

**DATE: JULY 16, 2014**

**FROM: ENVIRONMENTAL MANAGEMENT**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - PORT OF LOS ANGELES CLEAN TRUCK PROGRAM DRAYAGE SERVICES CONCESSION AGREEMENT**

**SUMMARY:**

On June 19, 2008, the Board of Harbor Commissioners (Board) approved the Clean Truck Program (CTP) Drayage Services Concession Agreement (2008 Concession Agreement), a five-year agreement which contained terms and conditions that must be met by a licensed motor carrier (LMC) in order to provide drayage services at Port of Los Angeles (Port) terminals. Since the inception of the CTP on October 1, 2008, the City of Los Angeles Harbor Department (Harbor Department) has entered into approximately 1,100 CTP Concession Agreements with LMCs. As all of the 2008 Concession Agreements are set to expire on September 30, 2014, the Harbor Department, with input from stakeholders, has prepared a new five-year agreement that will commence upon the expiration of the 2008 Concession Agreement. The proposed Board action is to approve the new CTP Concession Agreement, and to authorize the Executive Director to execute each individual Concession Agreement with LMCs.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the Port of Los Angeles Clean Truck Program Drayage Services Concession Agreement;
2. Authorize the Executive Director to execute the Port of Los Angeles Clean Truck Program Drayage Services Concession Agreements with individual licensed motor carriers on the Board-approved form and authorize the Board Secretary to attest to said Concession Agreements, for and on behalf of the Board;
3. Approve a reduced concession fee of \$500 (discount of \$2,000) under the new Port of Los Angeles Clean Truck Program Drayage Services Concession Agreement, for all licensed motor carriers that entered into the 2008 Drayage Services Concession Agreement with the Harbor Department after September 30, 2012; and
4. Adopt Resolution No. \_\_\_\_\_.

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**DISCUSSION:**

Background/Context - The CTP, a key component of the San Pedro Bay Ports Clean Air Action Plan, has been successful in improving air quality at the Port by banning older polluting trucks and replacing them with cleaner trucks equipped with 2007 U.S. Environmental Protection Agency (EPA) compliant or newer engines (clean trucks). The CTP has reduced truck emissions by over 90 percent in the Port and surrounding communities since 2008. In order to accomplish this achievement, the Harbor Department established a Concession Program and developed a concession agreement that specifies conditions which must be met by LMCs to provide drayage services at Port terminals. The concession agreement establishes a contractual relationship between the Harbor Department and the Concessionaires (an LMC that obtains a Port Drayage Services Concession to provide drayage services at the Port), and is designed to facilitate achievement of the Harbor Department's environmental, operational, safety and security objectives. Concessionaires are responsible for operating trucks that meet stringent emission standards, as well as for vehicle maintenance, insurance, security, and safety measures. The 2008 Concession Agreement was approved by the Board in June and October 2008, and became enforceable on October 1, 2008. At the inception of the CTP, approximately 500 trucking companies entered into Concession Agreements to provide drayage services at the Port and that number of companies has steadily increased to approximately 1,100 Concessionaires.

In July 2008, The American Trucking Association, (ATA) filed a lawsuit against the City of Los Angeles challenging several provisions in the 2008 Concession Agreement. The lawsuit was heard and ruled upon by the District Court, the Appellant Court, and finally the United States Supreme Court (Supreme Court). As a result of this lawsuit, although the 2008 Concession Agreement was considered enforceable, several provisions contained in the 2008 Concession Agreement were determined by the courts to be unenforceable, including the Employee Driver Hiring requirement, the Truck Route and Off-Street Parking requirement, and the Placarding requirement.

The 2008 Concession Agreement was effective up to a term of five years and all 2008 Concession Agreements, no matter when they were executed, were set to expire on September 30, 2013. However, due to the timing of the Supreme Court ruling in June 2013, the Harbor Department and Concessionaires entered into Amendments to extend the 2008 Concession Agreement an additional year to September 30, 2014, as well as to delete the provisions found to be unenforceable by the courts. Staff developed a new draft Concession Agreement (New Concession Agreement) (Transmittal 1) that will cover the next five-year period, from October 1, 2014 through September 30, 2019.

Stakeholder Outreach - As stakeholders have been essential to the success of the CTP to date, in order to inform the various groups on plans for the New Concession Agreement as well as to provide the groups with an opportunity to ask questions and offer comments and concerns, Harbor Department staff held two CTP workshops at Banning's Landing Community Center during April 2014. The first workshop, held April 23, 2014, was attended

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primarily by members of the trucking community, including trucking company representatives and drivers. The second workshop, held April 30, 2014, was attended mainly by representatives from community groups, advocacy groups and regulatory agencies, including Natural Resources Defense Council, Coalition for Clean Air, California Trucking Association, Harbor Trucking Association, the Teamsters, trucking companies, the California Air Resources Board, and the Port of Long Beach. Staff also met separately with the President of West Coast Marine Terminal Operator Association, who represents the terminal operators at the Ports of Los Angeles and Long Beach.

