

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

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

1. Section 4 is amended by adding the following as a new second paragraph of Section 4:

“This Section 4 is amended by the Seventh Amendment to Permit No. 733 (the “Seventh Amendment”), effective as of the date that is defined in the Seventh Amendment and referred to therein and herein as the “Seventh Amendment Effective Date.” The parties acknowledge and agree that although prior Section 4 is amended and superseded by the Seventh Amendment to the extent provided therein, the provisions of Section 4 as they existed prior to the Seventh Amendment Effective Date shall continue to govern the rights and obligations of the parties as to compensation due to City for periods prior to the Seventh Amendment Effective Date.”

2. Subsections 4(a), (a)(1), (a)(2), (a)(3), (b), (b)(1), (b)(3), (b)(4), (b)(5), (c), (c)(1), (c)(1)(A)(B), and (c)(2) of Permit No. 733, are amended by deleting the previous subsections and adding new subsections 4(a), (b), (b)(1), (b)(3), (b)(4), (b)(5), (c)(1), (c)(1)(A)(B)(C)(D)(E)(F), (c)(2), and (c)(3) to read as follows:

“(a) “Compensation” Defined. Commencing on the Seventh Amendment Effective Date, Tenant shall pay to City on behalf of itself and its invitees the amounts payable to City under this Section 4.

“Compensation” is defined as the total aggregate amount Tenant is required to pay to City under this Section 4 for each compensation year, which consists of the Twenty-Foot Equivalent Unit Container (“TEU”) charges payable under subsection (c)(1), the wharfage and dockage charges payable under subsection (c)(2) and dockage charges payable under subsection (c)(3).

(b) Minimum Annual Guarantee. For each compensation year during the term of this Agreement, Tenant guarantees to City a minimum annual payment, which is referred to in this Agreement as the “minimum annual guarantee” or “MAG.” The MAG is the aggregate minimum annual payment which Tenant must make to City each year for the use of the Premises. Only TEU charges payable under subsection (c)(1), wharfage and dockage charges payable under subsection (c)(2) and dockage charges payable under subsection (c)(3) shall be counted toward the MAG.

(1) Calculation of the MAG. For the 5-Year Period ending on December 31, 2016, the MAG is calculated upon a cost per acre

basis of One Hundred Fifty Three Thousand Four Hundred Fifty Four Dollars (\$153,454) per acre. It is assumed that the total acreage of the Premises as of the Seventh Amendment Effective Date shall be two hundred sixty one and three one hundredths (261.03) acres. If the actual acreage varies from this amount, as provided in Section 2(b), or if at any time during the term of this Agreement area is added to or deleted from the Premises, the amount of the MAG shall be adjusted to reflect the variance in actual acreage by increasing or decreasing the MAG at the rate of \$113,000 (and adjusted to reflect the current Percentage Adjustment Factor pursuant to subsection 4(d)(5)(D)(i)) per acre, and such adjustment shall be prorated to reflect any period of less than one (1) year during which such variance in acreage is in effect. In no event, however, shall the acreage fall below one hundred ninety and eight-tenths (190.8) acres, nor shall the MAG fall below Twenty-nine Million Two Hundred Seventy-Nine Thousand Twenty-Three Dollars (\$29,279,023).

(3) Full Payment of the MAG. Subject to the provisions of paragraph (5) below, if Tenant has not generated sufficient TEU charges and wharfage and dockage charges to pay City the MAG by the end of each compensation year, Tenant shall within thirty (30) days of the end of each year pay such additional sums as are necessary to assure that City has been paid the full MAG. All monies due and unpaid after the thirty (30) days has elapsed shall be subject to a late payment charge at the rate provided in Item No. 270 of Tariff No. 4, currently two percent (2%) per month, or at the rate provided by any amendment or successor to Tariff No. 4.

