



THE PORT  
OF LOS ANGELES  
Executive Director's  
Report to the

Board of Harbor Commissioners

**DATE: AUGUST 26, 2021**

**FROM: CARGO & INDUSTRIAL REAL ESTATE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVE PERMIT NO. 953 WITH EVERGLADES COMPANY TERMINAL, INC; GUARANTY WITH TERMINAL INVESTMENT LIMITED HOLDING SA**

**SUMMARY:**

Staff requests approval and issuance of Permit No. 953 (Permit 953) between Everglades Company Terminal, Inc. (Everglades) and the City of Los Angeles Harbor Department (Harbor Department), and approval of a guaranty of that Permit furnished by Terminal Investment Limited Holding SA (TIL). The Permit allows Everglades to operate a marine container terminal at Berths 121 to 127.

The term of the proposed Permit is three years. The Permit will yield a minimum of \$26,039,623 in the first year, followed by annual three percent increases thereafter on the minimum annual guarantee and rent due for the on-dock rail facility, plus \$137,412 per year for office space at rates set forth in the Tariff.

The proposed award of Permit 953 arises from a public competitive solicitation process that commenced on June 1, 2021, and closed on June 30, 2021, in which two proposals were received, analyzed and reviewed, and scored by a review panel consisting of Harbor Department and other City of Los Angeles personnel. That public competitive process ultimately resulted in staff's determination that Everglades was the superior proposer, as detailed below.

**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 administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article III Class 1(14) and Article II Section 1 of the Los Angeles City CEQA Guidelines;
2. Find that entering into this Permit No. 953 is in the best interest of the City of Los Angeles despite certain exceptions to the City of Los Angeles Harbor Department's Leasing Policy, Section XI, concerning a 2 percent holdback on security instruments for a maintenance fund and Section VIII concerning the rate of return policy;
3. Approve Permit No. 953 with Everglades Company Terminal, Inc.;
4. Approve the Guaranty provided by Terminal Investment Limited Holding SA;

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5. Authorize the Executive Director to execute and the Board Secretary to attest to Permit No. 953;
6. Authorize the Executive Director to execute and the Board Secretary to attest to the parent guaranty provided by Terminal Investment Limited Holding SA; and
7. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

The proposed Permit arises from a solicitation process conducted in June 2021, for premises located at Berths 121-127 for operation of a marine container terminal, which is depicted on Transmittal No. 1 (site map). The discussion below details the basis for the award of the proposed permit to Everglades.

1. Background on Berths 121-127 Marine Container Terminal

On May 14, 1998, the Board issued Permit No. 787 (Permit 787) to Yang Ming Marine Transport Corporation (Yang Ming) to use and occupy Berths 121 to 131, effective October 11, 1996 for a term of 25 years, with a specific and explicit expiration date of October 10, 2021. Yang Ming's premises are unique, relative to other terminals, in that they are limited to handle vessels that carry up to approximately 6,500 twenty-foot equivalent units or TEUs, as compared to other terminals at the Port of Los Angeles that can handle larger vessels. This limitation is largely due to the existing ship-to-shore crane infrastructure which supports a maximum of 50-foot gauge cranes (versus other terminals with 100-foot gauge cranes) and at-berth water-depth of minus ~39 to 44 feet (versus 50 feet or more at other terminals).

Notwithstanding the unique characteristics of this terminal, it is a strategic asset of critical importance to the Harbor Department, particularly at a time when the San Pedro Bay ports are experiencing an unprecedented amount of cargo volume. Cargo volume processed at the Yang Ming Terminal accounted for 6.8 percent of total volume handled at the Port of Los Angeles in Fiscal Year 2021, 6.2 percent of the Harbor Department's operating revenue, and 8.5 percent of total operating revenue from marine container terminal operations. Further, Yang Ming, through its operating entity, West Basin Container Terminal, has employed approximately 1,200 full- and part-time contract and management personnel combined, and contributes to the approximate 1 in 9 jobs in the five-county region. As such, uninterrupted operations at Berths 121-127 is of critical importance to the supply chain, the regional and national economy, and the Harbor Department.

For many years, Yang Ming and the Harbor Department have discussed a possible extension of Yang Ming's occupancy of Berths 121 to 131, as evidenced by the Notice of Preparation issued by the Harbor Department in 2014 for redevelopment of this terminal. Despite ongoing negotiations, an agreement was not reached with Yang Ming to extend its occupancy as the tenant.

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As noted, Permit 787 expires October 10, 2021. Despite concerted and ongoing efforts to negotiate an agreement for Yang Ming's continued occupancy of the premises, even on a short-term basis, no agreement materialized. As Permit 787's expiration date grew closer, staff determined that preparing a Request for Proposal (RFP) in an attempt to procure a new permit for the Berths 121-127 premises would be prudent since the Harbor Department had no assurance that Yang Ming would continue its occupancy beyond October 10, 2021.

