



Executive Director's

Report to the

Board of Harbor Commissioners

**DATE: AUGUST 26, 2021**

**FROM: CARGO & INDUSTRIAL REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - AUTHORIZE STAFF TO REQUIRE A SURETY BOND FROM YANG MING MARINE TRANSPORT CORPORATION UNDER PERMIT NO. 787**

**SUMMARY:**

Staff requests that the Board of Harbor Commissioners authorize the Executive Director to require Yang Ming Transport Corporation (Yang Ming) furnish a surety bond up to the amount of \$3,492,800 in connection with its restoration obligations under Permit No. 787 (Permit). The Permit expires October 10, 2021, and the proposed surety bond will provide additional financial security to the Harbor Department to ensure that Yang Ming completes restoration activities required under the Permit. Yang Ming will be financially responsible for furnishing the proposed surety bond.

**RECOMMENDATION:**

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

1. Find that the Director of Environmental Management has determined that the proposed action is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(18(d)) of the Los Angeles City CEQA Guidelines;
2. Authorize the Executive Director to Require a Surety Bond from Yang Ming under Permit No. 787 in the amount of up to \$3,492,800; and
3. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background - The City of Los Angeles Harbor Department (Harbor Department) entered into the Permit with Yang Ming, which expires on October 10, 2021, for container operations located at the Port of Los Angeles (Premises). Pursuant to the terms of the Permit, a number of administrative steps must be commenced prior to termination in order to ensure a smooth winding down and transition of Yang Ming's operations at the Premises. One such step is a requirement for Yang Ming to provide security in the form of a surety bond to "assure restoration of the premises including removal of hazardous material if at any time City demands such a bond." The Permit defines "City" as the City of Los Angeles, acting by and through its Board of Harbor Commissioners. Accordingly, staff requests that the Board demand such surety bond pursuant to the foregoing language of the Permit, and authorize the Executive Director to transmit that demand in writing to Yang Ming.

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Pursuant to the terms of the Permit, the Harbor Department provided formal written notice to Yang Ming on June 11, 2021, and again on August 17, 2021, of a number of administrative steps that need to be taken in order to comply with the Permit's requirements, including the Harbor Department's intent to require a surety bond.

Specifically, the Harbor Department provided notice pursuant to Section 8(b)(3) of the Permit that it is exercising its right to require that Yang Ming "provide City a surety bond to assure restoration of the premises including removal of hazardous material . . . ." In accordance with terms of the Permit, the Executive Director has the sole discretion to determine the amount of the surety bond. The bond amount, discussed further below, was determined by the Executive Director using staffs' estimate of actual costs the Harbor Department would incur should it have to step-in and perform the required restoration if Yang Ming fails to comply. Further, in accordance with the Permit, the Executive Director provided Yang Ming an opportunity to provide its opinion as to the amount supported by a detailed estimate from an independent contractor. The estimate is currently under review by Yang Ming.

Determination of Bond Amount - In order to determine Yang Ming's restoration obligations, in late June and early July 2021, staff conducted five close-out inspections at the Premises to commence the winding down of Yang Ming's operations. To that end, staff has determined the items listed on Exhibit A (Transmittal 1) include the restoration obligations Yang Ming must perform in order to comply with the terms and conditions under the Permit. While Exhibit A lists various items, they generally fall within two categories: 1) costs for certain repairs to City-owned improvements, and 2) potential costs to decommission ship-to-shore cranes. Some of the items requiring restoration may be resolved prior to the actual bond request, thus negating the need to include the item's cost (total or partial) in the requested bond amount.

Function of Surety Bond - The bond amount is intended to guarantee Yang Ming's performance in the event Yang Ming fails to restore the Premises, and is intended to cover resulting damages or losses to the Harbor Department due to such failure. The surety bond will involve three parties: the obligee (Harbor Department), the principal (Yang Ming), and the surety (company that will agree to guarantee payment of any valid claim). As the principal, Yang Ming will be the responsible party in acquiring the bond from the surety and naming the Harbor Department as the obligee. If Yang Ming's restoration obligations are not fulfilled, as the named obligee, the Harbor Department will be entitled to make a claim directly to the surety. If the claim is deemed valid, it will be paid directly by the surety to the Harbor Department in an amount that cannot exceed the bond amount.

Accordingly, staff is requesting that the Executive Director be given the authority by the Board to request up to \$3,492,800 for the amount of the surety bond required for the restoration of the Premises.

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is the authorization of the Executive Director's requirement of Yang Ming to furnish a surety bond in connection with Yang Ming's restoration obligations under their Permit, which is an administrative activity. Execution of restoration activities are separate from the approval of this requirement, and will require a separate assessment under CEQA. Therefore, the Director of Environmental Management has determined that the proposed action of authorization of the surety bond is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Approval of the proposed surety bond will provide the Harbor Department with additional assurance that Yang Ming will complete its restoration obligations under Permit No. 787. As Yang Ming is financially responsible for furnishing the proposed surety bond, the Harbor Department will not incur additional expenses if the proposed action is approved.

**CITY ATTORNEY:**

The recommendation to require a surety bond from Yang Ming Marine Transport Corporation raises no legal issues at this time. The proposed demand instrument is subject to approval as to form by the Office of the City Attorney.

**TRANSMITTAL:**

- 1. Exhibit A

FIS Approval: MB  
CA Approval: SO

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