In addition, the draft New Concession Agreement has been posted on the Port's website for review and comment since Monday, June 9, 2014. Stakeholders were given an opportunity to voice their opinions at each workshop and during the written comment period, which ended June 23, 2014. Stakeholders also may provide oral public comments at the Board meeting. During the workshops and comment period, the CTP received praise for the air quality benefits and most of the trucking companies seemed to appreciate the idea of a streamlined process for the New Concession Agreement; however, the following common concerns were noted.

First, there was some opposition to requiring a \$2,500 concession fee, in general as well as by certain Concessionaires that have signed up only within the last few months and have to pay the fee again when the New Concession Agreement is launched. Staff has clarified that the concession fee is not an "application fee" but is an administrative fee that contributes to the cost of the program administration over the life of the five-year Concession Agreement. Staff recommends retaining the fee in order to obtain partial cost recovery for the program, but recommends offering a discount for those that have purchased a concession recently. As a result, the Harbor Department proposes to Concessionaires that paid a \$2,500 concession fee within one year of the original 2008 Concession Agreement expiration period, any time after September 30, 2012, be charged a reduced concession fee for the New Concession Agreement of only \$500. Up to 120 trucking companies, mostly small businesses, would be affected by this recommendation, with a loss in revenues of up to \$240,000.

Second, there were requests made to raise the current \$1,000,000 insurance requirement to some higher amount, though no specific level was recommended. Staff investigated this and found that the current insurance level was set back in 1978 by the U.S. Department of Transportation (DOT). It has not been altered since. Proposals to increase the insurance level have been considered by the DOT over the years, but no change has been made. There is currently a proposed bill, H.R. 2730, referred to the Committee on Transportation and Infrastructure in the United States House of Representatives which is investigating this issue and further proposals for changing the insurance level have also been presented. Staff recommends retaining the current insurance level as it complies with DOT requirements, but staff recommends that the Harbor Department monitor this issue closely, and consider altering insurance levels in accordance with DOT deliberations as they proceed.

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Third, questions were raised about how the Harbor Department plans to confirm that trucks are in compliance with maintenance requirements. Staff has studied this matter very carefully. It should be noted that the New Concession Agreement contains a requirement to submit a maintenance plan. It also contains a requirement that trucks must comply with local, state and federal safety, security and environmental requirements. Two methods to confirm compliance with these requirements will continue to be available to the Harbor Department. First, the New Concession Agreement provides that the Harbor Department may, upon reasonable notice, inspect the records, property, or equipment of the Concessionaire to confirm compliance with this agreement. Confirmation of truck maintenance activities in this manner has proven to be expensive in the past, mainly because the Harbor Department is not (and does not have the staffing to become) an expert on truck maintenance.

The other method to confirm compliance with maintenance requirements has been use of the Port Police. It should be noted that the Port Police work closely with the California Air Resources Board (ARB) under a Memorandum of Understanding (MOU) to support ARB's enforcement of state laws regulating drayage trucks through issuance of citations for dray-offs, non-compliant trucks, excessive truck idling, and trucks releasing visible exhaust emissions. This work will continue, as ARB staff has told the Harbor Department that these efforts are very effective. Further, ARB staff is developing regulatory guidance for drayage truck maintenance requirements, which ARB expects will be completed in a few months. These ongoing efforts notwithstanding, staff proposes to report back to the Board by December 31, 2014, with recommendations for continued maintenance confirmation activities going forward, including the potential for funding additional support, continued work with partners such as ARB (and possibly others), and even technologies that may be available to support this work.

Fourth, in response to questions regarding employment status of the drivers, staff described the results of the recent Court decisions, referred to above, and indicated that the Harbor Department would follow the Courts' direction that it is preempted from actions on employee status.

Fifth, comments were raised asking if the CTP could assist in reducing turn-times at the terminals. This is an ongoing concern for the Harbor Department. Staff recommends establishing a task force to investigate methods to improve turn-times in coordination with the terminals, as improvement of efficiency is also a goal for the terminals as well.

Finally, commenters asked about the coordination of truck programs with the Port of Long Beach in order to maintain efficiency within the San Pedro Bay. Staff has and will continue to coordinate with the Port of Long Beach in development of the two Ports' CTPs, agreements with LMCs and on all aspects of the CTP, including issues raised by commenters during this outreach period.

