

ORDER NO. 11-_____

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

FINDINGS

BACKGROUND

1. On July 12, 1989, the Board of Harbor Commissioners of the City of Los Angeles adopted Order No. 5837, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 165789, adopted on April 10, 1990. Said Order and Ordinance designated Port of Los Angeles Tariff No. 4, which sets forth rates at which, and terms under which, the Port of Los Angeles, California is willing to provide marine terminal services. Tariff No. 4 has been amended from time to time since 1989. The current version of Tariff No. 4 is made available to the public on the Port of Los Angeles website at www.portoflosangeles.org.
2. On January 14, 2008, the Board adopted Order No. 6950, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 179982, adopted on June 17, 2008. Said Order and Ordinance amended Tariff No. 4 by adding Section 21 Infrastructure Fee, establishing an infrastructure cargo fee.
3. On March 20, 2008, the Board adopted Order No. 6956, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 179981, adopted on June 17, 2008. Said Order and Ordinance amended Tariff No. 4 by, among other things, modifying Section 21 Infrastructure Fee, to clarify and harmonize the Infrastructure Fee and the Clean Truck Fee under Section 20 of the Tariff.
4. On December 18, 2008, the Board adopted Order No. 08-6976, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 180920, adopted on October 14, 2009. Said Order and Ordinance amended Port of Los Angeles Tariff No. 4 by revising Section 21, Item 2105, to amend the date of commencement of collection of the Infrastructure Fee to July 1, 2009 and the amount of the Infrastructure Fee to Six Dollars (\$6) per Twenty Foot Equivalent Unit (TEU), and to update the Computation Methodology in the tariff definitions section.
5. On April 16, 2009, the Board the Board adopted Order No. 09-6996, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 180921, adopted on October 14, 2009. Said Order and Ordinance amended Port of Los Angeles Tariff No. 4 by revising Section 21, Item 2105, to amend the date of commencement of collection of the Infrastructure Fee to July 1, 2010, and that the amount of the Infrastructure Fee would be determined at a future date, no later than March 31, 2010.

6. On April 15, 2010, the Board the Board adopted Order No.10-7050, which Order was approved by the City Council of the City of Los Angeles by Ordinance No. 181200, adopted on June 22, 2010. Said Order and Ordinance amended Port of Los Angeles Tariff No. 4 by revising Section 21, Item 2105, to amend the date of commencement of collection of the Infrastructure Fee to January 1, 2012, and that the amount of the Infrastructure Fee would be determined at a future date, no later than September 30, 2011.
7. The Board now wishes to further amend Port of Los Angeles Tariff No. 4 by revising Section 21, Item 2105 to amend the date of commencement of collection of the Infrastructure Fee to January 1, 2014 because of additional delays in the environmental clearance of some of the projects, and to provide further financial relief for shippers. The Board also wishes to amend Item 2105 to provide that the amount of the Infrastructure Fee shall be determined at a future date, no later than September 30, 2013.

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

Section 1. The Board of Harbor Commissioners of the City of Los Angeles hereby adopts the findings set forth above.

Section 2. 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. This amendment shall be subject to California Association of Port Authorities (CAPA) review and approval, and the Executive Director is authorized to present the tariff amendment to CAPA to secure CAPA approval or proceed to take independent action in accordance with CAPA procedure.

Section 3. The Director of Environmental Management has determined that these amendments to the Tariff are exempt from the California Environmental Quality Act (CEQA) as provided by the following sections of the State of California CEQA Guidelines in California Public Resources Code 21084, Title 14 of the California Code of Regulations, Section 15273 (rates, tolls, fares, and charges), and Section 15061(b) (3) (no possibility of significant adverse effect on the environment). Infrastructure Projects proposed to be funded by the Infrastructure Fee shall only qualify for funding by the Infrastructure Fee after CEQA assessment and project approval by the applicable lead agency.

Section 4. 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).

