



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: DECEMBER 1, 2010

FROM: REAL ESTATE DIVISION

SUBJECT: RESOLUTION NOS. _____ - PROPOSED FOURTH AMENDMENT TO PERMIT NO. 999 AND PROPOSED THIRD AMENDMENT TO PERMIT NO. 787 BETWEEN CITY OF LOS ANGELES HARBOR DEPARTMENT AND CHINA SHIPPING (NORTH AMERICA) HOLDING COMPANY, LTD. AND YANG MING MARINE TRANSPORT CORPORATION, LTD., RESPECTIVELY

SUMMARY:

Permit No. 999, between the City of Los Angeles Harbor Department (Harbor Department) and China Shipping (North America) Holding Company, Ltd. (China Shipping Holding) grants nonexclusive use of 72.48 acres at Berths 100-102 for container terminal operations. Permit No. 787 between the Harbor Department and Yang Ming Marine Transport Corporation (YM) grants nonexclusive use of approximately 186 acres at Berths 121-131 for container terminal operations. These adjacent terminals have entered into a cooperative arrangement that allows both terminals to be operated jointly as one terminal. However, the TEU efficiency scale that provides discounts on compensations for higher TEU throughput applicable to each individual permit does not reflect such combined and cooperative terminal operations.

The proposed Fourth Amendment to Permit No. 999 and Third Amendment to Permit No. 787 provide for the aggregate number of TEUs processed on the combined Permit Nos. 999 and 787 premises to be utilized for calculation of the applicable TEU charge based on the TEU efficiency scale in each permit. Both amendments are proposed to be effective retroactively on May 1, 2009. The Fourth Amendment to Permit No. 999 also consents to a tenant name change. All other terms and conditions of both permits remain unchanged.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Fourth Amendment to Permit No. 999 with China Shipping Holding;
2. Approve the Third Amendment to Permit No. 787 with YM;
3. Direct the Board Secretary to transmit the Fourth Amendment to Permit No. 999 and the Third Amendment to Permit No. 787 to the Los Angeles City Council for approval pursuant to Section 606 of the City Charter;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the amendments upon approval by Los Angeles City Council; and

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5. Adopt Resolution Nos. _____.

DISCUSSION:

Background – The adjacently-located China Shipping Holding and YM terminals have entered into a cooperative arrangement that allows both entities to jointly use the combined premises as one terminal. This cooperative arrangement maximizes efficiencies at both terminals and is consistent with the Harbor Department's terminal design for the China Shipping Holding's and YM's terminals, including access roads and bridges to access both container yards, the main gate entrance, and intermodal rail facility. Both terminals benefit from amenities provided at the other terminal and the combined amenities and acreage provide a terminal design that is comparable to other Harbor Department container terminals. Despite this integrated design and joint use operation agreement, both terminals are charged compensation, primarily TEU charges, separately under separate permits.

Compensation for both Permit Nos. 999 and 787 are based primarily upon payment of TEU charges based on an efficiency scale that calculates the annual TEU charge based on the number of TEUs handled annually per acre. This rent structure provides discounts as higher volumes are achieved. Both terminals currently share identical TEU efficiency scales with identical TEU charges for each TEU volume bracket, and TEU charges are calculated separately for each terminal. The resulting average TEU charge for both terminals is less competitive in comparison with the results if the aggregate number of TEUs processed on the combined premises was utilized for calculation of the applicable TEU charge provided in each permit. Therefore, consistent with the terminal design and the intent to operate separate terminals as one terminal, it is proposed that Permit Nos. 999 and 787 be amended to make the TEU efficiency scale currently included in both permits applicable to the aggregate TEU volumes of the combined China Shipping Holding and YM premises. Based on the recent history of TEU volumes at each terminal, this proposed change in calculating the applicable TEU charges is currently anticipated to result in an estimated annual revenue loss to the Harbor Department of approximately \$0.5 million.

In addition, the proposed Fourth Amendment to Permit No. 999 and Third Amendment to Permit No. 787 establish an annual reconciliation process for both China Shipping Holding and YM to ensure accurate accounting of TEUs handled and allocation of TEU charges attributable to each terminal. Further, the proposed amendments provide that the tenant or the Harbor Department can cancel the proposed method of calculating TEU efficiency for the combined premises upon 30 days' written notice. Cancellation of this proposed combined method of calculating TEU efficiency would result in a reversion to the current method of calculating TEU efficiency for each premises separately. Cancellation of this arrangement by one tenant (either China Shipping Holding or YM) does not automatically result in cancellation for the second tenant. Therefore, in such an event, the Harbor Department would immediately initiate cancellation for the second tenant.

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The proposed amendments will be retroactive to May 1, 2009, the date China Shipping Holding and YM jointly requested the proposed amendments to their current compensation structure. Negotiations were extended for a prolonged time period due to complexities associated with negotiating dual amendments with two separate entities; however, it was agreed at the commencement of negotiations that the proposed amendments would be retroactive to the initial request of May 2009.

The proposed Fourth Amendment to Permit No. 999 also includes consent to the tenant's name change from "China Shipping Holding Company, Ltd. to "China Shipping (North America) Holding Co., Ltd."

ENVIRONMENTAL ASSESSMENT:

The proposed action is a Fourth Amendment to Permit No. 999 with China Shipping Holding and a Third Amendment to Permit No. 787 with YM to establish a combined payment structure for TEU volumes that would not exceed the individual terminal's throughput or result in an expansion of use beyond what is currently permitted. 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 the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

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

FINANCIAL IMPACT:

Annual impacts of this proposal depend on TEUs per acre through one terminal versus the other. Based on historical patterns of cargo movement since the start of operations at the China Shipping Holding terminal in 2004 through August 2010, the annual impact of the proposed compensation scheme based on the assumption of history repeating ranges from a benefit of \$0.1 million to a cost of \$2.0 million with the average of this historical analysis being a cost of \$0.6 million. Annual costs approaching the \$2.0 million level occur when China Shipping Holding's TEUs per acre are high (approximately 8,000) and YM's TEUs per acre are low (approximately 4,000). Recent observations indicate a persistence of this imbalance and the cost for calendar 2010 under combined compensation is likely to approach the \$2.0 million level. As the China Shipping Holding terminal expands by 60 acres over the next four years, the annual cost of combined compensation versus separate compensation schemes is likely to decline as China Shipping's TEUs are spread over the additional acres. In addition, retroactive implementation of combined compensation calculations during the completed 2009 calendar year will cost approximately \$ 0.5 million.

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TRANSMITTALS:

1. Fourth Amendment to Permit No. 999
2. Third Amendment to Permit No. 787
3. Site Aerial Map
4. CS TEU Per Acre Rate Schedule
5. YM TEU Per Acre Rate Schedule



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Director of Real Estate

FIS Approval: KB (initials)



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APPROVED:



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Executive Director

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