

## Comments received

- Comment 1 Catalina Channel Express (letter - June 5, 2013)
- Comment 2 H.J. Baker and Bro., Inc. (e-mail – June 17, 2013)
- Comment 3 SA Recycling (letter – June 13, 2013)
- Comment 4 California Yacht Marina (e-mail – May 21, 2013)
- Comment 5 PMSA (hand delivered letter to Board on July 25, 2013)
- Comment 6 SA Recycling (hand delivered letter to Board on July 25, 2013)



COMMENT 1

June 5, 2013

Mr. Jack Hedge  
Director of Real Estate  
Port of Los Angeles  
425 S. Palos Verdes Street  
P.O. Box 151  
San Pedro, California 90733

Re: Port of Los Angeles Leasing Policy  
Our File No.: 5714-17

Dear Jack:

Thank you for your letter of May 20, 2013 soliciting feedback on the proposed leasing policy of the Board of Harbor Commissioners.

Please find our comments to the draft leasing policy attached to this cover note. Having recently concluded a multi-year dialogue with Senior Port administrative staff over Permit No. 897, I feel we have vast experience in dealing with some of the critical issues which should be addressed in any policy. Unfortunately, our experience is good cause for remaining mindful of the old adage about "the devil" being in the details. Most of your proposed policy statements will not rid the system of the very serious problems we experienced in our own negotiations with the Port. Further thought needs to be given to how the Board's statement of policy can be made to provide meaningful oversight of abuses by senior management. In my estimation, any hint of how this would be accomplished is completely missing in the current draft. We would be happy to have a more detailed discussion of our experience and the basis for our concerns when you have time.

Sincerely,

Mark Hereford  
Director of Facilities  
Catalina Express

Reservations:  
(562) 485-3300  
(800) 995-4386

400 Oceangate, Suite 300  
Long Beach, CA 90802  
[www.CatalinaExpress.com](http://www.CatalinaExpress.com)

Administration:  
(562) 485-3200 ext. 1000  
Fax (562) 485-3201

## COMMENTS ON DRAFT LEASING POLICY

### A. GENERAL COMMENTS

1. In your cover letter of May 20, 2013, you indicate that the intended update to the Port's leasing policy should provide a framework "for the Port's internal use in making leasing decisions, increasing efficiency, and achieving consistency and transparency." Nowhere in the draft leasing policy is there a commitment to developing form lease agreements which are appropriate to the various types of tenants which do business with the Port of Los Angeles. When we completed tedious negotiations toward a term sheet, we were shocked to see that the Port did not have a form lease agreement that had been properly vetted to weed out inconsistencies and inappropriate provisions having little or no relationship to the type of lease we had negotiated. Worse yet, the document was presented to us by the Port's senior management on a "take it or leave it" basis, and we were specifically admonished not to attempt to make any changes. No real changes in the inefficiencies of your current leasing policy can be expected unless the Port gains greater control over and understanding of the problems lurking in its own lease documents.

2. While we recognize that the proposed Leasing Policy is intended to be "separate from lease administration and compliance procedure," one of its stated objectives is to "recognize existing relationships with current customers and their investment in the occupied terminal and premises." It is also a Board policy that the "Board shall be advised of all material deviations from compliance with a Lease Agreement . . . ." With that by way of background, you can imagine our consternation over an 8 year quest to obtain a refund of overpayment of percentage rent which is specifically contemplated by our prior permit. Proper contract administration must be a Board priority too or else all of the leasing policy objectives in the world will have been for naught. To date we have no meaningful explanation for the Port's own refusal (or inability) to comply with its own

obligations to us as a tenant of over 30 years. Senior management clearly elected to withhold money due to our Company despite knowing that the Port's own auditors had agreed on what was owing to us. Was this strictly an issue of lack of proper administrative oversight of the Port's own contracts and agreements, or was this a more sinister plan to intentionally ruin a tenant's business? To this day we don't know what could justify delays of such magnitude in the face of years of requests for an explanation.

3. In discussions about changes needed to the lease document presented to us, to make it consistent with what had been negotiated with senior management (commemorated in a written term sheet), we learned that the legal review process lends itself to anything but consistency and transparency and leaves far too much discretion in the hands of legal staff who attempt to renegotiate documents after they have been fully negotiated with senior management. Worse yet, legal staff show very little to no interest in the quality of the legal document they are preparing and are clearly content to have a document with numerous internal inconsistencies and provisions which are clearly at odds with issues negotiated over the course of months with administrative staff. Toward this end, lease documents could be improved immeasurably by simply adopting time tested verbiage in use in standard industrial and commercial leases. Otherwise, it should be a policy of the Board to have the law department intimately involved in the negotiation process from the outset if the law department will be given effective veto power over substantive terms which have been carefully negotiated over the course of months with Port administrative staff.

4. In our negotiations with senior management, we observed that there is an attitude of complete disdain for any Port property uses other than container terminals. In our case this went to the extreme of senior management literally telling us that it intended to ignore prior, Board-approved environmental impact reports showing a master plan for the development of the waterfront along the south side of the main channel from the Vincent Thomas Bridge. Months of negotiations were required in order to simply get our discussions with the Port

refocused on consistency with plans already approved by the Board of Harbor Commissioners several years prior.

5. Board policy should compel senior management to seek to achieve not only consistency and transparency in its negotiations with tenants, but which also forces staff to approach negotiations in a fashion which recognizes the horrible cost to tenants and commerce caused by protracted negotiations. The Board's policy should be one of encouraging a process that more closely resembles what occurs in the commercial and industrial real estate sectors which value tenant retention and recognizes real market conditions and the need for timely performance.

6. The new policy should explicitly recognize the importance of accommodating uses other than container terminals as appropriate uses of Port owned property. The policy should acknowledge the importance of accommodating tenants of dramatically different sizes and financial capabilities which have differing needs for space within the Port. The policy should expressly encourage many of the different services which are necessary and traditional maritime activities, including firms which provide ancillary services to the larger tenants of the Port (such as tugs and barges) and those which provide for special community needs which depend on waterfront access (like the fishery and ferry businesses). It is not at all clear that the leasing policy as currently written ultimately properly recognizes the importance of balance and the need to protect service companies.

7. While the introduction to the document mentions the fact that the Port oversees nearly 300 property agreements throughout the harbor district, in the end that is not really a significant number of leases by comparison to what many landlords deal with in the private sector. Our own lease negotiation was a point in fact. We endured horrible inefficiency in negotiations with the senior management (and legal department) despite their clear understanding of the exigent circumstances we were faced with until we literally had run out of time and had no option but to accept inappropriate terms and unfair conditions in order to protect our business from severe damage. We are aware of many other tenants who have experienced the same sort of treatment. No landlord (much less a public landlord)

should negotiate with a tenant in this fashion, and no landlord that wants to remain in business would ever negotiate this way with tenants in the private sector. In our experience, there was little or no structure to the negotiations conducted, and virtually every issue was negotiated on an ad hoc basis by senior management who seemed completely unguided by any Port policy. Certain senior staffers exhibited a sort of fiefdom mentality and even openly discouraged us from attempting to continue to negotiate for the renewal of a lease for a business which has been a Port tenant for more than 30 years. At one point we were openly encouraged to simply quit trying and move to Long Beach. On other occasions one senior manager repeatedly told us that in order to get a new lease, we needed to "share the pain" with the Port of Los Angeles, even though a former Executive Director had committed to relocate us at the Port's expense (since the reason for our relocation was due to the Port's own desire to accommodate an adjacent container terminal tenant). In the end, the Port reneged on its commitment to relocate us at the Port's expense, and because we were out of time and had no additional room to maneuver, we were left with no option but to accept the Port's "painful" terms so that our business could continue.

