

DATE: OCTOBER 21, 2021

FROM: CARGO & INDUSTRIAL REAL ESTATE

**SUBJECT: RESOLUTION NO. _____ – ORDER RESETTING COMPENSATION
 UNDER PERMIT NO. 692 WITH YUSEN TERMINALS, LLC**

SUMMARY:

Staff requests approval of the Order resetting compensation under Permit No. 692 between the City of Los Angeles Harbor Department (Harbor Department) and Yusen Terminals, LLC (YTI). YTI operates a container terminal at Berths 212-224 and rear Berth 209. The Order will reset compensation to fair market rent for the five-year period from October 1, 2021 through September 30, 2026.

The proposed Order would: (a) increase Minimum Annual Guaranteed (MAG) compensation by \$24,435,902, or 15.8 percent, over a five-year period from \$154,882,347 to \$179,318,249; (b) increase annual fixed rent on 11.08 acres by \$115,223, or 6.6 percent, from \$1,751,500 for the year ended September 30, 2021 to \$1,866,723 in Year 1 with 2 percent annual increases thereafter; (c) reduce annual storage and demurrage from \$100,000 to \$0; and (d) increase the Twenty-Foot Equivalent Unit (TEU) Rate by \$0.30 from \$129.58 to \$129.88 to offset the storage and demurrage fee reduction. All other components of compensation will remain the same.

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 Order resetting compensation under Permit No. 692 with Yusen Terminals, LLC for the five-year period of October 1, 2021 through September 30, 2026;
3. Authorize the Board Secretary to attest to the Order resetting compensation to be paid by Yusen Terminals, LLC under Permit No. 692; and
4. Adopt Resolution No. _____ and Order No. _____.

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DISCUSSION:

Background – On October 27, 1990, Nippon Yusen Kaisha (NYK) became the tenant of the City of Los Angeles Harbor Department under Permit No. 692 (Permit) located on Terminal Island (Transmittal No. 1). On February 22, 1991, the Permit was assigned from NYK to YTI (although NYK remained the guarantor of the Permit), a subsidiary of NYK. The Permit expires on September 30, 2026

Under the Permit, YTI's premises (Transmittal No. 2) are comprised of the following areas and subject to the following fees:

- 181.36 acres are subject to the greater of a Minimum Annual Guarantee (MAG) of \$177,565 per acre or TEU efficiency charges.
- 5.68 acres at the Radiation Portal Monitor site on New Dock Street is subject to land rates in Tariff No. 4.
- 11.08 acres of land at Rear Berth 209 (known as YTI East) subject to fixed rent recently increased in January 2021 pursuant to the 12th Amendment.
- 33.75 acres are dedicated to the non-preferential rail areas shared with Everport Terminal Services, Inc., and are not subject to charge.

Compensation is reset in five-year intervals; reset for the period of October 2021 through September 30, 2026 was due on October 1, 2021. Staff commenced negotiations concerning this reset with YTI in April 2021 and concluded negotiations in September 2021, consistent with the deadlines set forth in in the Permit.

The current rent compensation structure under Permit has four components:

1) **MAG, Revenue Sharing Breakpoints, TEU Rate:**

- a. **MAG**. The value established as the MAG is the baseline for minimum rent due to the Harbor Department for any given year. If total TEU charges by container volume handled at the facility fail to reach the MAG, the value established as the MAG becomes minimum rent payable for that year. The current MAG is \$32,203,188 based on 181.36 MAG acres at \$177,565 per acre.
- b. **Revenue Sharing Breakpoints (RSB)**. If total TEU charges exceed the MAG, then a revenue sharing model is utilized to determine the amount due to the Harbor Department. The current structure discounts 50 percent of all qualifying charges (wharfage and dockage) until TEU volume reaches a certain amount per compensation acre, referred to as a Revenue Sharing Breakpoint (RSB). At that point the discount increases to 75 percent of all charges on that incremental volume.

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- c. TEU Rate. Cargo charges on the gross wharfage and dockage of a vessel are currently determined by applying a rate of \$128.58 per TEU, rather than by type of cargo. The more volume handled at the facility, the lower the net TEU charge, based on application of revenue sharing breakpoints.

2) Land Rent.

- Parcel No. 4, which consists of 5.68 acres of land that encompasses the Radiation Portal Monitoring site located at New Dock Street, which is subject to rates for unpaved land as set forth in the Tariff. Current annual rent is \$812,785 at \$143,096 per acre or a monthly rental rate of \$0.28 per square foot effective January 2021, and an annual rent of \$950,096 at \$167,270 per acre or a monthly rate of \$0.32 per square foot effective January 2022.
- Parcel No. 5 (YTI East) consists of 11.08 acres of land located at 935 East New Dock Street. As per the 12th Amendment to Permit No. 692, rent on Parcel No. 5 was increased on January 1, 2021 from \$135,102 per month to \$149,577 per month, such that rent of \$1,751,500 was earned for the year ended September 30, 2021. Dividing this annual rent of \$1,751,500 by the 11.08 acres comprising Parcel No. 5 results in a per acre rate of \$158,078 for the year ended September 30, 2021.

