



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

Board of Harbor Commissioners

DATE: SEPTEMBER 6, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ – ORDER APPROVING
COMPENSATION RESET UNDER PERMIT NO. 529 WITH INTERMODAL
CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY**

SUMMARY:

Staff requests approval of the Order resetting compensation under Permit No. 529 (Permit) between the City of Los Angeles Harbor Department (Harbor Department) and Intermodal Container Transfer Facility (ICTF) Joint Powers Authority (JPA), and companion sublease between the JPA and Union Pacific Railroad Company (Union Pacific), for the five-year period of December 1, 2021, through November 30, 2026.

Both the Guaranteed Annual Rent amount (GAR) and the Container Charge for Each Movement (CCEM), further explained below, are subject to reset.

Under the proposed reset, GAR will retroactively increase by \$10,535,211.40, or 83 percent, from \$12,690,788.60 as of November 30, 2021 to \$23,226,000.00 as of December 1, 2021. In addition, the CCEM will retroactively increase by \$36.59, or 109 percent, from \$33.56 as of November 30, 2021 to \$70.15 as of December 1, 2021. Thereafter, rent would be subject to scheduled increases per table below.

<u>Effective Date</u>	<u>GAR</u>	<u>CCEM</u>
12/1/2021	\$23,226,000.00	\$70.15
12/1/2022	\$24,371,041.80	\$73.60
12/1/2023	\$25,102,173.05	\$75.81
12/1/2024	\$25,855,238.25	\$78.09
12/1/2025	\$26,630,895.39	\$80.43

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the

SUBJECT: COMPENSATION RESET UNDER PERMIT NO. 529 WITH INTERMODAL CONTAINER FACILITY JOINT POWERS AUTHORITY

proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Approve the Order resetting compensation under Permit No. 529 with Intermodal Container Transfer Facility Joint Powers Authority for the five-year period of December 1, 2021 to November 30, 2026;
3. Authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 529; and
4. Adopt Resolution No. _____ and Order No. _____.

DISCUSSION:

Background – Permit No. 529, which took effect in 1984 for a term of 50 years, is between the Harbor Department and the JPA and has a companion sublease between the ICTF JPA and Union Pacific. ICTF JPA was formed in 1983 by the Cities of Los Angeles and Long Beach. The JPA is a separate legal public entity with its own ICTF JPA Governing Board. The purpose of the ICTF JPA was for the Port of Los Angeles (POLA) and the Port of Long Beach (POLB), together Ports, to jointly finance, issue revenue bonds to construct, maintain the ICTF, as well as sublease the ICTF to Union Pacific. Through this arrangement, all obligations of the JPA to POLA under the Permit are assumed by Union Pacific.

Under the sublease, Union Pacific uses and occupies 147 acres of Harbor Department property located east of Alameda Street between Sepulveda Boulevard and the San Diego Freeway in Wilmington and Carson for purposes of operating a near-dock rail facility. At this facility, Union Pacific handles the Ports’ intermodal cargo. Trucks dray containers from marine terminals to ICTF to build trains; trains then efficiently connect to the Alameda Corridor. See Transmittal No. 1 for a site map.

As compensation, Union Pacific must pay the greater of the GAR or CCEM, as further described below:

GAR:

- GAR is the minimum amount Union Pacific must pay the Harbor Department each compensation year.

CCEM:

- CCEMs are collected per load or offload of any container in the ICTF.
- The CCEM is determined by dividing the GAR by the average annual container movements of the previous three years.
- For purposes of this calculation as of December 1, 2021, the average annual container movement over the previous three years of this compensation reset period is 331,111.

SUBJECT: COMPENSATION RESET UNDER PERMIT NO. 529 WITH INTERMODAL CONTAINER FACILITY JOINT POWERS AUTHORITY

The GAR and the CCEM are reset in five-year intervals, with the current reset effective on December 1, 2021. For the period of December 1, 2020, to November 30, 2021, Union Pacific paid an annual GAR of \$12,690,788.60 and a CCEM of \$33.56.