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 _____

KORLA TONDREULT
Acting Board Secretary

APPROVED AS TO FORM

_____, 2011
CARMEN A. TRUTANICH, City Attorney
Thomas A. Russell, General Counsel

By _____
JOY CROSE, Assistant General Counsel

EXHIBIT A- TARIFF

PORT OF LOS ANGELES – TARIFF NO. 4		Second Revised Page 196 Cancels First Revised Page 196
SECTION TWENTY-ONE INFRASTRUCTURE FEE		Item No.
DEFINITIONS INFRASTRUCTURE FEE		
<p>* For purposes of Section 21 the following definitions shall apply:</p> <p>“Ports” shall mean all waterfront property owned by the Ports of Los Angeles and Long Beach.</p> <p>“Ports Rail System” shall mean: a Pier B Street Intermodal rail yard expansion, Terminal Island Wye Track Realignment, Pier B Street Realignment, Track Realignment at Ocean Boulevard/Harbor Scenic Drive, Pier F Support Yard, West Basin Rail Access Improvements, Grade Separation for Reeves Crossing, Closure of Reeves at-grade Crossing, Navy Mole Road Storage Rail Yard, Pier 400 Second Lead Track, Reconfiguration at CP Mole, Triple Track Badger Bridge, and Triple Track South of Thenard Jct.</p> <p>“Highway Projects” shall mean the Gerald Desmond Bridge Replacement, the SR-47 Expressway (including replacement of the Heim Bridge), the Navy Way/Seaside Avenue Interchange, the South Wilmington grade separation, and the I-110 Connectors Program (which includes: I-110/SR-47/Harbor Boulevard interchange improvements, I-110/”C” Street interchange improvements, John S. Gibson intersection and I-110 ramp access improvements, and SR-47 on-ramp and off-ramp improvements at Front Street).</p> <p>“Infrastructure Projects” shall include the Ports Rail System and Highway Projects.</p> <p>“Approved Infrastructure Projects” shall mean all Infrastructure Projects which have been: (1) approved by the applicable lead agency as defined in Section 21067 of the California Public Resources Code; and (2) determined by the Boards of Harbor Commissioners of Los Angeles and Long Beach to be eligible for use of tidelands funds.</p> <p>“Port Infrastructure Fund” shall mean a restricted fund to be used exclusively for payment of the Ports’ allocable share, using the Computation Methodology, of costs of Approved Infrastructure Projects that are incurred following the approval of the Approved Infrastructure Projects by the applicable lead agencies. The Port Infrastructure Fund shall be comprised of the monies collected from the Infrastructure Fee on Containers under Item 2105.</p>		[C] 2100
See Item 10 for explanation of abbreviations and symbols.		
Correction No.	Order No. Ordinance No.	Adopted Adopted EFFECTIVE:

SECTION TWENTY-ONE -- Continued INFRASTRUCTURE FEE -- Continued		Item No.
DEFINITIONS INFRASTRUCTURE FEE --Continued		
<p>“Terminal” shall mean any facility in the Port of Los Angeles used for the transfer of cargo from one mode to another, including all container terminals, break-bulk terminals, dry bulk terminals and rail yards.</p> <p>“Terminal Operator” shall mean the entity with contractual authority from the Port of Los Angeles to operate a Terminal.</p> <p>* “Computation Methodology” shall mean the methodology described in the document entitled Methodology for Determining Infrastructure Cargo Fee, which shall be adopted at the same time the Infrastructure Fee is determined, no later than September 30, 2013.</p>		[C] 2100 (Cont.)
INFRASTRUCTURE FEE ON CONTAINERS		
<p>* Beginning January 1, 2014 at 8:00 a.m., an Infrastructure Fee on Containers in an amount to be determined before September 30, 2011, per twenty foot equivalent unit shall be assessed on containerized merchandise entering or leaving any Terminal in the Port of Los Angeles. The Infrastructure Fee on Containers shall be paid by the cargo owner, notwithstanding anything to the contrary in Items 265 (c) or 265 (i) of this Tariff. As Infrastructure Projects are approved by the applicable lead agencies, and from time to time thereafter, the Executive Directors of the Ports of Long Beach and Los Angeles (“Executive Directors”) shall have the Infrastructure Fee on Containers recomputed using the Computation Methodology and this tariff shall be amended to reflect the amount so computed. The Infrastructure Fee on Containers shall not be assessed on any containerized merchandise moved between two terminals within the Ports. The Infrastructure Fee on Containers shall no longer be collected: (a) after the share of Approved Infrastructure Project costs allocable to be recovered by the Port Infrastructure Fund have been paid in full; (b) after the Executive Directors determine that the Infrastructure Fund balance is sufficient to pay all such costs; or (c) if the Clean Truck Fee (Item 2030 of this Tariff) cannot be collected, whichever occurs first.</p>		[C] [R] 2105
See Item 10 for explanation of abbreviations and symbols.		
Correction No.	Order No. Ordinance No.	Adopted Adopted EFFECTIVE:

SECTION TWENTY-ONE -- Continued
 INFRASTRUCTURE FEE -- Continued

PORT INFRASTRUCTURE FUND

The first Terminal Operator to handle containerized merchandise subject to the Infrastructure Fee on Containers shall collect and remit the Infrastructure Fee on Containers to the Port of Los Angeles, to be held in the Port Infrastructure Fund and used exclusively for Approved Infrastructure Projects. If the share of Approved Infrastructure Projects costs allocable to be recovered from the Port Infrastructure Fund have been fully paid and funds remain in the Port Infrastructure Fund, these funds may be used for additional infrastructure projects of similar utility to the Approved Infrastructure Projects which are approved by the Board of Harbor Commissioners to be funded by the Port Infrastructure Fund.

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See Item 10 for explanation of abbreviations and symbols.

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