12-19-13

THE PORT OF LOS ANGELES
Executive Director's Report to the Board of Harbor Commissioners

DATE: DECEMBER 19, 2013

FROM: FINANCE

SUBJECT: ORDER NO. _______ - PROPOSED SALE OF 49% OF INTERNATIONAL TRANSPORTATION, INC., A DELAWARE CORPORATION, THAT OWNS 100 PERCENT OF TRAPAC, INC., A TENANT OF THE CITY OF LOS ANGELES HARBOR DEPARTMENT, TO BIF II TP AGGREGATOR (DELAWARE), L.P., A SUBSIDIARY OF BROOKFIELD ASSET MANAGEMENT, INC. AND SOLELY CONTROLLED BY IT

SUMMARY:

Proposed is a request to provide consent to the sale of 49% of the ownership of International Transportation, Inc., a Delaware corporation (Tenant Holdco) that is currently a wholly owned subsidiary of the Mitsui O.S.K. Lines, Ltd. (MOL), to an entity (Transferee) legally known as BIF II TP Aggregator (Delaware), L.P., a Delaware limited partnership, a subsidiary of and controlled solely by Brookfield Asset Management, Inc., a Canadian corporation.

TraPac, Inc. (TraPac or Tenant), a wholly owned subsidiary of Tenant Holdco, initiated this request of consent. With Trapac's ultimate parent, MOL, remaining unaffected and with the parent's existing guarantee untouched, the risk position of the City of Los Angeles Harbor Department (Harbor Department) continues without being negatively affected in terms of its ultimate reliance on the guaranty of MOL.

RECOMMENDATION:

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

1. Approve the Order to consent to the sale of 49% of the ownership of International Transportation, Inc.;

2. Authorize the Executive Director to execute and the Board Secretary to attest to the Order to consent to the sale;

3. Authorize and direct the Board Secretary to transmit to the Los Angeles City Council for approval pursuant to Section 606 of the Charter of the City of Los Angeles the consent to the proposed transfer of 49% of the issued and outstanding shares of International Transportation, Inc., the holding company that owns TraPac, Inc., the tenant of the Harbor Department under Permit No. 881, as amended; and

4. Adopt Order No. __________.

DISCUSSION:

Background/Context – TraPac is a terminal operator that is wholly owned by Tenant Holdco, which in turn is wholly owned by MOL. MOL was founded in 1964, the result of a merger but has its roots going back to 1884. Originally part of the Mitsui trading group (known as a *zaibatsu*), it is now aligned with the Mitsui Sumitomo Group (known as a *keiretsu*), one of the largest business groups within Japan, with interlocking business relationships and shareholdings among other companies within the group.

Under Permit No. 881 (Permit) as amended dated September 29, 2009, the City of Los Angeles through the Board of Harbor Commissioners of the Port of Los Angeles granted to TraPac, the ability to operate through September 28, 2039 on the property specified under the Permit. TraPac operates at the northern end of the West Basin at Berths 136-147. This report had been presented at the December 12, 2013 meeting of the Harbor Commissioners but was continued in order for Harbor Department staff and the City Attorney to meet with representatives from the Transferee and the Tenant to ensure that the Tenant has fully complied with terms of the Permit to obtain consent to the transfer. The meeting took place on Monday, December 16, 2013. The information provided at the meeting fulfills the information requirements under the Permit.

Rights Under Permit – The Permit contains a provision for TraPac to obtain consent to transfer. Based on that provision, TraPac has requested that the Harbor Department consent to the sale of a minority share of Tenant Holdco to the Transferee owned by Brookfield Asset Management (Transmittal 2). Section 14 of the Permit governs transfers of interest. MOL's proposed sale of 49% of Holdco constitutes a "Transfer" within the meaning of Section 14.9 of the Permit.[1] As such, unless the City consents to that Transfer in accordance with the procedures outlined in Section 14 of the Permit, the proposed acquisition of 49% of TraPac, would be prohibited.