8. As noted above, from the beginning of our negotiations it was clear that the Port did not value non-container uses in the Port. The negotiation process was totally inefficient and took months to accomplish what could have been done in days or weeks with a commercial landlord. When we were finally presented with rent rates many months into the negotiations, it was clear that these had been developed on a completely ad hoc basis, bearing no resemblance to the Port's tariff or to market rents. As an example, senior management insisted on recouping the full, unamortized cost of a structure which had been built for a prior tenant many years prior even though it had to be demolished in order to accommodate our intended use. It appeared that the Port had decided it would try to "fly one by" us in order to recoup the cost of a structure which had never been justified by its prior use.

9. Given our experience, we believe the policy should probably provide for some sort of ombudsman who can provide oversight on the Board's behalf to prevent "out of control" Port administrative staff from avoiding the very Port leasing policies they are hired to protect. Ours was an experience which illustrated perfectly how inefficient and nontransparent the process can be when left in the hands of the wrong people. The proposed Board policies do nothing to proscribe that sort of conduct in the future.

## **B. SPECIFIC COMMENTS**

### **1. Term Options**

When a lease is negotiated and an option to extend the term of the lease is agreed at the outset, it seems highly unusual (unprecedented in my experience of over 35 years in the commercial and industrial leasing business) to compel the tenant to pay an additional fee for the option since the right to the option has purportedly been built into the overall cost of the lease at the time it was negotiated. Requiring tenants to pay a fee based on an estimated percentage of the annual base rent of the first year of the option period seems entirely inconsistent with the way options are dealt with in commercial and industrial leases generally. To make matters worse, to insist that the fee paid will not be applied against future rent (when in fact it is calculated as a percentage of future rent) is equally unfair in our estimation.

Your proposed leasing policy also provides that the fee will be refundable in the event the Port terminates the lease agreement "for convenience of the Port's interest." Yet in our experience and from a legal perspective, an option granted at the outset of the lease is fully enforceable by the tenant and cannot be terminated merely for "convenience of the Port's interest."

## **2. Assignments and Subleases**

It is hard to understand why you would require a rent guarantee from the assignor in the event of an assignment when in fact the original tenant is not being released by the sublease or assignment.

Consideration should also be given to changes in control of a tenant's business. There is industry standard language which has been worked out over the years in commercial and industrial leases to provide for assignments which occur under these circumstances. It seems hardly worthwhile or necessary for the Board to take a different approach

## **3. Rates, Fees and Charges**

Adopting a policy which compels a specific rate of return on Port property seems counterintuitive to market realities, particularly in light of current market conditions. Perhaps there is a different metric that could be used for determining what sort of rate of return should be utilized. In today's depressed commercial real estate market, market rents which are based on a fixed rate of return may simply be inconsistent with economic reality.

Similarly, careful consideration should be given to determining values of properties to be utilized as the basis for determining appropriate rents. A strict and defined list of methods to be used for determining real market values should be used.

## **4. Pricing Platform**

As noted above, it is our experience that the Port policy of developing pricing of Port properties is anything but consistent, and it appears far too much has been left to the discretion of senior management. As we mentioned above, we had the experience of being asked to pay for what was essentially 100% of the cost of a structure which had no use to our operation and which had to be demolished. Nonetheless, senior management insisted our rate had to be based on the cost of the obsolete structure.

## 5. Security and Environmental Deposits

Aside from a tenant's obligations under the lease to pay rent, it seems hardly practical and completely inconsistent with real world leasing policies to compel a tenant to provide a stand-by letter of credit or other security to assure its compliance with the terms and conditions of a lease agreement. Requiring that 2% of the value of the stand-by letter of credit should be additionally paid to the Harbor District as a fee for some unspecified reason seems equally hard to justify. This too has no comparative basis in the real world of commercial and industrial leasing policy. Where appropriate, deposits for environmental risks may be warranted (or perhaps the risk could be covered by insurance naming the Port as an additional insured), but this is hardly the same as a stand-by letter of credit assuring compliance with all of the other terms and conditions of a typical lease agreement. This particular provision, if enacted, would also place a severe and unwarranted burden on smaller Port tenants.

**Wheelwright, Rhonda**

---

**From:** Lee, Andy <alee@bakerbro.com>  
**Sent:** Monday, June 17, 2013 3:33 PM  
**To:** Wheelwright, Rhonda  
**Cc:** Robles, Ed; Maranda, John  
**Subject:** RE: Port of Los Angeles Leasing Policy Workshop

Rhonda,

Thanks for sending the invite to us, we will either attend in person or via online.

In the mean time as discussed today, please kindly see our comments below.

We have referenced sections from the current leasing policy and have underlined important principals that appear to be missing or not stated clearly in the new DRAFT policy. Please kindly review and consider modifications to the new policy that maintain these principals which are in the mutual interest of all stakeholders (Port, City and Tenants).

**Section 1 Introduction**

1.1 Purposes

Leasing and rental decisions will be made in a transparent environment, while maintaining compliance with City, State and Federal laws. The Policy is primarily focused on: (1) appropriate use, optimal utilization and competitive allocation of real property assets under the jurisdiction of the Port; (2) ensuring rental rates, fees and compensation for the use of Port property are fair, reasonable and uniformly applied; (3) treating similar maritime tenants on an fair and equal basis; and (4) providing for periodic adjustment of market rental rates for long term leases.

Comment:

It is important that all tenants are treated fairly and uniformly, especially for similar maritime tenants. This ensures a competitive environment and long term sustainability for all tenants.

**Section 2 Policies**

2.3.2 – The port shall make Port properties available on fair and reasonable terms without unjust discrimination.

2.3.4 – The Port shall establish and maintain a level and structure of rents, fees, and charges that are fair and equitable for all tenants, and which are based on current market land values.

Comment:

While the DRAFT policy makes reference to treating all tenants fairly, the existing policy stated these important policies more clearly.

Best Regards,

Andy Lee

Business Manager - Sulphur Division  
H.J. Baker & Bro., Inc.  
28202 Cabot Road, Suite #325  
Laguna Niguel, CA 92677  
T: 949-365-5010  
F: 949-365-5015  
<http://www.bakerbro.com/>

---

**From:** Wheelwright, Rhonda [<mailto:RWheelwright@portla.org>]  
**Sent:** Thursday, June 06, 2013 1:41 PM  
**To:** 'trlee@ymlyusa.com'; 'frank.pisano@trapac.com'; [zhang.bing@csna.net](mailto:zhang.bing@csna.net); [MGrubbs@pmsaship.com](mailto:MGrubbs@pmsaship.com);  
'bill.fitz@ssamarine.com'; 'dean.serr@2wglobal.com'; [Sandra.Bye@bnsf.com](mailto:Sandra.Bye@bnsf.com); [sjsand1@up.com](mailto:sjsand1@up.com); Lee, Andy;  
'Christian\_Lenci@praxair.com'; 'dremillano@calsulco.com'; [John.Ochs@apmterminals.com](mailto:John.Ochs@apmterminals.com); [Jack\\_Cutler@apl.com](mailto:Jack_Cutler@apl.com);  
'jasonhsu@evergreen-shipping.com'; [Linda.Frame@yti.com](mailto:Linda.Frame@yti.com); 'avuoso@trimarinegroup.com'; 'teri.shinde@exxonmobil.com'  
**Subject:** Port of Los Angeles Leasing Policy Workshop

The Real Estate Division of the Port of Los Angeles is holding a Leasing Policy Workshop to get feedback on a new Leasing Policy prior to submitting it to the Board of Harbor Commissioners for approval. A draft copy of the Leasing Policy is attached for your review. We encourage you to attend the workshop and provide comments.