(4) Deficient Payments. If Tenant has been required in any preceding year to make up a deficiency in the MAG as provided above in paragraph (3), unless such deficiency is eliminated by offsetting amounts previously paid to City as provided below in paragraph (5), or if Tenant has received a notice of delinquency from City for failure to pay amounts due to City within thirty (30) calendar days of invoice, City may require Tenant to pay the MAG in monthly installments at the beginning of each month for the balance of the year and for any succeeding year(s) as City may require, provided that Tenant's obligation to pay monthly installments of the MAG shall cease if Tenant's payment of TEU, wharfage and dockage charges exceed the MAG in any compensation year and all outstanding delinquency has been cured. Each payment shall be in the amount of one-twelfth (1/12) of the MAG for such adjusted amount as is necessary to assure that City will receive full payment of the MAG by the end of the year.

(5) Offset of Deficiency in Payment of MAG. If, at the end of the second compensation year or any subsequent compensation year during the term of this Agreement, Tenant has not remitted to the City sufficient TEU, wharfage and dockage charges to cover its obligation for payment of the MAG for the year, Tenant shall be entitled to offset the amount of the deficiency owed to City by the amount, if any, of combined TEU, wharfage and dockage charges paid to City during the immediately preceding year in excess of the MAG in effect during such preceding year. If the amount paid to City by Tenant during the preceding years was sufficient to offset the entire amount of the deficiency in the current year's MAG, then such deficiency in the current year shall be eliminated. If the amount paid by Tenant during the preceding year was not sufficient to offset the entire amount of the deficiency in the current year's MAG, Tenant shall pay the remaining balance of the MAG immediately upon receipt of City's invoice for the balance. Tenant shall have no right to carry over the amount of any yearly compensation paid to City in excess of the previous year's MAG to offset any deficiency incurred in any subsequent year.

(c)(1) Twenty-Foot Equivalent Unit Container ("TEU") Charges. A single charge referred to as the "TEU charge" shall be paid to City by Tenant for each and every cargo container, loaded or empty, inbound or outbound, for passage onto, over, through or under wharves or wharf premises, or between vessels or over side vessels (to or from barge, lighter or water) when berthed at or adjacent to wharves or wharf premises, or when moored in a slip adjacent to a wharf or wharf premise. Such containers shall be converted by measurement of length into "twenty-foot equivalent units" ("TEUs"), or any fraction thereof. On transshipped containers and transshipment merchandise as defined in Item 515 of the Section Five of Exhibit "B," the TEU charge shall be assessed once only, on the inbound movement. The containers that neither enter nor leave the Premises by vessel are exempt from the TEU charge and do not apply toward determining the final TEU charge.

(A) TEU/Acre Rate Schedule. The rate to be charged per TEU shall be established according to the total number of TEUs handled by Tenant, per acre, per compensation year, based upon a sliding efficiency scale, as set forth in the document entitled "TEU/Acre Rate Schedule," which is attached to this Agreement as Exhibit "B-1," and which is incorporated herein by reference. Each Efficiency Bracket defined by a volume range of TEUs per acre in Exhibit B-1 designates a rate to be charged per TEU. For purposes of determining Tenant's "efficiency bracket" and thereby the applicable rate charged per TEU in accordance with Exhibit "B-1" only the total acreage of the "Terminal Area," defined as Parcels Nos. 1, 2, and 3, as shown on Exhibit "A," shall be included. The Terminal Area subject to the efficiency scale shall total 261.03

acres. If the actual acreage varies from this amount, as provided in Section 2(b), or if at any time during the term of this Agreement area is added to or deleted from the Premises, the Terminal Area shall be adjusted to reflect the variance in actual acreage by increasing or decreasing the Terminal Area by the acreage increase or decrease, and such adjustment shall be prorated to reflect any period of less than one (1) year during which such variance in acreage is in effect. The Efficiency Brackets and applicable rates per TEU for each bracket set forth in Exhibit "B-1" shall be and remain in effect during the 5-Year Period which ends on December 31, 2016. The initial efficiency bracket on the Seventh Amendment Effective Date shall be the container throughput at the Premises for the twelve (12) months period prior to the Seventh Amendment Effective Date.

(B) Notwithstanding anything in this Agreement to the contrary, with respect to container vessels and non-container vessels carrying containerized cargo which are loaded or unloaded at the Premises, TEU charges shall be deemed to be inclusive and in lieu of all wharfage and dockage.