This decision was underpinned by the fact that continuity of operations, in some form, is critical for a number of reasons, specifically to:

- Maintain cargo handling capacity in a period of unprecedented cargo volumes, and to facilitate the beneficial use and productivity of strategically important assets;
- Preserve the direct and indirect jobs associated with the operations at the premises noted above;
- Facilitate the Harbor Department's ability to fulfill its trustee duties under the Tidelands Trust; and
- Maintain a revenue source for this terminal valued at approximately \$26 million minimum annually and to maintain the Harbor Department's current AA bond rating.

In light of the overarching objective to ensure uninterrupted and continued operations beyond October 10, 2021, and a myriad of negative implications that could arise from the terminal going dark for any period of time, staff developed the RFP for a short-term leasing arrangement. Given the objective stated above and the time constraints imposed by the expiration date of Permit 787 on October 10, 2021, staff determined that it was in the best interests of the Harbor Department to:

- Release the RFP during the term of Permit 787 in order to ensure a sufficient, albeit compressed, time for the solicitation process, including preparation of legal documents and an award to the successful proposer by the Board, and the completion of the required City-approval process, all of which would need to occur before the expiration date of October 10, 2021.
- Establish tight and prescriptive limitations around the physical operations that could be undertaken on the premises to facilitate the potential for an efficient and streamlined entitlements process. In that regard, the RFP: a) limited the term of the opportunity to three years, without the possibility for extension, b) prohibited any expansion of use or terminal redevelopment; and c) required the successful proposer to secure and deploy ship-to-shore cranes similar to those in operation (i.e. 50-gauge) and cargo terminal equipment that is the same or cleaner (i.e. from an air quality emissions standpoint) than the existing equipment in operation at the terminal.

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In view of these limitations, the successful proposer presumably would need to consider options that would include negotiating an arrangement with Yang Ming to leave the terminal equipment in place or to procure new equipment having potentially long lead-times. The RFP, however, left the decision to proposers to determine for themselves the business potential of the opportunity. Further, the Harbor Department would not participate in any interactions concerning terminal equipment between the successful proposer and Yang Ming, and, in effect, required proposers to assume the risk associated with the unknown condition of the equipment, any other improvements and the premises themselves if they elected to submit a proposal. It should be noted that the Harbor Department's exposure to this risk was largely mitigated by the requirement that the tenant pay a minimum annual guaranteed rent, regardless of any circumstance, as described below.

### 3. The Solicitation

The Harbor Department released on June 1, 2021, for a 30-day period, an RFP in conformity with Section II(1) of the Harbor Department's Leasing Policy which sought interest in a leasing opportunity of three years, with no possibility of any extension, and restricted operations as detailed above.

The solicitation set forth in detail the Harbor Department's objectives to 1) continue operations of an existing marine container terminal at Berths 121 to 127 following the October 10, 2021 expiration of the existing permit, 2) generate jobs, and, 3) promote trade in accordance with the Port Master Plan and the Tidelands Trust.

Provided below is an overview of the solicitation:

- Shipping Line Affiliation: The RFP required proposers to evidence an affiliation with a container shipping line, as defined in the Shipping Act of 1984. The purpose of this requirement was to ensure the successful proposer would have a discernible connection with an entity that maintained control over cargo-routing decisions and be in a position to make a volume commitment.
- Commercial Terms:
  - The premises are provided to the successful proposer as-is on the effective date of the Permit, for a term of three years, without any right of holdover or any possibility of extension(s).
    - The premises excludes the lay berth to the north of Berths 121-127 at Berth 128-131 (formerly permitted to Yang Ming), as they are non-functioning berths for marine container operations, which in effect reduced the size of the backland premises from 162.52 permitted under Permit 787 to 159.57 acres under the proposed Permit.
  - Terminal redevelopment is prohibited, and as such, any modification to upsize the cranes or deepen at-berth water depth to accommodate larger vessels, more specifically, is prohibited.

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- The RFP prescribed the rates, fees, and charges due under the Permit and took into account 1) the short-term nature of the permit, 2) the physical characteristics of the terminal relative to other San Pedro Bay terminals, i.e. 50-gauge crane rail, shallow at-berth water depth, etc., and 3) inherent business risk associated with the obligation to secure all required equipment that is the same or superior than what is in operation today at the terminal. The guaranteed rent components of the proposed Permit, as published in the RFP, are essentially a continuation of the fees in place under Permit 787; however, subject to increase as described above. Based on these factors, coupled with a market survey, staff determined the rates, fees, and charges published in the RFP are appropriate for this transaction.