The workshop will be held on Wednesday, June 19, 2013, at 1:30 pm (PDT) in the Board Room of the Harbor Administration Building located at: 425 S. Palos Verdes Street, San Pedro.

If you are unable to attend in person, you may participate via web conference by logging on to <https://www.connectmeeting.att.com>. You will need to enter a meeting number: (877)336-1828 and access code: 9825771.

Your participation and feedback are important to us. Thank you.

*Rhonda Wheelwright*  
Real Estate Division  
Port of Los Angeles  
(310) 732-7632



---

-----Confidentiality Notice-----

This electronic message transmission contains information from the Port of Los Angeles, which may be confidential. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify us immediately by e-mail and delete the original message and any attachment without reading or saving in any manner.



COMMENT 3

2411 N. Glassell Street  
Orange, CA 92865  
Office (714) 632-2000  
Fax (714) 282-7366  
www.sarecycling.com  
GOT SCRAP?®

Mr. Jack Hedge  
Director of Real Estate

Subject: POLA draft Leasing Policy.  
Date: 6/13/13

SA Recycling appreciates the opportunity to comment on the Port's draft Leasing Policy. We trust that the revised document will not only seek to promote the best and highest use of the Port's assets, but also create mutually beneficial relationships with its tenants and foster the growth of commerce and improve community relations.

SAR believes that the draft document will add some new provisions which should prove to be constructive, such as the strengthening of the authority and increasing the flexibility of the CEO to negotiate leases with existing and future tenants. We also believe that by defining who qualifies as a Tenant in Good Standing, the Port is more likely to assure fair treatment of its responsible tenants. SAR is also encouraged by the Port highlighting its commitment to providing equal treatment to all its tenants. We recommend that in order to implement this particular policy more effectively, the Port should consider setting up a **list of classifications for the various types of businesses** operating within the Port. By doing so the Port is more likely to achieve the parity (*page 4 Number 5*) it seeks that would prevent one tenant within a classification (i.e., break-bulk or container terminals) from having a competitive advantage or disadvantage over another tenant within the same classification.

The Sections with which SAR has serious concerns are the ones dealing with Rates, Fees and Charges and Compensation Adjustment. In these Sections the Draft Policy significantly differs from its previous Policy especially as it pertains to the consideration of what constitutes a desired level of ROR by the Port. (*Please see Footnote #1.*) This draft Policy abandons the policy of getting annual fair market appraisals. In addition, the Port sets a 10% ROR, which is very high especially considering the economic conditions for the past several years. While we certainly understand the Port's desire to receive as much revenue as possible (and reasonable) from its leased assets, the level of rent and various fees should not be so high as to place an unreasonable burden on the tenants' ability to compete in the market. The method of evaluation should provide the tools for the Port to be flexible in what it wants to achieve in terms of ROR in differing use classifications in the market at the time. There should be a mechanism for the Port to take into consideration the amount of wharfage and other non-rent fees that a tenant pays in order to get a true picture of the total return on a given piece of property.

In the Section on Rates, Fees and Charges item Number 3, the draft states that " *it is the Board's' policy to establish market rates and maximize its ROR through use of appraisals or other pricing methods as may be appropriate*". It is not clear what constitutes "other pricing methods". Without a doubt there are some special properties which are unique and difficult to appraise according to standard processes. However, as Public Trust Land, the valuations must take into account the fact that the land has to be used according to Public Trust principles which include a number of public purposes not just the maximization of revenue.

We take strong exception to the Port's insistence on adding an annual CPI adjustment on top of the five year market value reset (please see Compensation Adjustment #1). We believe that tacking on an additional CPI, in addition to all of the other financial obligations such as wharfage, dockage and other charges the Port requires, is burdensome, unreasonable and onerous. An automatic CPI increase is not consistent with the Public Trust land policy in that the rates should be tied to expenses of operating the facility.

We thank you for the opportunity to express our point of view regarding the draft Leasing Policy and offer to meet with port staff if a more thorough discussion of our points is desired.

Best regards,



Terry Adams  
SA Recycling

**Footnote #1.**

***POLA Leasing Policy of 2006  
Leasing Policy Directive No. 1***

***Establishing Land Values for Determining Land and Water Rental Rates***

***To determine land and water rental rates for industrial, commercial and retail properties, the adopted Rate of Return will be applied to the appraised land and water values. This will produce the appropriate rental rate.***

***The Director of Real Estate will ensure that a benchmark appraisal to establish land and water values will be conducted every year, or as deemed necessary by market trends. This will ensure that land values reflect the current market. Due to the uniqueness and size of Port tenant's leasehold interest, the benchmark appraisal will be of a hypothetical 150-acre waterfront and backland properties, with a hypothetical corresponding 5-acre water area. Also, appraised will be a 50-acre vacant industrial site removed from the waterfront, but within the Harbor District. Once the appraised values are determined, the Executive Director, with the Board of Harbor Commissioner's approval, will adopt these land values. The Board's adopted Rate of Return for land and water rents will be applied to the land values to determine land and water rental rates. The Rate of Return will be determined by surveying Ports on the West Coast, as well as major land owners in the Southern California area such as the Watson Land Company, and major financial institutions to determine their established rate of return for land rent. Based on the survey, the Director of Real Estate will recommend to the Executive Director a rate of return that will be presented to the BHC for approval. Rate of Return surveys will be conducted every year by the Director of Real Estate and presented to the Board for approval if any significant changes are identified.***

**Wheelwright, Rhonda**

---

**From:** Benson, Amy  
**Sent:** Tuesday, June 11, 2013 11:35 AM  
**To:** Wheelwright, Rhonda  
**Subject:** FW: Port Leasing Policy

Here's another for your records.

---

**From:** Hedge, Jack  
**Sent:** Tuesday, June 11, 2013 11:11 AM  
**To:** Benson, Amy; Anaya, Victoria; Parker, Gwendolyn  
**Subject:** FW: Port Leasing Policy



**Jack C. Hedge**  
Direct: 310.732.0399  
Main: 310.732.3860  
Fax: 310.547.1725  
[jhedge@portla.org](mailto:jhedge@portla.org)

**Director -Real Estate Division**  
425 S. Palos Verdes Street  
San Pedro, CA 90731  
[www.portoflosangeles.org](http://www.portoflosangeles.org)

---

**From:** Globus, Regner  
**Sent:** Wednesday, May 22, 2013 1:27 PM  
**To:** Hedge, Jack  
**Subject:** FW: Port Leasing Policy

Jack,  
Who's collecting the comments on the leasing policy. I got one from the marina operators.