(C) TEUs controlled by Tenant or users of the Premises other than Tenant which are handled upon the Premises shall be counted in determining Tenant's Efficiency Bracket; TEUs controlled by Tenant or others which are not handled upon the Premises subject to this Permit shall not be counted in determining the Tenant's Efficiency Bracket.

(D) Readjustment of TEU Charges. Following the expiration of each 5-Year Period that expires after the Seventh Amendment Effective Date, the TEU rates within each Efficiency Bracket shall be adjusted for each successive 5-Year Period of the term of this Permit, as provided below in subsection (d)(5)(D)(ii) of this Section 4. Upon completion of such periodic readjustment of the TEU rates, and effective as of January 1 of the succeeding 5-Year Period, the TEU/Acre Rate Schedule shall be revised to reflect such adjustment, and shall be marked in sequence as Exhibit "B-2," "B-3," etc., and shall be appended to this Permit, effective upon the effective date of such TEU rate adjustment(s). The TEU/Acre Rate Schedule, as revised, shall be incorporated herein by reference and shall supersede the previous exhibit for all purposes relating to the 5-Year Period during which the adjusted rates are applicable. Nothing herein in any way changes the dates of any currently established 5-Year Period.

(E) Semi-Annual Review of Applicable Efficiency Bracket. The efficiency bracket applicable to Tenant's TEU volume shall be subject to review in the month of June of each compensation year,

and within sixty (60) days after the end of each compensation year, with the first such review to occur in the sixty (60) days following the end of the compensation year that the Seventh Amendment becomes effective. During the June review, City and Tenant shall verify the total number of TEUs per acre actually handled by Tenant through or upon the premises during the preceding five (5) month period ending May 31, along with a projection of the TEU throughput for the month of June, which Tenant shall provide to City, and shall review Tenant's TEU volume projections for the upcoming half-year. City and Tenant shall mutually determine whether the efficiency bracket in effect at mid-year requires adjustment to reflect Tenant's actual and projected TEU throughput. If the efficiency bracket corresponding to the anticipated current compensation year throughput, consisting of five months of actual throughput and June through December Tenant projections, is different from the one effective from January through June, a new efficiency bracket from Exhibit B-1 will be recommended for July through December. Given the anticipated current compensation year throughput, the recommended efficiency bracket will be selected so as to minimize the final adjusted billing (or credit) that occurs after the compensation year ends (defined below in this section). The recommended bracket shall, upon mutual agreement between City and Tenant, which agreement shall not be unreasonably withheld, be adjusted for the ensuing six (6) month period, and Tenant shall be charged at the corresponding TEU rate for the balance of the compensation year. If City and Tenant fail to agree upon such adjustment after using good faith efforts to do so, the current efficiency bracket shall remain unchanged for the balance of the compensation year. Within sixty (60) days following the end of each compensation year, City shall review Tenant's total TEU throughput per acre for the year, readjust Tenant's efficiency bracket for the prior compensation year, if necessary, to reflect Tenant's actual throughput, and prepare an adjusted billing for all TEU charges accrued during the compensation year at the rate corresponding to the correct efficiency bracket. Tenant shall pay any additional amounts due within thirty (30) calendar days of City's issuance of the adjusted billing; Tenant shall be issued a credit or refund for TEU charges paid to City in excess of the adjusted billing, which may be applied to any monies owed to City under this Agreement, except for the final year of the term of this Agreement, in which case City shall pay to Tenant within thirty (30) calendar days of City's issuance of the adjusted billing the amount of the TEU charges paid to City in excess of the adjusted billing. The efficiency bracket and corresponding applicable rate as adjusted for the expired compensation year shall remain in effect during the ensuing compensation year, subject to semi-annual adjustment as provided above in this subsection.

(F) Discount on Empty Containers. Tenant shall not receive any discount for empty containers.

