



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

DATE: OCTOBER 1, 2020

FROM: CARGO & INDUSTRIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ - APPROVE FOURTH
 AMENDMENT TO PERMIT NO. 881 WITH TRAPAC, LLC**

SUMMARY:

Staff requests approval of the Fourth Amendment to Permit No. 881 (Permit) with TraPac, LLC (TraPac) to effect two material changes to the Permit: 1) change the name of the tenant from TraPac, Inc. to TraPac, LLC; and 2) change the overall approach to compensation by converting the existing efficiency-based rate scale to a structure in which TraPac will pay fixed rent plus incremental TEU charges upon reaching certain efficiency levels over a given compensation year. This new approach is aimed at facilitating container volume retention and growth. The amendment also resets compensation for the five-year period of September 29, 2019 to September 28, 2024, in accordance with the requirements of the Permit and the Los Angeles City Charter, using the new approach to compensation contemplated under this action.

Under the proposed Fourth Amendment, the Permit will yield \$200.9 million in guaranteed compensation, in aggregate, over the five-year period from September 29, 2019, to September 28, 2024. This guaranteed compensation represents a 59.3 percent increase relative to guaranteed compensation generated over the prior five-year period.

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively 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 Fourth Amendment to Permit No. 881 with TraPac, LLC;
3. Direct the Board Secretary to transmit the Fourth Amendment to Permit No. 881 to City Council for approval pursuant to Charter Section 606 of the City Charter;

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4. Authorize the Executive Director to execute and the Board Secretary to attest to the Fourth Amendment upon approval by City Council; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background – The Permit grants TraPac the use of 219.976 acres at Berths 136-147 for cargo handling operations for a term of 30 years expiring on September 28, 2039. The premises consists of 219.976 acres of land at Berths 136-147, including approximately 16 acres of on-dock rail and 4,630 lineal feet of wharf.

The purpose of the amendment is to effect the following material changes to the Permit: 1) change the tenant name from TraPac, Inc. to TraPac, LLC; and 2) change the overall approach to compensation by eliminating the efficiency-based rate scale that applies to all TEUs handled at the premises, and replacing it with an incremental rate structure that will apply to TEUs above a minimum volume commitment. Also, the amendment addresses a third item: the reset of compensation for the five-year period of September 29, 2019 to September 28, 2024, using the new approach to compensation contemplated under this action.

Each of these items are discussed in more detail below.

1. Name Change:

On January 31, 2014, TraPac, Inc. converted to a limited liability corporation. Staff confirmed the entity following the conversion is the same entity that existed before the conversion; and that such conversion caused no changes to the organization structure of Mitsui O.S.K. Lines, Ltd., the guarantor of the Permit.

2. Amendment to Compensation Structure

Current: Currently, TraPac's compensation for use and occupancy of the premises is collected through charges on TEUs handled on the premises subject to a MAG. The MAG is a per-acre base rent that is required to be paid regardless of how many TEUs are handled at the premises. TEU charges within the existing efficiency scale generally decline as additional TEUs per acre are handled. More specifically, the greater the number of TEUs TraPac handles annually on a per-acre basis, the lower the cost TraPac must pay to the Harbor Department on a per-TEU basis. The TEU efficiency scale comprises TEU rates in 100 TEU per acre increments from 3,000 to 10,000 TEUs per acre, resulting in 71 potential brackets. Said differently, in a given compensation year, TraPac's efficiency rate could be one of 71 potential rates, the selection of which depends upon how many TEUs TraPac handles in a compensation year. Ultimately, TraPac pays the greater of the MAG or the product of volumes multiplied by rates for a given calendar year.

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Proposed: Under the proposed Fourth Amendment, TraPac would pay the MAG in monthly installments. If TraPac does not reach a certain efficiency level (i.e. handle a given number of TEUs) over the course of a calendar year, then no further compensation would be due. In the event that TraPac exceeds an agreed-upon efficiency level (MAG TEUs), then additional compensation in excess of the MAG would be due to the Harbor Department as those additional TEUs are handled. TEUs in excess of the MAG TEUs would be charged an incremental rate at two separate progressive volume thresholds. Using calendar year 2020 as an example, provided below is the proposed rate structure followed by an example for illustrative purposes.

Annual TEU Thresholds	Rate Category	2020 Compensation
0 - 847,550 TEUs	MAG	\$38,935,752
847,551 - 1,099,880 TEUs	First Incremental Rate	\$25/TEU
1,099,880+ TEUs	Second Incremental Rate	\$18/TEU

As an example, if in calendar year 2020, TraPac handles 1,099,881 TEUs, compensation due would be comprised of 1) the MAG of \$38,935,752 for the first 847,550 TEUs, and 2) \$6,308,250 for the additional 252,330 TEUs at the First Incremental Rate, and 3) \$18.00 for the one TEU at the Second Incremental Rate, for an aggregate total of \$45,244,020 in compensation due for the 2020 calendar year.

