

## **Factors Germaine to Consent**

### **Permit No. 931 - Transfer of Permit from Praxair, Inc. to Linde, Inc.**

**113.4 Factors Germaine to City Consent.** In evaluating any Transfer Notice, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) **The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity or entities;**

In August 2016, it was publicly announced that the parent company of Praxair, Inc. (Praxair) was in official negotiations to merge with Linde plc, and, in June 2017, both companies agreed to the merger in principle. Permit 931 became effective in April 2018, and, at that time, the merger had not yet closed. The merger ultimately closed on October 31, 2018, and staff is now processing the transfer of Permit 931 to Linde Inc., a subsidiary of Linde plc.

Under Permit 931 with Praxair, minimum rent obligations are \$305,624.48 per quarter as of December 31, 2022, or \$1,222,497.92 annually. A compensation reset is due on April 24, 2023, at which time rent will be adjusted to reflect the fair market rental level for the premises. Thereafter, rent will be increased each April based upon the annual change in the Consumer Price Index (CPI). Permit 931 is due to expire on April 23, 2028, but is subject to two ten-year options which could potentially extend the expiration date to April 23, 2048 if both are executed.

For purposes of this evaluation, staff has assumed that rent will increase to \$321,211.33 per quarter effective April 24, 2023 and increase annually by 3% through the expiration of Permit 931 on April 23, 2028. Assuming a discount rate of 10%, which is consistent with the Port's target rate of return on land, the present value of aggregate minimum rent obligations from April 24, 2023 through April 23, 2028 is approximately \$5.1 million.

The Finance division has reviewed financial information of Praxair, Inc. for the year ending December 31, 2017 (last year prior to the merger) as well as financial information of Linde Inc. for the year ending December 31, 2021. Specifically, Total Revenues, Operating Income, Net Income, Total Assets and Total Equity were reviewed. Based upon staff's review of these key financial metrics, Linde, Inc. appears to possess reasonably sufficient financial wherewithal to meet its obligations as Transferee under Permit 931.

(b) **The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;**

Praxair and Linde are reputable companies that are listed on the New York Stock Exchange. Both are considered leaders in their industry. Praxair has paid their rent on time and have been a good tenant in regard to upkeep of their premises.

**(c) Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department, and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants.**

Praxair secured the options to extend in 2018 so that if needed, after the merger, and if it was determined by Linde management that the gas separation plant was no longer needed, they could terminate their Permit and restore the premises. Should that occur, this area could be used for several different Port uses, such as chassis and container storage, construction of a transloading facility, or as a drayage yard. It has a rail spur that POLA would likely request to remain on the premises, should a use that requires rail be proposed by a tenant on the site.

**(d) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and Tenant's use and occupancy thereof;**

Praxair is not requesting a change of its permitted use of the premises. The transfer has been called a merger of equals and the only change to date has been the change of corporate holding. All former Praxair employees are now Linde employees, and the manufacturing of gases continues at the premises site. The corporate headquarters in Danbury, CT is still being used as the North America headquarters.

**(e) Whether the information provided by Tenant in connection with Subsection 113.3.1 (Transfer Notice) justifies such consent;**

The letters dated October 8, 2020, and July 22, 2022, provide all information necessary to justify such consent. See Attached letters at end of document.

**(f) Whether there are uncured defaults including, without limitation, unpaid Rent and, if there are, whether the proposed transferee agrees to cure, remedy or otherwise correct any default by Tenant existing at the time of the Transfer, in a manner satisfactory to the Board; and**

Praxair's rent has been paid on time and there are no defaults or delinquencies.

**(g) Whether the Transferee, its operator or any Affiliate of the Transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the City may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List.**

Staff has reviewed all of the above-mentioned websites to determine if employees of, or actions of both Praxair, Inc. and Linde, Inc. would warrant that the City of Los Angeles should not do business with them and was unable to find any information to that effect.