(c)(2) Wharfage and Dockage Charges. Subject to the next-to-last sentence of this Section 4(c)(2), wharfage charges shall apply only to non-containerized cargo that is loaded or unloaded at the Premises to or from any vessel(s). Such non-containerized cargo loaded or unloaded at the Premises during each compensation year shall be subject to wharfage charges at fifty percent (50%) of the rates set forth in the Section Five that is appended to Exhibit "B," adjusted for each 5-Year Period as provided in subsection (d)(5). Any vessels of Tenant and its invitees that carry only non-containerized cargo and that dock and load or unload non-containerized cargo at the Premises during each compensation year shall be subject to fifty percent (50%) of the dockage charges at the rates set forth in the Section Four that is appended to Exhibit "B," adjusted for each 5-Year Period as provided in subsection (d)(5). Wharfage shall not be assessed on container cranes and terminal operating equipment (excluding empty cargo containers) received at the Premises for use in Tenant's operation of the Premises, nor upon any merchandise generally exempted under the provisions of Tariff 4 as in effect at the time the cargo is handled at the Premises. As of 2015, the current Percentage Adjustment Factor is 35.8%. Notwithstanding anything in this Agreement to the contrary, the wharfage and dockage charges that are payable under this Section shall be deemed to be inclusive and in lieu of all other wharfage and dockage, payable with respect to any cargo or vessel described in this Section.

(c)(3) Certain Vessels. Any vessel that berths at the Premises but neither loads nor unloads cargo at the Premises shall pay fifty percent (50%) of the dockage charges pursuant to the Section Four that is appended to Exhibit "B," and as adjusted for each 5-Year Period as provided in subsection 4(d)(5). Notwithstanding anything in this Agreement to the contrary, the dockage charges that are payable under this Section shall be deemed to be inclusive and in lieu of all other wharfage and dockage, payable with respect to any vessel described in this Section."

3. Section 4, Compensation, (d), Readjustment of Compensation, is amended by deleting the entirety of the first paragraph and inserting in its place:

"(d) Readjustment of Compensation. Following the end of the first 5-Year Period, the MAG and the Compensation to be paid by Tenant for the use of the Premises shall be readjusted for each ensuing 5-Year Period, or any portion thereof, according to the procedure set forth below, subject in the case of the TEU Charges to the provisions of subsection (c)(1)(D)."

4. Section 4, Compensation, (d), Readjustment of Compensation, subsection (5)(D) is amended by deleting the existing subsection (5)(D) (including subsections) and inserting in its place:

“Application of the Adjustment Factor. The Adjustment Factor is defined as the sum of all preceding 5-Year Periods’ accumulated percentage changes in either the PAF or the PCC as determined above in paragraph (5)(C). To readjust the MAG and the Compensation payable by Tenant during each compensation year of the new 5-Year Period, each shall be increased as follows:

“(i) Readjustment of the MAG. The MAG shall be readjusted by multiplying the Base MAG (defined above at paragraph (1) of this subsection (d)) by one hundred percent (100%) plus the Adjustment Factor. E.g.: [the number of acres included in the Premises at the time of readjustment] x \$113,000 x [100% + Adjustment Factor] = MAG for the new 5-Year Period.

“(ii)(AA) Readjustment of Wharfage and Dockage Rates for Non-Containerized Cargo. The wharfage and dockage amounts payable for non-containerized cargo under subsection (c)(2) and the dockage charges payable for certain vessels under subsection (c)(3) shall be readjusted for the new 5-Year Period by multiplying the amounts due as set forth in Exhibit “B” Sections Four and Five by one hundred percent (100%) plus the Adjustment Factor.

“(ii)(AB) Readjustment of Twenty Foot Equivalent Container (“TEU”) Charges. The TEU rates payable under subsection (c)(1) shall be readjusted for the new 5-Year Period by multiplying (x) the rates in effect for the prior 5-Year Period, by (y) the percentage (if any) by which “a” exceeds “b,” where “a” is equal to one hundred percent (100%) plus the Adjustment Factor for the new 5-Year Period, and “b” is equal to one hundred percent (100%) plus the Adjustment Factor for the prior 5-Year Period. The adjusted rates would remain in effect until the next five year review. For example, if the Adjustment Factor for the 5-Year Period beginning January 1, 2017 increases to 40.1% from the 35.8% Adjustment Factor in effect for the 5-Year Period ending December 31, 2016, there would be an increase of 3.1664% in the rates payable under subsection (c)(1) effective January 1, 2017. In this example, the 3.1664% is calculated as follows as described above: $(140.1\% - 135.8\%) / 135.8\% = 3.1664\%$.

