

DATE: MAY 11, 2021

FROM: ENVIRONMENTAL MANAGEMENT

**SUBJECT: RESOLUTION NO. _____ - APPROVAL OF AN AGREEMENT
AMONG THE PORT OF LONG BEACH, PORTCHECK, LLC AND
MARINE TERMINAL OPERATORS FOR CLEAN TRUCK FUND RATE
COLLECTION SERVICES**

SUMMARY:

Staff requests approval of a proposed Agreement among the City of Los Angeles Harbor Department (Harbor Department), the Port of Long Beach (POLB) (together, Ports), PortCheck, LLC (PortCheck), and marine terminal operators of the Ports (MTOs), for PortCheck to provide Clean Truck Fund (CTF) Rate collection services for the Ports. PortCheck was selected through a joint Ports' competitive bid process. PortCheck's CTF Rate collection services will include development of a Rate Collection System, and performance of collection operations that include collection of the CTF Rate, application of exemptions in accordance with the Ports' Tariffs, and remitting the collected CTF Rate revenues to the Ports. The Harbor Department is financially responsible for development costs, to be paid prior to CTF Rate collection operations, and operating costs, which the proposed Agreement permits the vendor to retain from the collected CTF rate revenues, following Harbor Department invoice approval. The proposed Agreement is for a three-year contract term for a not-to-exceed amount of \$10,000,000 in total between the Ports.

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 categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) and Section 15306 of the State CEQA Guidelines;
2. Find in accordance with the Los Angeles City Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City of Los Angeles employees;

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3. Authorize the Executive Director to enter into an Agreement with the Port of Long Beach, PortCheck, LLC and Marine Terminal Operators for Clean Truck Fund Rate Collection Services for an amount not-to-exceed \$10,000,000;
4. Authorize the Executive Director to execute and the Board Secretary to attest to said Agreement for and on behalf of the Board; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context – One of the most notable and successful strategies contained in the original joint Ports of Los Angeles and Long Beach Clean Air Action Plan (CAAP) was the Clean Truck Program (CTP), which led the trucking industry to replace the existing fleet of trucks that provided drayage services at the Ports with cleaner trucks. In order to incentivize trucking companies to replace their trucks, the Ports charged a clean truck fee of \$35 per TEU to Beneficial Cargo Owners (BCOs) on loaded cargo carried by any drayage truck that did not meet the 2007 EPA compliance standard. The Ports used the money collected to administer the CTP and provide incentive funding for truck drivers and trucking companies to purchase clean trucks. Notably, as a result of the successful CTP efforts over the years, air emissions have been reduced by 97% for diesel particulate matter (DPM), 78% for NOx, and 92% for sulfur oxides (SOx) compared to 2005. However, even with these tremendous improvements, heavy-duty trucks remain the Ports' largest source of greenhouse gas emissions (GHGs) and second highest source of NOx.

CAAP 2017 Update – The 2017 CAAP Update (2017 CAAP) was adopted on November 2, 2017. The strategies in the 2017 CAAP support the Ports' aggressive effort to clean the air for the community, move toward utilization of zero-emission freight moving equipment, plan for zero-emissions infrastructure, encourage freight efficiency, and address energy resources. As part of the 2017 CAAP, the Ports committed to new measures for the landmark CTP that continues to serve as a model for more sustainable goods movement, by transitioning to the cleanest feasible trucks for marine cargo movement. In order to reduce NOx and GHGs, the goal of the CTP is to achieve zero-emission drayage truck operations by 2035. A critical element in the 2017 CAAP's CTP is the establishment of a CTF Rate. Although the Tariff will specify that the BCO will pay the CTF Rate, from our past experience, these costs tend to be passed on to the LMC and eventually, the driver, under market conditions. It is the Port's intention that the CTF Rate will be charged to the BCO.

The contract mechanism to collect the CTF Rate is the subject of this Board action as detailed below.

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CTF Rate Collection Mechanism – On March 9, 2020, at a joint Ports’ Board meeting, the Boards adopted Resolution No. 20-9613 (Transmittal 1) for planning purposes to set the amount of the CTF Rate to be collected pursuant to a future tariff. Future implementation of this CTF Rate through a tariff is contingent upon establishment of a CTF Rate collection mechanism to collect funds from non-exempt trucks hauling loaded containers at both Ports’ container terminals. Staff is requesting approval of the proposed Agreement with PortCheck (Agreement, Transmittal 2).

Contractor Selection Process – The contractor was selected through a joint Ports’ Request for Proposal (RFP) process. Seven proposals were received, five were deemed responsive.

PortCheck ranked the highest for the following reasons:

- PortCheck’s fees were at least two times lower than the other proposers’ firms over the three-year contract term.
- PortCheck’s process would be the fastest option to implement. Some of the other proposed options would take years to be fully implemented.
- PortCheck collected the rates for the Port’s initial CTP (2009-2011) and has the experience and infrastructure to implement this program.
- PortCheck has an existing relationship with the MTOs which allows them to leverage existing data connections and they would not need to install new equipment at or around the terminals.

Staff reviewed the proposed processes and analyzed the cost efficiency of performing the work directly by Harbor Department employees. Current staff is not sufficient to perform such work, and the newly hired team would need to begin the design work without the experience and software infrastructure that PortCheck already possesses. Time to develop and implement the system would be extensive and overall costs would be significantly higher as result.

