



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: NOVEMBER 8, 2017

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE INDEMNITY AGREEMENT WITH HARBOR PERFORMANCE ENHANCEMENT CENTER, LLC

SUMMARY:

Staff requests approval of an Indemnity Agreement (Agreement) with the Harbor Performance Enhancement Center, LLC (HPEC). If approved, the Indemnity Agreement will indemnify the City of Los Angeles Harbor Department (Harbor Department) against any and all claims associated with its review, as lead agency, under California Environmental Quality Act (CEQA) activities, and the reimbursement, not to exceed \$200,000, for Harbor Department staff time. The CEQA assessment is related to the proposed development of the former U.S. Customs House and Los Angeles Export Terminals (LAXT) facility (Project site) and a pilot study to market-test the validity of HPEC's proposed operational model. The site of the pilot study will be granted under a Revocable Permit No. 17-05, to be presented to the Board of Harbor Commissioners for approval as a separate item.

Approval of the Agreement will protect the Harbor Department against the costs (i.e., legal fees) associated with the defense of a lawsuit for any claim regarding the approval of the CEQA assessments for the project and pilot study and any and all entitlements or conditions necessary for development of the Project site.

RECOMMENDATION:

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

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines as determined by the Director of Environmental Management;
2. Approve the Indemnity Agreement with Harbor Performance Enhancement Center, LLC;
3. Direct the Board Secretary to transmit the proposed Indemnity Agreement to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Indemnity Agreement; and

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5. Adopt Resolution No. _____.

DISCUSSION:

Background – In June 2015, the Harbor Department released a Request for Proposals (RFP) to solicit a qualified entity to develop, operate, and maintain a container terminal support facility on Terminal Island at the former sites of the U.S. Customs House and LAXT facility (Project site). The scope of the development was to solicit proposals that will increase the velocity, fluidity, and efficiency of existing nearby container terminals in the San Pedro Bay.

The RFP resulted in five responses, of which HPEC was selected because its proposal best represented the goal of improving the flow of cargo through the San Pedro Bay by developing a truck staging/waiting area, storage for containers mounted on chassis, chassis depot and adaptively reusing the Customs House for office and meeting space (Project).

Given the central location of the Project site to the Harbor Department's largest container terminals, and the projected volume of cargo moving through the San Pedro Bay ports, it is anticipated that the proposed Project will support critical truck-based cargo movements through the gateway and thus may greatly augment the core cargo-handling function. The type of operation proposed at the Project site may also provide substantial environmental benefits by reducing the idling time and terminal gate congestion currently experienced by truckers at the port complex.

As part of both parties' due diligence to test the feasibility of the Project and to develop its project description for CEQA, HPEC has hired AECOM and Cambridge Associates to model the test performance. HPEC will utilize the premises to conduct the pilot study to collect essential operating metric data, which will sample container movement efficiencies created through HPEC's operational model. Specifically, the pilot study, limited to 400 parking spaces, or "spots", is designed to reveal actual customer interest for the proposed container handling and staging program as well as help provide insights into the seasonality of container volumes over the length of the permit period. This data will provide information which can be used to develop improved container movement efficiencies and cargo velocity for San Pedro Bay container terminals. The metrics utilized in the pilot study will include container dwell time at the site, ingress and egress times, and an analysis of throughput improvements and other efficiency improvements at the terminals. The data collected from the pilot study will be shared with the Harbor Department and will supplement current and future traffic and cargo movement analyses.

Furthermore, the study will gauge expected environmental benefits of improving efficiencies and reducing gate wait times and engine idling, and reduced congestion at impacted intersections and roadways during peak hours in the San Pedro Bay.

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Summary of the Indemnity Agreement - The Indemnity Agreement (Transmittal 1) between the Harbor Department and HPEC provides the Harbor Department certain protections in the form of indemnity and defenses in regard to all phases of the development and through the entitlement process of HPEC's proposed Project. The Project consists of, and this Indemnity Agreement applies to, the pilot study, as well as the development of a truck staging/waiting area, storage for containers mounted on chassis, chassis depot and adaptively reusing the Customs House for office and meeting space; and uses incidental thereto, including alternative fuel facilities.

As stated in Section 6 of the Indemnity Agreement, HPEC has agreed to defend, indemnify, and hold harmless the Harbor Department from and against any claim, action, or proceeding brought against the Harbor Department to attack, challenge, revise, amend, set aside, void or annul: (i) the approval of the proposed Project, including but not limited to any and all entitlements or conditions necessary for development of land; or (ii) the validity or legality of the Project and its Project Documents, which action is brought within the applicable time periods of the State Government Code and Public Resources Code, California Coastal Act, and applicable rules or codes.

The Indemnity Agreement also requires HPEC to remunerate the Harbor Department for its review of Project Documents (as defined in Section 1), including those that result from CEQA compliance. The Indemnity Agreement caps the amount payable to the Harbor Department for review of Project Documents at \$200,000. This dollar amount is separate and apart from HPEC's obligation to indemnify and defend the Harbor Department as detailed in Section 6, which is not capped.

In addition, the Indemnity Agreement requires the Harbor Department to agree that HPEC has and will incur substantial expenses in completing the necessary studies, application processing, and other work required to obtain the approvals and financing required for the successful implementation of the Project. In recognition of HPEC's substantial financial investment in the success of the Project, all documentation submitted by HPEC to the Harbor Department regarding the Project will remain the sole and exclusive property (i.e., intellectual property rights) of HPEC.

This Indemnity Agreement does not in any way affect the Board's unfettered discretion, as described in Section 2. The Board is under no obligation to approve the Project, agree to any other agreement or obligation, or approve any permit or lease, or agree to any entitlement. The Board's discretion remains absolute.

The Indemnity Agreement will also require the approval of City Council pursuant to Los Angeles City Charter Section 373 and Los Angeles Administrative Code Section 10.5, as it has the potential to last longer than three years.

Additionally, Harbor Department staff has already commenced work related to the CEQA activities associated with the Project and pilot study. As such, the Harbor Department will invoice HPEC for the amount of labor hours spent to date. Currently, staff estimates \$2,000 – \$3,000 will be invoiced for the next 4 months. The total expenditure for Harbor Department staff time will not exceed \$200,000.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the Indemnity Agreement with HPEC for environmental assessment activities under CEQA and reimbursement. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2 (f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The Indemnity Agreement will protect the Harbor Department against the costs (i.e., legal fees) associated with the defense of a lawsuit for any claim regarding the approval of the CEQA assessments for both the Project and pilot study and any and all entitlements or conditions necessary for development of the Project site. In addition, HPEC will reimburse Harbor Department staff time in the review of the CEQA documents associated with the Project at an amount not exceed \$200,000.

CITY ATTORNEY:


The Indemnity Agreement was drafted and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

- 1. Indemnity Agreement
- 2. Site Map

FIS Approval: MD (Initials)
CA Approval: MD (Initials)

for 
JACK C. HEDGE
Director of Cargo & Industrial Real Estate


MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Mark Bleavin *FOR*

EUGENE D. SEROKA
Executive Director