“(iii) Adjustment Factor of Ten Percent or More. If the change in the Adjustment Factor as compared to the Adjustment Factor for the previous 5-Year Period is less than ten percent (10%), the entire increase shall be effective immediately at the outset of the new 5-

Year Period. If, however, the change in the Adjustment Factor as compared to the Adjustment Factor for the previous 5-Year Period is ten percent (10%) or greater, one-half (1/2) of the increase shall be effective during the first compensation year of the new 5-Year Period; the entire increase shall be applied in each of the remaining compensation years during such new 5-Year Period."

5. The effective date of this Seventh Amendment shall be April 1, 2016, provided that it is executed by Tenant and the Executive Director of the Harbor Department of the City of Los Angeles, following approval in accordance with the City of Los Angeles Charter and Administrative Code, including but not limited to the approval of the City Council of the Resolution or Order approving this Amendment ("Seventh Amendment Effective Date").

Except as amended herein, as previously amended, all remaining terms and conditions of Permit No. 733 shall remain the same.

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IN WITNESS WHEREOF, the parties hereto have executed this Seventh Amendment to Permit No. 733 on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____

By _____
Executive Director

Attest _____
Board Secretary

EAGLE MARINE SERVICES, LTD

Dated: 3-28-16

By *Gregory J. Suter*
CEO EMS

(Type/Print Name and Title)
Attest *Eric R. Smith*
VP General Counsel
(Type/Print Name and Title)

APPROVED AS TO FORM AND LEGALITY

April 1, 2016
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By *Christopher B. Bobo*
CHRISTOPHER B. BOBO, Assistant

CBB/jrs

Equivalent TEU Rates

EFFICIENCY BRACKET		Equiv- alent Rate Per TEU	EFFICIENCY BRACKET		Equiv- alent Rate Per TEU
Low	High		Low	High	
0	- 2499	62.59	6400	- 6499	36.45
2500	- 2599	60.13	6500	- 6599	36.21
2600	- 2699	57.86	6600	- 6699	35.97
2700	- 2799	55.75	6700	- 6799	35.74
2800	- 2899	54.29	6800	- 6899	35.51
2900	- 2999	53.60	6900	- 6999	35.30
3000	- 3099	52.96	7000	- 7099	35.08
3100	- 3199	52.36	7100	- 7199	34.88
3200	- 3299	51.80	7200	- 7299	34.68
3300	- 3399	51.27	7300	- 7399	34.49
3400	- 3499	50.41	7400	- 7499	34.30
3500	- 3599	49.57	7500	- 7599	34.11
3600	- 3699	48.77	7600	- 7699	33.93
3700	- 3799	48.01	7700	- 7799	33.76
3800	- 3899	47.29	7800	- 7899	33.59
3900	- 3999	46.61	7900	- 7999	33.42
4000	- 4099	45.96	8000	- 8099	33.26
4100	- 4199	45.35	8100	- 8199	33.10
4200	- 4299	44.76	8200	- 8299	32.95
4300	- 4399	44.20	8300	- 8399	32.80
4400	- 4499	43.67	8400	- 8499	32.65
4500	- 4599	43.16	8500	- 8599	32.51
4600	- 4699	42.67	8600	- 8699	32.37
4700	- 4799	42.20	8700	- 8799	32.23
4800	- 4899	41.75	8800	- 8899	32.10
4900	- 4999	41.32	8900	- 8999	31.97
5000	- 5099	40.90	9000	- 9099	31.84
5100	- 5199	40.50	9100	- 9199	31.71
5200	- 5299	40.12	9200	- 9299	31.59
5300	- 5399	39.75	9300	- 9399	31.47
5400	- 5499	39.40	9400	- 9499	31.35
5500	- 5599	39.05	9500	- 9599	31.24
5600	- 5699	38.72	9600	- 9699	31.13
5700	- 5799	38.41	9700	- 9799	31.02
5800	- 5899	38.10	9800	- 9899	30.91
5900	- 5999	37.80	9900	- 9999	30.80
6000	- 6099	37.51	10000	greater	30.70
6100	- 6199	37.23			
6200	- 6299	36.96			
6300	- 6399	36.70			