Thank you,

Regner  
Ext. 3291

---

**From:** R. Kevin Ketchum [<mailto:rkketchum@californiayachtmarina.com>]  
**Sent:** Tuesday, May 21, 2013 6:56 PM  
**To:** Globus, Regner  
**Subject:** RE: Port Leasing Policy

Regner,

Good evening, thanks for sending this over. A fast review has me wondering if this is intended to apply to marinas and other similar type of leases/uses. It reminds me of the problems years ago encountered when redoing the Wilmington Marina leases. Back then minimum rent based on a 10% return of underlying land/water value had some marinas paying an effective rate of 50% of gross income off the top. It appears that the writer(s) of this policy had container type of uses in mind and forgot about marinas.

Rates, Fees and Charges section seems to be a throwback to the old days. This is different than my understanding of minimum rent calculations for marinas currently in place. It definitely is out of sync with other Port Districts in how they

calculate minimum rent for their marina tenants/users. Is it the intent of the Port to change the current methodology of calculating minimum rents for marinas to that of a fixed return of 10% on highest and best use of land value?

Will the Port apply the Leasing Policy to its customers at Cabrillo Way Marina (CWM)? "It is the policy of the Board to require annual adjustments of rental compensation due for all Lease Agreements. Such adjustments shall be based upon consumer price index." My reading of the policy indicates that they would, "The Leasing Policy applies to all property agreements involving use and occupancy of land, submerged land, buildings, and other improvements." The boaters in CWM occupy the Port owned marina. If not, would it not be unfair for the Port to selectively apply this standard to some but not all marina tenants of the Port. Similar questions are generated when I look at pages 11 through 14.

As I suggested above, it might just be that the writers were not thinking about marinas in general and the Port's marina specifically. It appears to me that the Policy needs to take into consideration the differences between marinas and other types of Port users. And if adjustments are made, that all Marina tenants be treated equally. Simply put, it would be hard for those marinas that now find themselves competing with the Port's Marina (CWM) being held to a Leasing Policy that it's Landlord does not apply to itself.

I am sending this email to you instead of the formal response channel because I did not want us to appear confrontational. Sometimes things like this start taking on a life of their own and by the time the public gets a chance to comment people get defensive on both sides. It just struck me that the new Policy simply forgot about marinas and how it would be applied.

Thanks for your time and hope this helps the process,

Kevin



R. Kevin Ketchum  
California Yacht Marina  
22905 Lockness Ave.  
Torrance, CA 90501  
310.534.8436 - office  
310.534.8670 - fax

July 25, 2012

Jack Hedges  
Director of Real Estate  
Port of Los Angeles  
425 S. Palos Verdes Street  
San Pedro, CA 90731  
[jhedges@portla.org](mailto:jhedges@portla.org)

Subject: Port of Los Angeles Leasing Policy

Dear Mr. Hedges:

Thank you for the opportunity to provide comments on the Port of Los Angeles proposed Leasing Policy. PMSA members represent the ocean carriers and marine terminal operators who provide the majority of the annual revenues at the Port of Los Angeles. Our members are committed to working with you to find ways to attract cargo to maintain the Port of Los Angeles as the nation's largest port. Given the financial returns of the ocean carriers, the consolidation of the terminal capacity in California and the over capacity of land in San Pedro Bay, the Leasing Policy reflects a series of incorrect and unworkable market assumptions; chief amongst them that cargo will automatically flow through the Port of Los Angeles. We respectfully ask staff to consider the following comments:

#### **VII. Assignments and Subleases**

2. It is the policy of the Board that the Executive Director may require a fee in return for granting an assignment when the assignment results in economic or financial benefit to the assignor. Such fee shall be, at minimum, 10% of the economic value attributable to the assignor's leasehold interest derived from, or a result of, the use of the premises.

**PMSA Comments:** This policy is reflective of the 2007 market when the industry was sustaining double digit growth rates with capacity constraints. San Pedro Bay currently has substantial terminal capacity which is reflected in the Port of Los Angeles year to date volumes being 7.4% below the 2012 volumes. We request staff delete this requirement for a 10% fee in return for granting an assignment. Furthermore, if the other policies regarding effective market pricing are actually done well, this amounts to a penalty to tenants and a windfall to the Port.

#### **VIII. Rates, Fees and Charges**

1. It is the policy of the Board that pricing for use of Port property shall be structured to enhance the Port's competitive position and advance the Port's as a positive place to do business while

working to achieve minimum Rates Of Return (“ROR”) on land and on improvements consistent with Port financial management policies (currently 10% ROR target on land and 12% ROR target on improvements).

PMSA Comments: One of the Leasing Policy stated objectives is to “*Ensure that no one entity secures a competitive advantage by means of controlling an undue amount of Port property or berthing area.*” While this object applies to the amount of land used, we do not see a stated pricing policy regarding fair and equitable leases so that one tenant is not given a competitive advantage over another due to significant lease term (rates, rights, obligations). As a public agency, the Port of Los Angeles should have a policy for requiring fair and equitable lease terms to their tenants.

The Leasing Policy should not state specific ROR targets since the market conditions change dramatically every few years. Since the Policy also provides guidance to the Executive Director to negotiate within the current competitive marketplace, then there is no need to limit leases based on acreage or ROR, and if additional control is sought in this policy then specific targets should be defined on an annual basis by the Board.

3.a. Market rental rates shall be established in accordance with the Appraisal Institute’s definition of “market rent” which is “*the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, and tenant improvements.*”

PMSA Comments: PMSA members support the policy of establishing “market rent including all lease terms and restrictions as long as one tenant is not given a competitive advantage over another. The market rents should be established using comparable industrial rates from other ports in the United States and/or West Coast.

4. It is the policy of the Board that different pricing methods may be used for non-maritime related Lease Agreements.

a. Any deviation from market rates and ROR goals intended to encourage tourism, preserve the public’s right to fish and to have convenient access to water and other public use must be brought before the Board and approved in open public session.

PMSA Comments: This policy provides deviations to tenants other than the Port’s core customers that provide approximately 75% of the revenue. The Port of Los Angeles is the major economic engine of the Southern California and consideration should be given to the entities that create a significant amount of jobs created for the City of Los Angeles before those that do not.

This policy provides a financial benefit for non-maritime businesses. We request the port to provide a definition of non-maritime and explain why it is necessary.

## IX. Compensation Adjustments

1. It is the policy of the Board to require annual adjustments of rental compensation due for all Lease Agreements. Such adjustment shall be designed to cover inflationary and other cost adjustments and be based upon a Consumer Price Index (CPI).

**PMSA Comments:** Requiring an annual CPI increase puts the Port of Los Angeles tenants at a competitive disadvantage since the port's main California competitors in the container trades, the Port of Long Beach and Port of Oakland, have not adopted this policy. We feel the port should not place their tenants at an even further competitive disadvantage. Please define "and other cost adjustments."

2. It is the policy of the Board that, consistent with the City Charter, compensation resets are required no less often than every five years. Such compensation resets shall be made to the then current applicable fair market rent.

a. Any reset to market process shall take into account annual adjustments implemented in preceding periods. However, in no case will any such reset result in adjustments beyond the market rate as such rate is defined in the above Section VIII, Rates, Fees and Charges, 3.a, nor will it result in a reduction to the existing rate.

**PMSA Comments:** After the Board approved the GRI increase, PMSA requested language in the Leasing Policy that stated if a tenant received an annual CPI adjustment; the Port would not require any increase during the five year reset process. We also requested language providing a cap on the annual adjustment. Port staff stated the Leasing Policy could not state requirements that tie the hands of future Board actions, yet this policy states explicitly the reset will not result in a reduction to the existing rate.