The Harbor Department published the RFP on the City of Los Angeles' solicitation platform, LABAVN, and alerted potential interested parties of the opportunity (e.g. shipping lines, terminal operators, etc.). Two proposals were received by the proposal due date. The low number of proposals received was not unexpected given the factors involved as to the physical limitations of the premises, prohibition on development, inherent risk associated with securing terminal equipment, and short-term duration of the permit.

#### 4. Proposed Award

As detailed below, and in conformity with Section IV(3) of the Harbor Department's Leasing Policy, which requires the performance of due diligence in tenant selection, the Everglades' proposal met all of the requirements of the RFP, and received the highest number of points from the Evaluation Panel. As such, staff is recommending 1) award and approval of the Permit to Everglades, and 2) approval of the guaranty between Everglades and TIL.

Everglades evidenced it possesses the required affiliation with a shipping line due to its affiliation with Mediterranean Shipping Company, an entity with authority over cargo routing decisions and one of the largest shipping lines in the world. See attached corporate organizational chart provided as Transmittal No. 2. Through its RFP proposal, Everglades demonstrated it has the appropriate volume commitments in place and financial wherewithal to fulfill the compensation obligations of the term permit.

#### Procurement process

On June 30, 2021, two proposers submitted proposals in response to the RFP for the Leasing Opportunity for Operation of a Marine Container Terminal at Berths 121-127 at the Port of Los Angeles. The proposals were reviewed by the four-member Evaluation Panel, which consisted of the following:

- Deputy Executive Director, Harbor Department, Finance and Administration
- Deputy Executive Director, Harbor Department, Development
- Deputy Executive Director, Los Angeles World Airports, Sustainability and Revenue Management
- Chief Management Analyst, Harbor Department, Cargo and Industrial Real Estate - Wharfingers

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The Evaluation Criteria, published in the RFP and shown below, were used to rank the proposals. Consistent with the RFP selection guidelines, the Evaluation Panel elected to interview the proposers. Interviews were conducted on July 23, 2021.

<u>Criteria</u>	<u>Possible Points</u>
Organization and Team	30
Qualifications, Experience, and References	20
Business and Operations Plan	30
Financial Capability	20
Total	100

Following the interviews, the Evaluation Panel scored the proposals based on the Evaluation Criteria shown in the table below.

<u>Proposer</u>	<u>Total Points</u>
Everglades	330
Company B	260

Despite certain material proposal deficiencies, Company B's proposal was evaluated on its merits nonetheless to ensure that it received a good faith review. The Everglades' proposal met all of the requirements of the RFP, and received the highest number of points from the Evaluation Panel. As such, staff is recommending award and approval of the Permit to Everglades, and approval of the guaranty between Everglades and TIL.

#### 5. Proposed Permit

Material terms of the Permit (Transmittal 3) are as follows:

<u>Provisions</u>	<u>Description</u>
Real Estate Entitlement	Term Permit
Permitted Use	Operation of a Marine Container Terminal
Term	Three years
Holdover Provision	None
Extension Options	None

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<p>Premises (See Transmittal No. 1)</p>	<ul style="list-style-type: none"> <li>- Backland is comprised of 159.57 acres</li> <li>- Wharf is comprised of Berths 121 to 127, 2,000.13 linear feet</li> <li>- On-dock rail facility aka West Basin ICTF is comprised of 23.61 acres</li> <li>- Administration building located at 2001 John S. Gibson Blvd comprised of 22,358 square feet plus additional area for parking</li> </ul>
<p>Compensation</p>	<p>Compensation comprised of three components:</p> <ol style="list-style-type: none"> <li>1. Greater of a) Minimum Annual Guarantee or b) TEU Charges:             <ol style="list-style-type: none"> <li>a) <u>Minimum Annual Guarantee (MAG)</u>: MAG is a per acre base rent that is required to be paid regardless of how many Twenty Equivalent Units (TEUs) are handled at the premises:                 <ul style="list-style-type: none"> <li>- <u>MAG</u>: 159.57 acres X \$156,528/acre = \$24,977,173</li> </ul> </li> <li>b) <u>TEU Charges</u> The TEU charge fluctuates on an efficiency scale which adjusts TEU charges based on the number of TEUs that are handled annually at the premises. The greater the number of TEUs Everglades handles annually on a per-acre basis, the lower the cost Everglades must pay to the Harbor Department on a per-TEU basis. The TEU efficiency scale comprises TEU rates in ~100 TEU per-acre increments from 3,000 to 4,999 TEUs per acre, with an incremental rate for TEUs exceeding 5,000 TEUs per acre.  Total TEU charges include the charges derived from the efficiency bracket rate plus charges for incremental TEUs.</li> </ol> </li> <li>2. <u>West Basin ICTF Rent</u> 23.61 acres X \$45,000/acre = \$1,062,450/Year</li> <li>3. <u>Office Space Rent</u> \$137,412/Year (subject to increase with Tariff increase)</li> </ol>
<p>Compensation Adjustments</p>	<p>Two adjustment provisions apply to compensation:</p> <ol style="list-style-type: none"> <li>1. Annual three percent increases applicable to:             <ul style="list-style-type: none"> <li>• Minimum Annual Guarantee</li> <li>• West Basin ICTF Rent</li> </ul> </li> <li>2. Any increase in the Tariff rates for Merchandise Not Otherwise Specified will, upon the effective date thereof, be immediately and automatically applicable to readjust the TEU rates and the MAG.</li> </ol>