The proposed MAG, Incremental Rates and TEU thresholds are subject to scheduled increases each year of the five-year period of September 29, 2019 to September 28, 2024, as shown in the table below.

This new approach to compensation is aimed at facilitating, retaining and growing cargo volumes by enabling the tenant to institute a dynamic pricing structure to attract container volumes delivered to the Harbor Department above the MAG level TEUs.

3. Compensation Reset

The Permit requires that compensation is reset in five-year intervals, and in compliance with Section 607(b) of the Los Angeles City Charter. The Fourth Amendment reflects and effectuates the parties' agreement on rates for the period of September 29, 2019 to September 28, 2024, using the new framework outlined in this action. In connection with the reset, on September 27, 2019, the Harbor Department exercised its right to increase rates to 125 percent until the reset is complete. As a component of the subject negotiated agreement, the Harbor Department agreed to reverse said additional charges, and issue a credit on the paid amount totaling \$3,166,349.12, subject to the City's approval of the Fourth Amendment. That credit is reflected in the Amendment.

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Provided below is a table showing material terms of the proposed Fourth Amendment (See Transmittal 1).

	Current Permit	Proposed Fourth Amendment
Tenant Name	TraPac, Inc.	TraPac, LLC
Per Acre Rate	\$166,357	\$173,589 (Yr. 1) increasing to \$190,000 (Yr. 5)
5-Year MAG	Not Applicable	\$200.9 million
TEU Rates	Efficiency scale comprised of 71 brackets; single rate applies to all TEUs	Incremental rate schedule comprised of two rates; rates apply to respective TEU thresholds above the MAG
Incremental Rates	Not applicable	\$25.00/TEU (2020 First Incremental Rate) \$18.00/TEU (2020 Second Incremental Rate)
Annual Rate Increases	None	2% increase on Incremental Rates
Rate-based TEU Thresholds	Not Applicable	<u>MAG TEUs</u> <ul style="list-style-type: none"> • 0 - 847,550 TEUs (2020) <u>First Incremental Rate TEUs</u> <ul style="list-style-type: none"> • 847,551 - 1,099,880 TEU (2020) <u>Second Incremental Rate TEUs</u> <ul style="list-style-type: none"> • 1,099,880+ TEUs (2020)
Annual Increases	Not applicable	Scheduled increases over the 5-year compensation period
5-year Reset	Compensation reset in 5-year intervals	No change; next reset is due September 29, 2024
Rent Credit	Not applicable	\$3,166,349.12 to be credited in connection with reversal of 125% charges
Empty Container Discount	Applicable until January 1, 2021	Applicable until January 1, 2021

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Harbor Department's Right to Take-back Premises and Impact to Five-year MAG

Per the terms of the Third Amendment to the Permit, the Harbor Department has the right to take-back/delete 44,346 square feet (1.018 acres) of TraPac's premises. The deletion can occur no earlier than December 1, 2020. The Harbor Department expects to exercise its right to take-back the parcel on January 1, 2021, in connection with implementing the Wilmington Waterfront Project. Upon the Harbor Department's deletion of the parcel, TraPac's MAG would be reduced to reflect the then-current acreage multiplied by the then-current Per Acre Rate (above), as contemplated in the Third Amendment. As such, the five-year MAG would reduce from what is shown above to reflect the deletion.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Fourth Amendment to Permit No. 881 with TraPac, which is an administrative action. 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 Amendment will facilitate an administrative name change as well as revise the overall approach to calculating annual compensation as part of the overall compensation reset for the five-year period of September 29, 2019 to September 28, 2024. The change in approach to calculating annual compensation will convert TraPac's existing 71-bracket rate table into a structure whereby MAG is invoiced on a monthly basis and incremental amounts would be received once TraPac attains a given efficiency level.

Guaranteed compensation under the proposed Amendment is anticipated to be \$200.9 million over the five-year reset period. This level of guaranteed compensation would represent a \$74.8 million, or 59.3 percent increase, over the \$126.1 million in guaranteed compensation received over the prior five-year reset period. Assuming that 1.018 acres are taken back under the Third Amendment to the Permit on January 1, 2021, staff estimates that guaranteed compensation over the five-year reset period will decrease by \$0.7 million to \$200.2 million.

The proposed name change whereby the name of the tenant will change from TraPac, Inc. to TraPac, LLC is administrative in nature and is not anticipated to have a financial impact on the Harbor Department.

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CITY ATTORNEY:

The Fourth Amendment has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Fourth Amendment

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

FIS Approval: *MB*
CA Approval: *MB*

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Mark Bleavins FOR
EUGENE D. SEROKA
Executive Director

EDS:MLK:SM:raw
Author: Marisa Katnich
BL855raw Trapac 4th Amendment