The procedure to obtain such consent is set forth in Section 14.2 of the Permit. Section 14.2 required TraPac to provide written notice known as a "Transfer Notice" at least 30 days before the proposed effective date of the proposed Transfer, and to provide the following:

(a) Specific identification of the entity or entities with whom TraPac proposes to undertake the Transfer ("Transferee");

(b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;

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[1] A copy of Section 14 of the Permit is attached hereto as Transmittal 1. Section 14.9 considers transfers of more than 25% of the economic interest in any entity directly or indirectly controlling the subject tenant a "Transfer".

(c) Specific and detailed description of the type of Transfer proposed, and the rights proposed to be transferred;

(d) Specific and detailed description of the operations proposed to be undertaken at the Premises by TraPac and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of TraPac and Transferee;

(e) All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;

(f) The proposed form of a guaranty or guarantys providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) A business plan for the Transferee including specific estimates of cargo volume anticipated under each of the following categories: existing contracts, contracts under negotiation and other specified sources;

(h) A general description of any planned Alterations or improvements to the Premises; and

(i) Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records or other information of TraPac or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of TraPac's request for consent.

Section 14.3 of the Permit sets forth a variety of factors including financial condition of the Transferee, any impact to the plans of the Harbor Department, and the character, experience and reputation of the Transferee to be considered in granting any consent and that the City will not unreasonably withhold its consent to a transfer.

<u>Risk Considerations</u> – Under the proposed sale, the Transferee will hold 49% of Tenant Holdco. The sale is a cash transaction purchasing existing shares with no new shares being issued and carrying an incentive payment if certain volume criteria are met. The Transferee will be a subsidiary of Brookfield Asset Management and be solely controlled by it. Brookfield Asset Management is a Canadian corporation that is listed on the Toronto and New York stock exchanges. The company has over $175 billion of assets under management and has a 100-year history of owning and operating assets

with a focus on property, renewable power, infrastructure, and private equity. However, as no special rights are contained in such ownership, the Transferee will hold a minority position in Tenant Holdco but with an equal number of members of the board. While the Transferee holds a minority position in the shares, the sale terms indicate that in certain instances actions of the company require a supermajority. These instances include issues such as charter amendments, issues related to the company's business plan, budget, and strategy, compensation of major officers, and other terms normally seen for a substantive minority investment. While this adds another component to the decision making process at Tenant Holdco and MOL, MOL will continue in its guaranty (Transmittal 3) of the timely payment and performance of all obligations of the Tenant arising under the Permit and MOL's obligations will continue until all debts, obligations and liabilities of the Tenant to the City under the Permit are paid and performed in full. Given such guaranty, the Harbor Department's business and risk position continue to be supported by the MOL guaranty. With MOL being a part of the Mitsui *keiretsu*, the strength of that guaranty remains unchanged.

From Brookfield Asset Management's perspective, the full guarantee of MOL is also important as the return on the cash injection it is providing to MOL depends heavily on the shipping line's ability to maintain and increase container volume. In this respect, the risks of the Transferee and the Harbor Department align. Any payment of dividends will be determined by the board of directors of TraPac and be paid pro-rata to the shareholders.

ENVIRONMENTAL ASSESSMENT:

The proposed action is to provide consent to an Order to allow the sale of 49% of Tenant Holdco to the Transferee with no change in business operations. As an administrative activity, the Director of Environmental Management has determined the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no direct employment effect.

FINANCIAL IMPACT:

The Harbor Department expects no negative fiscal impact if the consent is provided and executed. The purchaser and the seller have indicated that business will be operated at TraPac in similar manner to current operations and with the continuing guarantee of MOL. It is expected that, at the minimum, over the course of the life of the permit that volumes and, as a result the associated revenues, will continue to meet what is currently being contemplated with TraPac.

SUBJECT: SALE OF 49% OF INTERNATIONAL TRANSPORTATION, INC. TO A SUBSIDIARY OF BROOKFIELD ASSET MANAGEMENT

CITY ATTORNEY:

The proposed Order is subject to approval as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Section 14, Permit 881
2. TraPac Transfer Notice Letter
3. MOL Guaranty

FIS Approval: KP (initials)

CA Approval: JMC (initials)

Karl K.Y. Pan

KARL K.Y. PAN
Chief Financial Officer

Molly Campbell

MOLLY CAMPBELL
Deputy Executive Director

APPROVED:

Gary Lee Moore

GARY LEE MOORE, P.E.
Interim Executive Director

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