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Environmental Operating Conditions	<p>Since this is only a three-year permit, Everglades is responsible for:</p> <ul style="list-style-type: none"> <li>- Securing and deploying cargo handling equipment that is the same or cleaner (i.e. from an air quality emissions standpoint) than the existing equipment in operation at the terminal; and electrified ship-to-shore cranes connected to existing grid electrical power at the highline. The number of cranes must be identical to those currently in operation and must closely match the size, scale, and appearance of the existing cranes;</li> <li>- Complying with Clean Truck Program; and</li> <li>- Ensuring vessels calling at the terminal must utilize shore power known as Alternative Maritime Power (AMP) or an equivalent alternative technology while loading and unloading cargo in accordance with the California Air Resources Board Ocean-Going Vessels At-Berth Regulation. In addition, vessels must achieve 10 percent more shore power calls than required by CARB Regulation due to site specific surplus emission reductions required under Prop 1B grant funds.</li> </ul>
Maintenance	<p>With the exception of certain structural items (e.g. wharf, high/low voltage electrical, maintenance dredging, rock slopes, hydrants), Everglades is responsible for maintaining the premises and all improvements, at its sole cost and expense.</p>
Restoration	<p>Everglades is responsible for restoring the premises at the expiration or earlier termination of the Permit.</p> <p>Attached to the Permit is a baseline exhibit depicting the condition of the premises as of the Effective Date.</p>
Insurance	<p>Insurance provision includes all standard insurance requirements and has been reviewed as acceptable by the Risk Management Division.</p>
Security Deposit	<p>Three months' rent (i.e. 3/12 of MAG and West Basin ICTF rent) in the form of a letter of credit or cash.</p> <p>The following item required by the Leasing Policy was excluded from the Permit published with the RFP; staff determined the commercial terms described herein provide sufficient coverage in lieu of this policy item:</p> <ul style="list-style-type: none"> <li>• 2% holdback on security deposit for port maintenance fund</li> </ul> <p>Because staff recommends the holdback is excluded it constitutes an exception to the Leasing Policy, which requires Board findings as noted in the Recommendations Section.</p>
Guaranty	<p>Terminal Investment Limited Holding SA has agreed to irrevocably guarantee the timely payment and performance of all obligations of Everglades arising under the proposed Permit.</p> <p>See Transmittal No. 4.</p>

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The proposed action is the approval of Permit 953 between Everglades and the Harbor Department for operation of an existing marine container terminal at Berth 121-127, and approval of a guaranty of Permit 953 furnished by TIL, which are activities that can be seen with certainty to have no possibility of a significant effect on the environment, and activities that involve the issuance of any permit to use an existing structure or facility involving negligible or no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed actions are administratively and categorically exempt from the requirements of CEQA in accordance with Article III Class 1 (14) and Article II Section 1 of the Los Angeles City CEQA Guidelines.

Everglades will be required to comply with the Environmental Operating Conditions previously described above, which are incorporated into the Permit. The Environmental Management Division will track and monitor compliance of the conditions through compliance forms and other verification documents upon permit execution and during the three-year term of the Permit.

**FINANCIAL IMPACT:**

The term of proposed Permit is three years. The Permit will yield a minimum of \$26,039,623 in the first year, followed by annual three percent increases thereafter on the minimum annual guarantee and rent due on the on-dock rail facility, plus \$137,412 per year for office space at rates set forth in the Tariff. The purpose of the proposed Permit is to allow for continuity of existing operations for a three-year term, as such, this action is not informed by a traditional rate of return analysis as outlined in the Leasing Policy. This exception, which is appropriate considering the purpose and term of the Permit, is noted in the Recommendations Section above, item no. 2. The guaranteed rent components of the proposed Permit, as published in the RFP, are essentially a continuation of the fees in place under Permit 787; however, subject to increase as described above.

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**CITY ATTORNEY:**

Permit No. 953 and the Guaranty have been reviewed and approved as to form and legality by the Office of the City Attorney.

**TRANSMITTALS:**

1. Site Map
2. Everglades' Corporate Structure
3. Permit No. 953
4. Guaranty

FIS Approval: MB  
CA Approval: SO

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