The Leasing Policy set requirements to establish market rates every three to five years. Los Angeles industrial property values have experienced dramatic changes given the economic conditions of 2008 and 2009. It is not fair and reasonable to only require upward adjustments to the leases when market values reflect reductions. PMSA requests staff delete the language ... nor will it result in a reduction to the existing rate

We appreciate the opportunity to provide comments and look forward to working with you on the Leasing Policy.

Sincerely,

Michele S. Grubbs  
Vice President

**Statement by Barna Szabo, representing SA Recycling, on item #11 on the July 25<sup>th</sup> Harbor Commission Agenda concerning the proposed adoption of a new Port Leasing Policy.**

Honorable Commissioners and Port staff:

SAR appreciates the opportunity to comment on the Port's new Leasing Policy. Previously we had commented in writing on the *draft* Policy document in the hope that our concerns and suggestions would get a serious consideration. After reading the document which is in front of you, it appears that our hopes were not fulfilled. The final document is only slightly different from the earlier draft with mostly cosmetic, stylistic changes.

The new Leasing Policy states that it will provide for:

*"Fair and equitable methods for potential and existing customers to conduct business with the Port; and Recognize existing relationships with current customers and their investment in the occupied terminal and premises".*

The Policy also provides for possible special consideration for those who are deemed to be Tenants in Good Standing. (Section II b).

These are lofty goals which we support, but which will be difficult to achieve given the harsh financial terms and conditions that will be implemented by this new Leasing Policy.

SAR's concerns about the proposed Leasing Policy are the following:

Number One:

In Sections VIII and IX the Policy addresses Rates, Fees and Charges and Compensation Adjustment. Specifically, Section VIII item #1 pertains to the consideration of what constitutes a desired level of ROR by the Port. The Port sets a 10% ROR, which, we would argue, is high especially considering the economic conditions for the past several years. The Port's stated desire is to receive as much revenue as possible from its leased assets, but we believe that the level of rent and various fees should not be so high as to place an unreasonable burden on the tenants' ability to compete in the market.

The Policy states that:

*"market rental rates shall be established in accordance with the Appraisal Institute's definition of "market rent" which is 'the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, and tenant improvements.'"*

The Policy also indicates that: *"Any reset to market process shall take into account annual adjustments implemented in preceding periods. However, in no case will any such reset result in adjustments beyond the market rate as such rate is defined in the above Section VIII, Rates, Fees and Charges, 3.a, nor will it result in a reduction to the existing rate.*

We urge the Port to recognize that economic conditions fluctuate and at time negatively impact the tenants' ability to meet their financial obligations. In such situations, the Leasing Policy, perhaps in Section IX, should provide for some flexibility for the CEO and the Commission to make rent adjustments if the impacted party or parties and the Port find such adjustments to be prudent and advisable. Such was the case during the most recent, severe economic downturns of 2008-2009 both here and at other ports like the Port of San Diego.

Number Two:

To make matters even more problematic for tenants (especially during economic turndowns) is the Port's insistence on collecting an annual CPI (please see Compensation Adjustment point #1). We believe that charging CPI, **in addition** to all the other financial obligations such as rent, various fees and charges the Port requires, is burdensome, unreasonable and onerous. An automatic CPI increase is not consistent with the Public Trust Land policy in that the rates should be tied to expenses of operating the facility. We urge that the Port instead consider **crediting** the amount of revenue generated by wharfage and dockage into its evaluation of the ROR for its waterfront assets and set its rent levels accordingly for the applicable business classifications.

Number Three:

We, and others, had raised these and other related issues in writing **after** the Leasing Policy workshop, which were solicited by the Port (*please note our correspondence dated June 13<sup>th</sup>, 2013 from Mr. Terry Adams*), but have not heard back from Port staff as to why they were dismissed/ rejected and not reflected in this Policy. We urge the Board to take another look at the serious concerns that several of the long term tenants-in good standing -have with the Port's approach and provide a written explanation as to why such concerns were disregarded.

We thank you for the opportunity to express our point of view regarding Leasing Policy and offer to meet with port staff if a more thorough discussion of our position is desired.



# LEASING POLICY

---

*August 8, 2013*

*This Port of Los Angeles Leasing Policy was prepared by the Harbor Department's Business Development Bureau and Real Estate Division in conjunction with IMC Municipal Consulting.*

## TABLE OF CONTENTS

	<b>Page</b>
Port Management.....	ii
Sources of Information.....	iii
Introduction.....	1 - 3
Port of Los Angeles Leasing Policy.....	4 -14
Section	
I. General Provisions.....	4, 5
II. Competitive Proposals.....	5, 6
III. Tenant in Good Standing.....	6
IV. Tenant Selection.....	7
V. Term Options.....	7, 8
VI. Amendments.....	8
VII. Assignments and Subleases.....	8, 9
VIII. Rates, Fees and Charges.....	9,10
IX. Compensation Adjustments.....	10
X. Pricing Platform.....	10,11
XI. Security and Environmental Deposits.....	11
XII. Material Deviations.....	11,12
XIII. Other Port Plans and Policies.....	12
XIV. Property Ownership.....	12
Glossary of Terms.....	13, 14

## **PORT MANAGEMENT**

### **Board of Harbor Commissioners**

Cindy Miscikowski  
*President*

David Arian  
*Vice President*

Douglas P. Krause  
*Commissioner*

Dr. Sung Won Sohn  
*Commissioner*

### **Senior Management**

Geraldine Knatz  
*Executive Director*

Michael R. Christensen, P.E.  
*Deputy Executive Director of Development*

Molly C. Campbell  
*Deputy Executive Director, Finance and Administration*

Captain John M. Holmes  
*Deputy Executive Director, Operations*

Kathryn McDermott  
*Deputy Executive Director, Business Development*

Cynthia Ruiz  
*Deputy Executive Director, External Relations*

Janna Sidley  
*General Counsel*

## SOURCES OF INFORMATION

Development of the Leasing Policy included information drawn from discussions with Port of Los Angeles staff, consulting firms, various port agencies located in the United States, and Port of Los Angeles tenants' and stakeholder feedback. The development process also included review of documentation from agencies which govern the operation of the Port of Los Angeles, professional real estate organizations, leasing policies from other ports located in the United States and familiarization with other Port of Los Angeles policies. Outreach and information sources are listed below.

- AIR Commercial Real Estate Association
- Building Owners and Managers Association International (BOMA)
- California State Lands Commission – Public Trust Doctrine
- City of Los Angeles Harbor Department Business Development Bureau and Real Estate Division
- City of Los Angeles Harbor Department, Office of the City Attorney
- City of Los Angeles Harbor Department Port Police
- IMC Consulting
- Los Angeles World Airports (LAWA)
- Los Angeles City Charter
- Los Angeles City Administrative Code
- Performance Audit of the Port of Los Angeles Real Estate Division (performed by Harvey M. Rose Associates, LLC)
- Port Everglades, Broward County, Florida
- Port of Long Beach, California
- Port of Los Angeles, 2012-2017 Strategic Plan
- Port of New York and New Jersey
- Port of Oakland, California
- Port of Portland, Oregon
- Port of San Diego, California
- Port of Vancouver, Washington
- State Tidelands Trust Grant
- Tubert Consulting

## INTRODUCTION

The Harbor Department is a proprietary department of the City of Los Angeles, more commonly known as the Port of Los Angeles (“Port”) and operates for the purpose of the promotion and accommodation of maritime commerce, navigation and fishery. As a proprietary department of the City of Los Angeles (“City”), the Port is financially independent of the City and self-sustaining. The Port is one of the State of California’s primary economic resources and an essential element of the national maritime industry.

