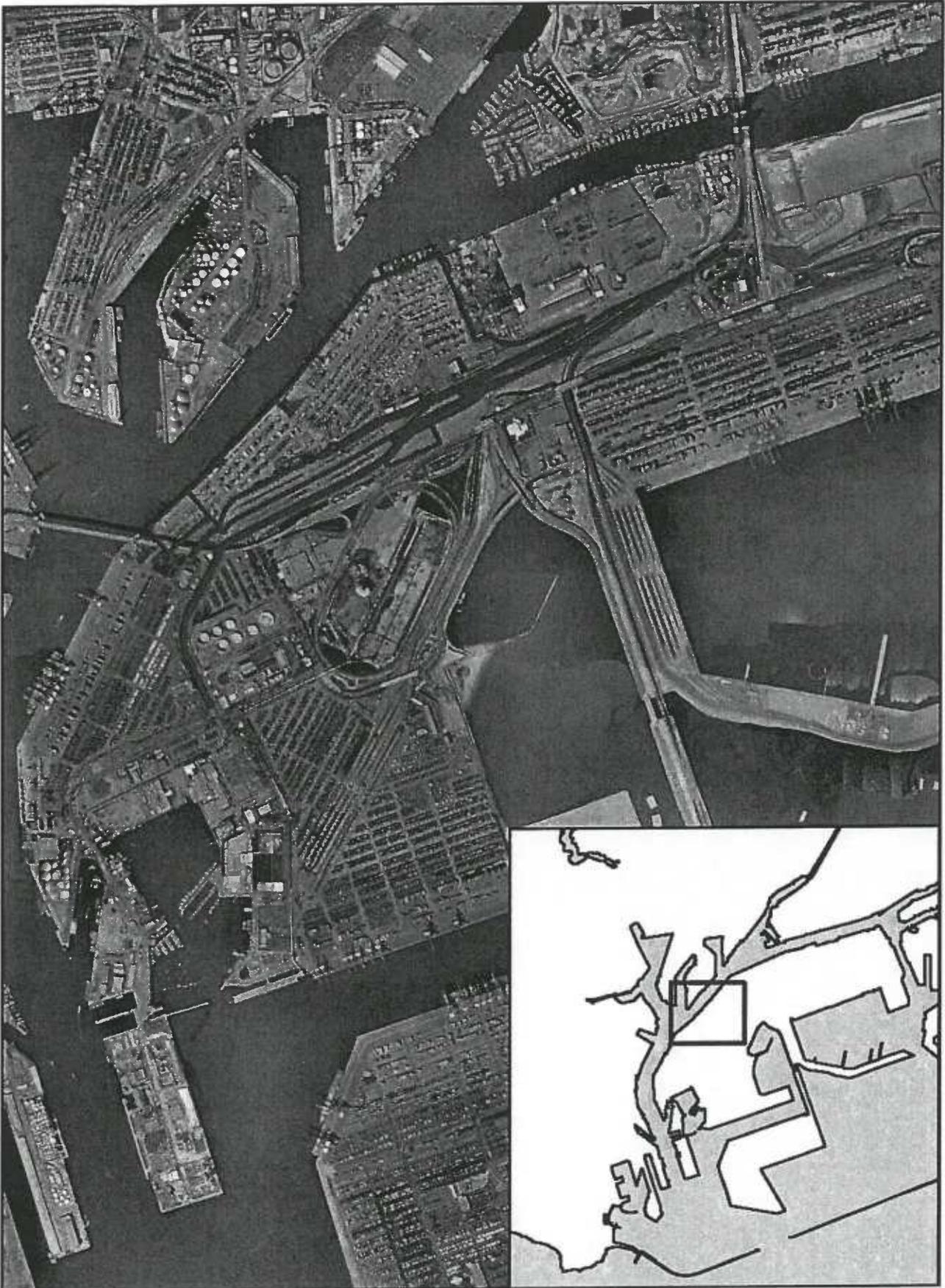
APPROVED

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0 1,250 2,500
Feet

Harbor Department,
Planning & Economic Development
Map Produced 01/2011



ELEVENTH AMENDMENT TO PERMIT NO. 692
BETWEEN THE CITY OF LOS ANGELES
AND
YUSEN TERMINALS, INC.

THIS ELEVENTH AMENDMENT TO PERMIT NO. 692 is made and entered into by and between the City of Los Angeles, acting by and through its Board of Harbor Commissioners ("City"), and Yusen Terminals, Inc. ("YTI" or "Tenant").

WHEREAS, Board Order 14-7721 approved by the Board of Harbor Commissioners on November 7, 2014, certified the Berths 212 – 224 [YTI] Container Terminal Improvements Project Final Environmental Impact Report;

WHEREAS, Board Order 14-7721 approved by the Board of Harbor Commissioners on November 7, 2014, approved the Berths 212 – 224 [YTI] Container Terminal Improvements Project.

WHEREFORE, City and YTI agree that Permit No. 692 between the City and YTI (Agreement) is hereby amended an eleventh time, as follows:

NOW THEREFORE, the parties agree as follows:

1. The Agreement's Section 2(a), which describes the premises granted to Tenant and as modified by earlier Amendments is deleted in its entirety and replaced with the following:

Section 2(a). Premises

(a) Description. The premises subject to this Agreement comprise Parcels No. 1 through No. 4, Parcels No. A through F and Berths 212-224. Those parcels are delineated and more particularly described on Drawings No. 1-2473 (7-1-2003) which is on file in the office of the Chief Harbor Engineer of the Harbor Department of City ("Harbor Engineer"). Exhibit "A-2" which replaced Exhibit "A-1" (Drawings SSA PH) and Exhibit "A" by the Fifth Amendment to Permit No. 692 is replaced by drawing attached hereto as Exhibit "A-3" and incorporated by reference into this Agreement.

The premises consist of three berths: Berths 212–213; Berths 214–216; and Berths 217–224. Tenant has the "preferential" right to use Berths 212-224 and the backlands granted. The berths currently have a depth of minus forty-five (-45) feet mean lower low water (MLLW).

The City will upgrade the wharfs at Berths 214-216 (approximately 1400') and Berths 217-221 (approximately 1485') by dredging to the depth of -53' and -47' (MLLW) respectively. No dredging will be performed at Berths 212-213 and it will remain at -45' (MLLW).