- 3) Storage and Demurrage. In lieu of paying Tariff charges for storage and demurrage, YTI pays a fee of \$100,000 per year. YTI is one of two terminals that has a separate fee for storage and demurrage.

- 4) Other Premises. Other rail premises are shared with the neighboring tenant, Everport Terminal Services, Inc., and per the terms of the Permit, are non-compensatory.

Proposed Reset of Compensation – As noted above, the Permit with Yusen requires that compensation is reset in five year intervals. Further, in connection with determining compensation over the five-year term from 2021-2026, the permit calls for the parties to consider: 1) the uses permitted under this entitlement and all of its terms, conditions and restrictions; as well as 2) all factors and data relating to the fair rental value of the premises. As such, the parties used a market-based approach to setting the MAG following evaluation of various transactions in the San Pedro Bay, and used comparable land data for setting compensation related to the fixed rent area. After conducting a market analysis as a part of these negotiations, staff determined the proposed reset rates noted below are within market range for comparable container terminal operations in the San Pedro Bay. To enable YTI to remain competitive from a unit cost point of view, staff focused the reset on guaranteed compensation.

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PROPOSED COMPENSATION						
<i>October 1, 2021 - September 30, 2026</i>						
	Current	10/2021 - 09/2022	10/2022 - 09/2023	10/2023 - 09/2024	10/2024 - 09/2025	10/2025 - 09/2026
Changing Rental Components						
<i>MAG</i> ¹	\$177,565	\$189,995	\$193,795	\$197,671	\$201,624	\$205,657
<i>Land (Fixed Rate)</i> ^{1,2}	\$158,078	\$168,477	\$171,846	\$175,283	\$178,789	\$182,365
<i>TEU Rate</i> ³	\$129.58	\$129.88	Same	Same	Same	Same
<i>Storage/Demurrage</i> ^{4,5}	\$100,000	\$0.00	Same	Same	Same	Same
1. Per Acre 2. Parcel No. 5 3. The RSB will remain the same. 4. Per Year 5. The TEU rate increase offsets the reduction of storage and demurrage to zero, resulting in an overall net neutral change.						

As noted above, the TEU rate increase offsets the reduction of the storage and demurrage charge to zero dollars, resulting in a net neutral effect to rates. Typically, storage and demurrage rates are included in TEU rates, and this offset creates that same net effect, without lowering overall compensation. This change is recommended for ease of administration and application of fees.

Staff requests the Board approve the reset Order (Transmittal No. 3) as set forth in this current action.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the Order resetting compensation for Permit No. 692 with YTI, 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 Order would increase MAG compensation by \$24,435,902, or 15.8 percent, over a five-year period from \$154,882,347 for the five-year period ended September 30, 2021 to \$179,318,249 for the subsequent five-year period ending September 30, 2026. On a per acre basis, MAG per acre would increase by 7.0 percent from \$177,565 for the year ended September 30, 2021 to \$189,995 for the year ending September 30, 2022. Thereafter, MAG per acre would increase by 2.0 percent annually until reaching \$205,657 for the year ending September 30, 2026.

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In addition, the proposed Order would increase fixed rent compensation related to the 11.08 acre Parcel 5 by \$115,223, or 6.6 percent, from \$1,751,500 for the year ended September 30, 2021 to \$1,866,723 for the year ending September 30, 2022. Thereafter, rent would increase by 2.0 percent annually until reaching \$2,020,601 for the year ending September 30, 2026.

Lastly, under the proposed Order annual storage and demurrage fees received by the Harbor Department would be reduced from \$100,000 for the year ended September 30, 2021 to \$0 going forward. Concurrently, in order to offset this decline, the TEU rate paid by Yusen would increase from \$129.58 for the year ended September 30, 2021 to \$129.88 over the five-year period ending September 30, 2026.

As stipulated in Section 4(i) of the Permit, the Order resetting compensation is retroactive to October 1, 2021. Over the five-year period ending September 30, 2026, staff estimates that YTI would need to handle between 772,000 and 897,000 TEUs in order to meet its MAG obligations. If additional TEUs are handled by YTI in excess of those required to meet its MAG, then the Harbor Department would receive compensation in excess of the guaranteed amounts provided above.

CITY ATTORNEY:

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

TRANSMITTALS:

1. Order
2. Parcel Map
3. Site Map

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

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