The Port is primarily governed by the Los Angeles City Administrative Code (“Administrative Code”); Los Angeles City Charter (“City Charter”); the California Coastal Act-Chapter 8 (“Coastal Act”); the California State Lands Commission - Public Trust Doctrine (“Public Trust Doctrine”); Tariff No. 4, as it now exists or may be amended or superseded in the future, (“Tariff”); and the State Tidelands Trust Grant (“Tidelands Trust”). Management and control of the Port is directed by a five-member Board of Harbor Commissioners (“Board”) and administered by the Executive Director of the City of Los Angeles Harbor Department (“Executive Director”).

The Port oversees nearly 300 property agreements throughout the Harbor District which include concession agreements, leases, operating agreements, orders, permits, revocable permits, temporary entry and use permits, and other agreements. The Board adopted the current policy and procedures document February 1, 2006. Since that time the following has occurred:

- A “Performance Audit of the Port of Los Angeles Real Estate Division” (“Performance Audit”) was conducted in 2011;
- The Port of Los Angeles 2012-2017 Strategic Plan (“Strategic Plan”) was published in May 2012; and
- In May 2012, the Real Estate Division was re-organized to direct the focus of operations toward property management to better support the Port’s needs.

This Port of Los Angeles Leasing Policy (“Leasing Policy”) is separate from lease administrative and compliance procedures which address internal processes and procedures.

The Leasing Policy supports the Strategic Plan while reinforcing consistency with other Board approved policies, the Administrative Code, City Charter, Coastal Act, Public Trust Doctrine, Tariff, and the Tidelands Trust.

The Leasing Policy applies to all property agreements involving use and occupancy of land, submerged land, buildings, and other improvements although certain aspects may not apply to all forms of Agreement or in all circumstances (i.e. certain rules governing Operating Agreements). Further, this Leasing Policy does not replace or supplant City Charter or Administrative Code or other governing documents that apply to City functions. Rather, it provides a framework for the Port's internal use in making leasing decisions, increasing efficiency, and achieving consistency and transparency, as it relates to the following:

- a) Development of new property use agreements; and,
- b) Modifications to existing property use agreements, including compensation adjustments and resets.

The Leasing Policy affirms the Port's responsibilities as a custodian of Tidelands Trust properties and as a proprietary department including, but not limited to, the following obligations.

- Operation of the Port as a proprietary department independent of financial support from the City;
- Compliance with Board-approved policies, the California Coastal Act, and other federal, state and local laws, rules and regulations and applicable mandates; and,
- Maximization of Tidelands Trust property to achieve the highest and best use of the assets consistent with the Port's strategic goals and objectives.

The Leasing Policy upholds the Strategic Plan through alignment with its 3 key results areas – Competitive Operations, Strong Relationships, and Financial Strength. The key result areas are defined below.

- Competitive Operations. Development and maintenance of world-class infrastructure; retention and growth of market share; advance technology and sustainability; and/or optimization of land use.
- Strong Relationships. Creation of a positive work place culture and/or increase stakeholder, and community awareness and support.
- Financial Strength. Activity which strengthens the Port's financial performance.

The objectives of the Real Estate Policies and Procedures are to provide the following:

1. Specific guidelines for selecting Qualified Customers to enter into leases for available property;
2. An approval process that is consistent with the Board of Harbor Commissioners and the City of Los Angeles applicable policies and procedures;
3. Fair and equitable methods for potential and existing customers to conduct business with the Port;
4. Recognize existing relationships with current customers and their investment in the occupied terminal and premises;
5. Ensure that no one entity secures an unfair competitive advantage by means of controlling Port property or berthing area, rates, or other lease terms, which are not comparable to the market.
6. A process for assembling, sharing, and maintaining information related to the proposed selection and negotiation processes in an open and transparent manner;
7. Optimizing of Tidelands Trust assets consistent with requirements of the State of California;
8. Use of available property consistent with the Port's Master Plan and strategic objectives;
9. Mutually agreeable provisions to prevent and control pollution to the extent feasible;
10. Achieve goals for local job participation and living wage requirements; and,
11. Periodically evaluate performance of leases.

The above objectives are reflected in the previously Board-adopted leasing policy and have been incorporated into this new Leasing Policy as well as a new Strategic Asset Management Policy ("Asset Management Policy").

## LEASING POLICY

### I. General Provisions

1. It is the policy of the Board that authority to implement this Leasing Policy is hereby delegated to the Executive Director.
2. It is the policy of the Board that the Leasing Policy shall apply to every type of Port property-use agreement to the extent applicable under law.
  - a. Leasing Policy Section III – Tenant in Good Standing, Section V – Term Options, Section VIII – Rates, Fees and Charges and Section IX – Compensation Adjustments do not apply to Operating Agreements. All other Leasing Policy sections may apply as appropriate.
3. It is the policy of the Board that all Lease Agreements shall be developed in complete accordance with, and governed by, the Leasing Policy.
4. It is the policy of the Board that the term “Tenant” shall apply to all parties that have or are being considered for a Lease Agreement with the Port.
5. It is the policy of the Board that the Leasing Policy shall remain in full force and effect unless and until changes are made by Board action.
6. It is the policy of the Board to review and update the Leasing Policy no less frequently than every five years following its adoption.
7. It is the policy of the Board that the Leasing Policy and the use of Port property shall be in agreement with the Administrative Code, City Charter, Coastal Act, Public Trust Doctrine, Tariff, and the Tidelands Trust, including giving priority to water-dependent uses that serve the maritime industry and optimize such property to its highest and best use consistent with the Port’s strategic goals and objectives.
8. It is the policy of the Board that the Leasing Policy shall not override or supersede the terms and conditions of any existing Lease Agreement or Tariff item, which defines rates, charges, rules and regulations, between the Port and a Tenant.
9. It is the policy of the Board that every Tenant shall adhere to all applicable and duly authorized policies of the Port and the City.
10. It is the policy of the Board that every Lease Agreement shall contain a provision for every Tenant to achieve goals of local job participation and living wage requirements as defined in the City of Los Angeles Administrative Code Section 10.37.

11. It is the policy of the Board that the Executive Director may execute a Lease Agreement on an “as-is, where-is, with all faults and limitations” basis. In such case, the Tenant shall be provided an opportunity to conduct due-diligence which may include a feasibility analysis and an environmental evaluation and inspection of the property to ascertain its condition. Such action shall be at Tenant’s sole expense.
12. It is the policy of the Board that all Port Tenant operations and uses shall adhere to all applicable building and fire codes and environmental standards including, but not limited to, federal, state, and local laws and regulations.
13. It is the policy of the Board that all Port Tenants shall provide for a safe environment and follow the Port’s Homeland Security rules and regulations, including, but not limited to, Tariff Section 2, item 298 and all other applicable federal, state and local policies and mandates.
14. It is the policy of the Board that use of all Port property shall be consistent with the Port’s Master Plan and all other land-use plans that establish future development of the Port.
15. It is the policy of the Board to require compensation for all Lease Agreements. Any exceptions must be approved by the Board, with findings, in an open public meeting.
16. It is the policy of the Board that all rates, fees and charges as well as all other terms and conditions shall be consistent with the Administrative Code, City Charter and all other applicable laws and regulations.
17. It is the policy of the Board that the use of Port property must allow for the key principle of the Public Trust Doctrine to include the promotion of public uses, (i.e. marinas, visitor serving retail), rather than exclusively private purposes.