JPA Permit Adjustment Process - The terms of the Permit call for the renegotiation of the GAR in each Adjustment Period, with the rent to be mutually agreed upon between the Tenant and the Board (Parties). If the Parties are unable to reach an agreement on the reset amount, the Parties are required to implement the appraisal process as the methodology to determine fair market rental value of the premises (also referred to as GAR). Since Union Pacific and the Harbor Department did not initially agree with proposed rents, both Parties agreed to initiate the appraisal process as required in the Permit. When implementing this process, the Union Pacific and Harbor Department each respectively appointed their own appraiser, and the two appraisers appointed a third appraiser. The Permit requires the three appraisers to file with the Board a written opinion concerning the GAR for the Premises. Those appraisers submitted their appraisals to the Board secretary in accordance with the Permit. The final step in this process would have been for the Board to conduct a public hearing and determine the amount of the GAR and CCEM, after considering the appraisals, and any other evidence presented by the Parties. However, the Parties arrived at negotiated reset terms in lieu of holding a public hearing. Nothing in the Permit precludes the parties from arriving at a negotiated settlement of reset terms.

Timeline for Compensation Reset - The Parties negotiated in earnest but ultimately implemented the appraisal process, which was lengthy due to the complexity of the assignment and high demand for appraisers at the time, which in part contributed to the protracted process. Even though a hearing is no longer needed, staff still utilized the appraisals to negotiate a fair rent increase as herein.

Proposed Compensation Reset - Staff recommends increasing compensation to reflect fair market rent for the facility. The Permit does not include a provision to increase rent annually. However, staff negotiated scheduled increases to simulate an index-based adjustment. The increase will occur annually through November 2025 as a condition to settling the reset in lieu of holding a public hearing process. Proposed rates for this reset period are as follows.

<u>Effective Date</u>	<u>GAR</u>	<u>CCEM</u>
12/1/2021	\$23,226,000.00	\$70.15
12/1/2022	\$24,371,041.80	\$73.60
12/1/2023	\$25,102,173.05	\$75.81
12/1/2024	\$25,855,238.25	\$78.09
12/1/2025	\$26,630,895.39	\$80.43

SUBJECT: COMPENSATION RESET UNDER PERMIT NO. 529 WITH INTERMODAL CONTAINER FACILITY JOINT POWERS AUTHORITY

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval to reset compensation under Permit No. 529 with JPA and Union Pacific to increase GAR, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action 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 reset will retroactively increase GAR by \$10,535,211.40, or 83 percent, from \$12,690,788.60 as of November 30, 2021 to \$23,226,000.00 as of December 1, 2021. In addition, the CCEM will retroactively increase by \$36.59, or 109 percent, from \$33.56 as of November 30, 2021 to \$70.15 as of December 1, 2021. Thereafter, rent would be subject to scheduled increases per table below.

The proposed terms were derived through a negotiated settlement which utilized the results of three separate appraisers. Given that these terms fell within the range of values determined through the appraisal process, the proposed terms reflect fair market value for the premises entitled under Permit 529.

<u>Effective Date</u>	<u>GAR</u>	<u>CCEM</u>
12/1/2021	\$23,226,000.00	\$70.15
12/1/2022	\$24,371,041.80	\$73.60
12/1/2023	\$25,102,173.05	\$75.81
12/1/2024	\$25,855,238.25	\$78.09
12/1/2025	\$26,630,895.39	\$80.43

DATE: SEPTEMBER 6, 2023

PAGE 5 OF 5

SUBJECT: COMPENSATION RESET UNDER PERMIT NO. 529 WITH INTERMODAL
CONTAINER FACILITY JOINT POWERS AUTHORITY

CITY ATTORNEY:

The proposed Order resetting compensation has been approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Order

FIS Approval: *JS* (initials)
CA Approval: *BO* (initials)

Marisa L. Katnich
MARISA L. KATNICH
Director of Cargo & Industrial Real Estate

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

Michael DiBernardo
APPROVED:
for EUGENE D. SEROKA
Executive Director

ES:MD:MK:AP:KH:db
Author: Armando Parra
G:\Board Letters\BL1000db ICTF- JPA\BL1000db ICTF-JPA.docx