



Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: AUGUST 6, 2014**

**FROM: REAL ESTATE**

**SUBJECT: ORDER NO. \_\_\_\_\_ – RESETTING COMPENSATION UNDER PERMIT NO. 529 WITH INTERMODAL CONTAINER TRANSFER FACILITY JOINT POWERS AUTHORITY**

**SUMMARY:**

The City of Los Angeles Harbor Department (Harbor Department) leases a 6,403,320 square foot site (147 acres) to the Intermodal Container Transfer Facility (ICTF) Joint Powers Authority (JPA); which in turn subleases the site to the Southern Pacific Transportation Company, now part of the Union Pacific Railroad Company (UPRC). Permit No. 529 (Permit), a 50-year ground lease, commenced in September 1984. The Minimum Annual Guaranteed (MAG) rental rates are reset to market every five years. It is necessary to reset the MAG for the five-year period of December 1, 2011 through November 30, 2016.

Compensation is based upon a MAG and container charge. The container charge for a particular compensation period is determined after establishing the MAG. Once the MAG is in place, it is divided by the average annual container throughput from the last three years of the prior compensation period. The most recent reset covered the period of December 1, 2006 through November 30, 2011. The MAG rental rate was \$7,500,000, reflecting a Board of Harbor Commissioners (Board) approved nine percent rate of return (ROR) for that reset period, with the container movement charge against the MAG set at \$11.82. UPRC has shown a decline in container movement in the last three years versus the MAG, and the container charge will be adjusted as required by the Permit.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Adopt the Order resetting compensation for Intermodal Container Transfer Facility Joint Powers Authority for the period of December 1, 2011 through November 30, 2016;
2. Authorize the Board Secretary to attest to the Order resetting compensation; and
3. Adopt Order No. \_\_\_\_\_.

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**DISCUSSION:**

**Background/Context**

Between 1982 and 1984, the Harbor Department, the Port of Long Beach (POLB), and Southern Pacific Transportation Company (acquired by UPRC in 1996) jointly developed and bond-financed the ICTF through a public/private partnership. An ICTF JPA was created and funded by the both the Harbor Department and POLB, to administer that partnership.

The ICTF was specifically designed to provide near-dock infrastructure required to handle the rapidly growing international container shipping demand and to enhance the flow of container traffic through the Port of Los Angeles and POLB. The ICTF totals approximately 147 acres, located within the City of Los Angeles (Transmittal 1). The property is subleased by UPRC from the ICTF JPA, which leases the property from the Harbor Department. The ICTF JPA Permit term extends through 2034. The ICTF operates 24 hours per day, seven days per week, and had an average throughput volume of approximately 420,480 containers in the last three Permit Years.

**ICTF/Permit Adjustment Period**

Article VII, Section 607 (b) of the City Charter requires "Every franchise, concession, permit, license, or lease shall include a procedure to adjust the compensation periodically, but in no case shall the period between adjustments exceed five years."

1. This requirement is addressed through two methods; Section 5(g) of the Permit which calls for:

"Renegotiation of Guaranteed Annual Rent in each Adjustment Period, with the rent to be mutually agreed upon between the Tenant and the Board at some time not more than nine months and not less than three months prior to the Adjustment Date. If negotiations have not begun four months prior to any Adjustment Date, the Tenant shall immediately set a date to discuss the readjustment of the Guaranteed Annual Rent with the Executive Director. If the Tenant and the Board cannot agree upon the Guaranteed Annual Rent for an upcoming Adjustment period, the Board shall give written notice to begin the appraisal processes as outlined in Section 5(g)(1)."

2. Section 5(g) (3) of the Permit calls for:

"After Board has established the new Guaranteed Annual Rent for the Premises for an Adjustment Period, whether or not Tenant exercises its option to pay the Graduated Guaranteed Annual Rent, the Container Charge payable by Tenant in each Permit Year in that Adjustment Period shall be determined by dividing the Guaranteed Annual Rent for each of the five (5) Permit Years by the average of the total number of Movements in the three (3) Permit Years immediately preceding the Adjustment Period under consideration."

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A historical look at previous Board approved revenue adjustments, beginning with the most recent, is as follows:

| Order No. | Date       | Period             | Container Charge | MAG         |
|-----------|------------|--------------------|------------------|-------------|
| 6913      | 05/03/2007 | 12/01/06 -11/30/11 | \$11.82          | \$7,500,000 |
| 6751      | 04/10/2002 | 12/01/02 -11/30/06 | \$10.05          | \$5,900,000 |
| 6696      | 07/18/2000 | 12/01/96 -11/30/01 | \$10.06          | \$5,100,000 |

During the current adjustment period, staff and UPRC began negotiations in earnest. Protracted negotiations, coupled with staffing changes on both sides, resulted in lengthy time delays. The Harbor Department's Real Estate Division's re-organization in 2012 placed emphasis on clearing the back log of past due compensation adjustments.

In December 2012, the Real Estate Division re-initiated negotiations with UPRC for the purpose of concluding protracted disagreements over valuation approaches. The negotiations were successfully completed in March 2014.

**Recommendation**

Set compensation for the 2011-2016 permit period based on a ten percent ROR on a \$14.00 per square foot market value of land. This reflects an increase from the current nine percent ROR on a \$13 per square foot market value of land which the Board approved at the time of the last reset. Container charges will be set at \$21.32 per unit, commensurate with the terms of the Permit.

This resetting of compensation (Transmittal 2) is in keeping with the Board adopted ROR Policy, the Board's adopted Leasing Policy, and is in parity with the rates being assessed on the Sothern California International Gateway (SCIG Site Preparation and Access Agreement No. 13-3121).

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an Order resetting compensation under Permit No. 529 with ICTF. As an administrative activity involving the amendment of a permit to use an existing facility involving negligible or no expansion of use, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Class 2(f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no employment impact.

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**FINANCIAL IMPACT:**

The Order resetting compensation for the period of December 1, 2011 through November 30, 2016 will increase the amount of rent as follows:

|                     | Current<br>2006-2011 MAG | Proposed<br>2011-2016 MAG | Adjusted<br>Difference |
|---------------------|--------------------------|---------------------------|------------------------|
| Land                | \$7,500,000              | \$8,964,633               | \$1,464,633            |
| Container<br>Charge | \$11.82                  | \$21.32                   | \$9.50                 |

As stipulated in Section 5 of the Permit, the Order resetting compensation, as well as the resetting of the container charge, is retroactive to December 1, 2011. There is no projection to exceed the MAG within the 2011 to 2016 compensation period.

**CITY ATTORNEY:**

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

**TRANSMITTALS:**

1. Site Location Map
2. Order



JACK C. HEDGE  
Director of Real Estate

FIS Approval: WJH (initials)  
CA Approval: JAC (initials)



DAVID L. MATHEWSON  
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APPROVED:



EUGENE D. SEROKA  
Executive Director