## **II. Competitive Proposals**

1. It is the policy of the Board to solicit competitive proposals for available properties, including land and submerged land areas. It is also the policy of the Board to continue to build long-term relationships with existing Tenants. Therefore, the Board recognizes certain exceptions as set forth below.
  - a. The Executive Director shall have the discretion to enter into temporary entry and use permits, internal temporary entry and use permits, space assignments and certain 30-day revocable permits without a competitive proposal process.
  - b. The Executive Director shall have discretion to negotiate with an existing Tenant in Good Standing (as defined below in Section III) when the term

of the Lease Agreement expires rather than soliciting proposals for the leasehold.

- c. The Executive Director may enter into a Lease Agreement with a Tenant when land adjacent to that Tenant's existing leasehold becomes vacant and the productivity or efficiency of the existing Tenant can be enhanced by this property rather than soliciting competitive proposals.
2. It is the policy of the Board that all competitive proposals, and any exceptions to competitive processes, shall remain consistent with the Administrative Code, City Charter and all other applicable regulations.

### **III. Tenant in Good Standing**

1. It is the policy of the Board that a Tenant in good standing shall be determined by the ability to meet minimum qualifying standards with respect to the criteria set forth below, ("Tenant in Good Standing"). Such determination will be made by the Chief Financial Officer of the Port, who must attest to such determination in writing, and made part of the staff report and recommendation to the Board.
  - a. A Tenant in Good Standing shall be, at all times, in compliance with all terms and conditions of its Lease Agreement with the Port, including current in all payments due and owing under the Lease.
  - b. A Tenant in Good Standing shall demonstrate financial capability and responsibility.
  - c. A Tenant in Good Standing shall possess management qualifications and experience which meet industry standards.
  - d. A Tenant in Good Standing shall operate and use the property in the manner contemplated in the Lease.
  - e. The Board may use other applicable factors to assess the status of the Tenant.

#### **IV. Tenant Selection**

1. It is the policy of the Board to ensure that no one entity secures an unfair competitive advantage by controlling an undue amount of Port property or berthing area.
2. It is the policy of the Board that the manner of assembling, sharing, and maintaining information related to proposal selection and negotiation processes shall be performed in an open and transparent manner.
3. It is the policy of the Board that the Executive Director shall exercise due diligence when considering a new or renewal Lease Agreement. The due diligence process shall determine prospective and existing Tenants' abilities to comply with Lease Agreement terms and conditions. Such due diligence shall include, but is not limited to, the evaluation processes set forth below.
  - a. Appropriate analyses shall be conducted to determine Tenant qualifications and ability to comply with terms and conditions of the Lease Agreement.
  - b. Appropriate analyses shall be conducted regarding provisions of the above Section III, Tenant in Good Standing, to assess Tenant's status.
  - c. Appropriate vetting shall be conducted to determine Tenant performance against industry ratios and standards. A Tenant which meets certain ratios and standards shall be deemed a qualified user ("Qualified User").

#### **V. Term Options**

1. It is the policy of the Board that the option to extend the term of a Lease Agreement may be negotiated during the original lease transaction. However, in no event can the sum of the initial term, plus option period(s), exceed the maximum allowable term per the City Charter and Tidelands Trust.
2. It is the policy of the Board that in consideration of granting an option to extend the initial term, and/or subsequent term, of a Lease Agreement, certain conditions may apply as set forth below.
  - a. Tenant shall satisfy specified metrics and industry standards.
  - b. Tenant shall pay a fee that is, at minimum, 10% of the estimated annual base rent of the first year of said option period ("Option Fee"). Such Option Fee shall apply to each option period and shall be paid upon the execution of the initial term of the Lease Agreement.

- c. The Option Fee shall not apply to, but is in addition to, future rent and shall not be refundable.
- d. The Option Fee shall be fully refundable in the event the Port terminates the Lease Agreement for convenience of the Port's interest.

## **VI. Amendments**

1. It is the policy of the Board that the Executive Director may consider a material amendment to a Lease Agreement subject to some, or all, of the conditions set forth below.
  - a. Substantial capital investment in tenant improvements have been made by Tenant, as approved by the Port, or Tenant has maintained the premises in accordance with Port policies, particularly maintenance standards and environmental policies.
  - b. Qualification for an amendment shall require Tenant to be a Tenant in Good Standing.
  - c. Any use proposed by the amendment is consistent with applicable land-use plans.
  - d. All parts of the amended leasehold shall be developed or used for the permitted use and Tenant shall pay the newly determined fair market rent.
2. It is the policy of the Board, to have the discretion to prescribe other conditions when considering an amendment.

## **VII. Assignments and Subleases**

1. It is the policy of the Board that the Executive Director shall have no obligation to approve an assignment or consent to a sublease if the proposed transaction is not specifically contemplated and authorized in the provisions of the Lease Agreement. It is also the policy of the Board that certain requirements shall apply to assignments and subleasing as set forth below. Further, any consideration of an assignment may require a rent guarantee from the assignor and shall, at minimum, meet the conditions set forth below.
  - a. Assignee shall meet conditions of Qualified Users, as defined in the above Section IV, Tenant Selection, item 4.b., and other applicable qualifying standards.
  - b. An assignment shall not release the Tenant from its obligation under the Lease Agreement.

- c. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, “assign or assignment”) or sublet all or any part of Tenant’s leasehold interest without prior written consent of the Executive Director.
  - d. Change in Tenant’s ownership or assets may be considered an assignment and shall be subject to compliance with conditions of Qualified Users, as defined in the above Section IV, Tenant Selection, and require prior written consent of the Executive Director. Such change includes, but is not limited to, merger, sale, acquisition, financing, transfer and leverage buy-out transactions.
2. It is the policy of the Board that the Executive Director may require a fee in return for granting an assignment when the assignment results in economic or financial benefit to the assignor. Such fee shall be, at minimum, 10% of the economic value attributable to the assignor’s leasehold interest derived from, or a result of, the use of the premises.

#### **VIII. Rates, Fees and Charges**

1. It is the policy of the Board that pricing for use of Port property shall be structured to enhance the Port’s competitive position and advance the Port as a positive place to do business while working to achieve minimum Rates Of Return (“ROR”) on land and on improvements consistent with Port financial management policies (current goal of 10% ROR target on land and 12% ROR target on improvements).
2. It is the policy of the Board that a fixed minimum annual guarantee shall be set for each lease agreement, whereby the Tenant shall pay full or 100% rent while meeting the Port’s return on land and improvements.
3. It is the policy of the Board to establish market rental rates and maximize its ROR through use of appraisals or other pricing methods as may be appropriate. Certain distinguishing factors which may be unique to Port property (for example near- or deep- water proximity, adjacency to heavy rail and transportation routes, and near water accessibility) may be valued using alternative pricing methods.
  - a. Market rental rates shall be established in accordance with the Appraisal Institute’s definition of “market rent” which is *“the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, and tenant improvements.”*

4. It is the policy of the Board that any deviation from market rates and ROR goals must be brought before the Board and approved in open public session.