Proposed PortCheck Contract – The proposed Agreement requires PortCheck to provide the following primary deliverables including, but not limited to:

1. Develop an information system and model that would implement the collection of CTF Rates and application of exemptions (Rate Collection System)

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- a. The Rate Collection System development will take approximately six months to complete.
2. Perform operational CTF Rate collection services including:
 - a. identify and obtain relevant truck information servicing terminals at the Ports by accessing the Ports' Drayage Truck Registry (PDTR) system to apply exempt or non-exempt status for CTF Rates based on Truck information;
 - b. collect, on behalf of the Ports, all CTF Rates from BCOs on their loaded cargo containers moving to and from the terminals of the MTOs in accordance with the Ports' future respective tariffs;
 - c. provide daily operational services which would include receiving truck, cargo and Licensed Motor Carrier information from the MTOs; and
 - d. remitting the collected Rate revenues to the Ports with reports on Rate collections and exemptions.
3. Compensation: The Ports agree to compensate PortCheck under the proposed Agreement by payment of (1) Rate Collection System development costs (Development Costs) and (2) operating costs for CTF Rate collection services (Operating Costs) as set forth in the proposed Agreement.
 - a. Development Costs: The reimbursement for the Development Costs of the Rate Collection System shall not exceed \$875,000, of which the Harbor Department is financially responsible for half of that amount or up to \$437,500, which will be paid out of the Harbor Department Operating Budget.
 - b. Operating Costs: The invoices for the operating costs will be paid from the revenue collected from the CTF Rate. PortCheck will pay the Harbor Department the CTF Rate revenue collected minus the operating costs for that period. Therefore, payment of operating costs will not impact the Port's budget. Once collection begins, PortCheck will provide one separate invoice per each Port that will include both transactional and non-transactional costs incurred in that month as set forth in the Agreement, Exhibit B. Operational costs shall not exceed \$9,125,000, of which the Harbor Department is financially responsible for half of that amount or up to \$4,562,500.

PortCheck Contract Terms – The proposed Agreement is for a three-year contract term for a not-to-exceed amount of \$10,000,000 in total between the Ports. The MTOs that are parties to the proposed Agreement are listed in Exhibit A of the Agreement. The contract

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terms containing the Scope of Work are outlined in Exhibit B of the Agreement. The reimbursement for the development of the fee collection system is set forth in the proposed Agreement, Exhibit C. The annual operation costs, though dependent on the number of transactions processed by PortCheck, is set forth in the proposed Agreement, Exhibit D. The Ports plan to collect approximately initially \$90 million per year in CTF Rate revenues, declining thereafter as more exempt trucks comprise the industry's drayage fleet.

Non-Standard Indemnity Provision – PortCheck has requested, and management at both Ports recommend their respective Boards' approval of, a non-standard indemnity provision in which the Ports indemnify PortCheck and the MTOs for lawsuits and claims liability arising from challenges to the CTF Rate or the PortCheck's collection of the CTF Rate (excluding PortCheck's own errors or omissions) and from Ports' errors or omissions in the content or transmission of the data in the Ports Drayage Truck Registry.

Effective date and Term – Because the parties include both Ports and their marine terminal operator tenants, the proposed Agreement Effective Date is subject to Federal Maritime Commission review pursuant to the Shipping Act of 1984, which can take 45 days or longer. The proposed term is three years following the Effective Date, 2021 to 2024.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a three-year agreement between the Ports with PortCheck and MTOs for PortCheck to provide CTF Rate collection services for the Ports, which is an activity where it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment and an activity involving basic data collection, research, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. Therefore, the Director of the Environmental Management Division has determined that the proposed action is categorically exempt from the requirements of CEQA in accordance with Section 15061(b)(3) and Section 15306 of the State CEQA Guidelines.

FINANCIAL IMPACT:

The proposed Agreement authorizes a total amount not-to-exceed \$10,000,000 (\$875,000 for development costs and \$9,125,000 for operational costs).

Developmental Phase – The development costs of the Rate Collection System shall not exceed \$875,000. These costs will be equally billed to both Ports on a monthly basis over the seven-month phase. The Harbor Department will be responsible for payment of an estimated \$396,101. Staff is requesting authorization for funds in an amount not-to-

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exceed \$437,500 to provide contingency for changes in costs from the initial estimate. The development costs of \$437,500 will be expensed in FY2022. Funds are available in Account 59965 (Clean Truck Program), Center 0330 (Environmental Management Division), Program 000 (Base Budget)

Operational Phase – The Operational costs shall not exceed \$9,125,000, of which the Harbor Department is financially responsible for half of that amount or up to \$4,562,500.

These expenditures will be paid from the CTF Rate revenue, therefore, budget appropriation for operating costs from the Harbor Department's budget is unnecessary.

Revenue – During the Operational Phase, PortCheck will collect the CTF Rate from non-exempt loaded cargo trucks at both Ports' container terminals. Out of an estimated \$90,000,000 in revenue expected to be collected in Year 1, \$50,000,000 is anticipated to be collected for the Harbor Department. Annual CTF Rate revenues are anticipated to decline beyond Year 1 as truck replacement occurs and more exempt trucks comprise the port drayage industry fleet.

The Harbor Department's financial obligations after the current fiscal year are contingent upon the Board appropriation of funds. If any subsequent fiscal year funds are not appropriated by the Board for the work required by the proposed Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligations previously incurred.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality the proposed Agreement.

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TRANSMITTALS:

1. Resolution No. 20-9613 – Clean Truck Program Rate Resolution
2. Proposed Agreement between the City of Los Angeles, the Port of Long Beach, Port Check, LLC and Marine Terminal Operators

FIS Approval: MB
CA Approval: SO


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FILE: Y:_ADMIN_BOARD REPORTS_AIR QUALITY\CTP\PORTCHECK 2021\Environmental_PortCheck_Board Report - FINAL.docx
UPDATED: 5/11/2021 12:56 PM - YO