#### **IX. Compensation Adjustments**

1. It is the policy of the Board to require annual adjustments of rental compensation due for all Lease Agreements. Such adjustment shall be designed to cover inflationary and other cost adjustments and be based upon a Consumer Price Index (CPI).
2. It is the policy of the Board that, consistent with the City Charter, compensation resets are required no less often than every five years. Such compensation resets shall be made to the then current applicable fair market rent.
  - a. Any reset to market process shall take into account annual adjustments implemented in preceding periods. However, in no case will any such reset result in adjustments beyond the market rental rate as such rate is defined in the above Section VIII, Rates, Fees and Charges, 3.a, nor will it result in a reduction to the existing rate unless approved by the Board.

#### **X. Pricing Platform**

1. It is the policy of the Board that pricing for use of Port property shall be structured to enhance the Port's competitive position and that the Real Estate Division shall develop recommendations for pricing of Port property. Such pricing shall be presented to the Board separately for policy adoption. Pricing categories are set forth below.
  - a. Waterfront. Pricing for waterfront property shall consider the area from the pierhead line extending inland to the top of the bank, plus 200 feet inland from the top of the bank. Such pricing shall be set at 100% of the calculated amount and shall be determined per valuation study or appraisal.
  - b. Backlands. Pricing for backlands property shall consider the area beyond 200 feet inland from top of the bank. Such pricing shall be set at 100% of the calculated amount per valuation or appraisal, or 85% of the waterfront value in the event a separate valuation does not exist.

- c. Submerged Lands. Pricing for submerged land shall consider the area from the pierhead line toward the channel line. Such pricing shall be assessed at 33% of the waterfront valuation.
- d. Sub-surface Land. Pricing for sub-surface land area, which has a depth of more than 3 feet beneath the surface, shall be assessed at 50% of the applicable land rate. Pricing for sub-surface land area, which has a depth of less than 3 feet below the surface, shall be assessed at the full applicable rate.
- e. Value of Port-owned properties will be reset every three to five years.
- f. Pricing platforms shall be consistent with all Board adopted financial policies.

## **XI. Security and Environmental Deposits**

1. It is the policy of the Board that Tenants shall provide security for compliance with the terms and conditions of their Lease.
  - a. A standby letter of credit, or equivalent, may be submitted as security for compliance with the terms and conditions of Lease Agreements. The amount shall be determined in relation to the category and term of the Lease Agreement. Two percent of the value of the standby letter of credit or equivalent shall be deducted and paid to a Harbor District maintenance fund and shall be non-refundable.
  - b. The Executive Director may release the standby letter of credit or its equivalent and refund the remaining 98% of the security deposit to the Tenant, provided that Tenant is in compliance with all terms and conditions of the Lease Agreement at the end of the term.
2. It is the policy of the Board that an additional environmental deposit, independent of the security deposit, may be required depending on risk factors associated with the proposed use of the leasehold. Such additional deposit shall be refundable upon compliance with all relevant terms and conditions.

## **XII. Material Deviations**

1. It is the policy of the Board that it shall be advised of all material deviations from the Leasing Policy and that such deviations must be approved by the Board, with findings, in an open public session.
2. It is the policy of the Board that it shall be advised of all material deviations from compliance with a Lease Agreement and that such deviations must be approved by the Board, with findings, in open public session.

3. It is the policy of the Board that the Port may terminate and/or assess Tenants for costs incurred by the Port as a result of unauthorized operation and use under a Lease Agreement, whether such operation or use is material or less than material.

### **XIII. Other Port Plans and Policies**

1. It is the policy of the Board that the Leasing Policy shall comport with other Port policies which cover various financial, environmental and other aspects of property use and entitlement. Applicable Port policies, plans, and standards include, but are not limited to, the Asset Management Policy, Port Master Plan, Historic Structures Policy, Clean Air Action Plan, Hazardous Materials Handling Policy, Storm Water Management Policy, and others as may be appropriate.

### **XIV. Property Ownership**

1. It is the policy of the Board that, unless otherwise negotiated, all Port-owned improvements, fixtures and equipment existing at the commencement of the term of the Lease Agreement shall remain property of the Port. Unless otherwise provided for in the Lease Agreement, title to improvements financed by Tenants or third parties shall revert to the Port upon expiration or termination of the term of the Lease Agreement.
2. It is the policy of the Board to have the discretion to require a Tenant to demolish and remove Tenant-owned improvements and return the leasehold premises to original condition at the Tenant's expense.
3. It is the policy of the Board that in the event the Port ascertains a need to acquire Tenant-owned assets, straight-line depreciation shall be applied to determine the purchase price. Such provision shall be included in the Lease Agreement.

## GLOSSARY OF TERMS

**Appraisal:** A professional opinion or estimate of the value of property. An appraisal is also the act or process of estimating property value.

**Assignment:** Transfer of contractual rights from one contracting party (the assignor) to another party (assignee).

**Capital Investment:** An expenditure that improves the value or extends the life of a major asset.

**Consumer Price Index (CPI):** CPI is an index of change in the price of a representative “market basket” of consumer goods relating to the current price to a designated base year. CPI is used to adjust rent to reflect the impact of economic conditions.

**Executive Director:** The senior Executive Officer of the Harbor Department, appointed by the Mayor of the City of Los Angeles, acting in his/her role and through the authority delegated by the Board of Harbor Commissioners. As used in this Leasing Policy, Executive Director shall mean the Executive Director or Designee as may be from time to time designated to carry out the functions delegated to the Executive Director.

**Harbor Department:** The proprietary department of the City responsible for the management of the Port of Los Angeles and the Harbor District.

**Harbor District:** The lands and waters, and interest therein, under the possession, management and control of the Board<sup>1</sup>.

**Highest and Best Use:** The reasonable and probable use of a property that will support the highest present value of the land.

**Improvements:** Improvements generally include a building or buildings, but may be any permanent structure or other development such as, but not limited to, a street and utilities.

**Land-Use Plan:** Establishes the visions and goals for the development of a specific area and prevents land-use conflicts.

**Market Rent:** As defined by the Appraisal Institute, market rent is “the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements.”

---

<sup>1</sup> Provision of the Los Angeles City Charter Section 651 and the Administrative Code Section 23.49.

**Port Master Plan:** A general plan for long-range development of the Port of Los Angeles, which describes an overall development concept.

**Port Property:** Real property assets, including upland, submerged lands and all improvements thereon, located within the Harbor District which are owned and controlled by the Harbor Department of the City of Los Angeles.

**Premises:** The defined area of control by the tenant which is specified in the lease.

**Pricing Platform:** An established method for calculating the value of an asset.

**Rate of Return:** Rate of return (ROR), also known as return on investment (ROI) is the ratio of money gained or lost (realized or unrealized) on an investment relative to the amount of money invested. The investment may be in the asset or capital.

**Rent:** Consideration paid for the occupancy and use of real property; any consideration not only money.

**Sublease:** A lease from a lessee to another lessee (tenant to another tenant). The new lessee is a sublessee or subtenant.

**Submerged Land:** Submerged land is land that is located underwater.

**Tariff:** Port tariffs prescribe the rates, charges, rules and regulations of the Port of Los Angeles.

**Tenant:** One who has possession of real estate under a lease or other rental agreement.

**Tenant Improvements:** Improvements to land or buildings to meet the needs of the tenant. Such improvements may be new or remodeled, the cost of which may be paid by the landlord, tenant or parts by each.

**Term:** A specified period of time, such as the term of a lease.

**Tidelands:** Tidelands represent the land between the ordinary mean high tide (OMHT) and the mean low tide.

**Waterfront Property:** Waterfront property is located along the edge of the water.