The Harbor Department will continue to work with stakeholders in the coming years and be responsive to any concerns as they arise.

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New Concession Agreement - The Harbor Department has used the additional year and stakeholder input to prepare the New Concession Agreement. The New Concession Agreement developed by staff has received input from the City Attorney as well as various stakeholders including, the LMCs and their drivers, regulatory agencies, community groups, the Port marine terminals, the Teamsters, and the Port of Long Beach. The New Concession Agreement is designed to continue achieving the environmental, operational, safety and security objectives established under the 2008 Concession Agreement, though it has been updated and streamlined for ease of use by LMCs and to reflect direction from the Supreme Court.

The proposed New Concession Agreement contains the following key provisions:

Concessionaire agrees to the following terms:

- Pay a concession fee of \$2,500 for a five-year term
- Maintain a valid Motor Carrier License
- Be a corporation in “good standing” with the Secretary of State of California
- Maintain liability and motor vehicle insurance of \$1,000,000 throughout the entire term of the Concession Agreement
- Register in both the state’s and Port’s Drayage Truck Registries
- Comply with City of Los Angeles contracting requirements
- Agree to be audited by the Harbor Department for compliance with the Concession Agreement

Concessionaire also agrees to only dispatch trucks in compliance with the following terms:

- Register under the Licensed Motor Carrier in both the state’s and Port’s Drayage Truck Registries
- Comply with Port Tariff requirements
- Comply with state Biennial Inspection of Terminals requirements
- Comply with local, state, and federal drayage trucking rules/regulations
- Maintain current state motor vehicle registration
- Ensure the vehicle is properly maintained
- Comply with Homeland Security requirements
- Utilize the proper compliance identification device (RFID or sticker)
- Pay the annual truck fee of \$100 for each truck
- Driver of the truck must have a current Commercial Driver’s License and Transportation Worker Identification Card (TWIC)
- Maintain certification for motor carrier safety compliance

Additional Clean Truck Program Considerations - The New Concession Agreement is just one approach that the Harbor Department utilizes to ensure the CTP continues to remain successful. Questions and concerns have been raised by stakeholders on how the Harbor Department will continue to encourage the use of cleaner trucks, i.e. cleaner than the

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current state standard of 2007 U.S. EPA compliance. The Harbor Department may consider cleaner truck incentive programs as well as consider amending the Tariff to require cleaner trucks at a future date. Such programs, if developed, would be Tariff items and are not part of this Concession Agreement. As a result, they will be considered separately with recommendations brought to the Board at the appropriate time.

Additionally, the Harbor Department is interested in helping to demonstrate technical, operational and commercial feasibility of zero emission equipment and, thereafter, seeing the use of zero-emission trucks to move containers throughout the region, and, in particular, to and from the terminals and the near-dock railyard(s). Staff is preparing a plan containing information on various types of zero-emission technologies, the status of demonstration and work towards feasibility of the technologies, proposed testing plans for future demonstrations, and a business case study. The plan is scheduled to be completed and released in late 2014.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of the updated Port of Los Angeles Clean Truck Program Drayage Services Concession Agreement. As an administrative activity, 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, Section 2 (f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Since the inception of the CTP, the Harbor Department has spent approximately \$113 million on CTP implementation including incentives and consultant fees. Conversely, over the same period, the Harbor Department generated approximately \$83 million in revenue from Clean Truck Fees, Annual Truck Fees and concession fees. While this overall revenue shortfall of approximately \$30 million is not expected to be recouped, the Board-adopted Strategic Plan contains a goal that CTP expenses not exceed revenues on a year-to-year basis by fiscal year 2013/2014. The CTP actually accomplished this goal in fiscal year 2012/2013 and is expected to continue to break even each fiscal year into the future. The current annual expenditure of the CTP is approximately \$1.25 million. Annual revenues will continue to be generated by Annual Truck Fees and the concession fee. The Harbor Department will continue to collect the annual \$100 truck fee for the estimated 12,500 trucks signed up in the Concession Program resulting in approximately \$1.25 million in revenue each year over five years, thereby matching anticipated expenses during this period. In addition, for the new five-year Concession Agreement, the Harbor Department plans to collect a \$2,500 concession fee from an estimated 680 future Concessionaires, and an additional \$500 from the estimated 120 future Concessionaires receiving a reduced concession fee, resulting in approximately \$1.76 million in revenue over five years or approximately \$350 thousand per year.

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**ECONOMIC IMPACT:**

Approval of the proposed Resolution will have no employment impacts.

**CITY ATTORNEY:**

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

**TRANSMITTAL:**

1. Proposed Drayage Services Concession Agreement

FIS Approval: WR (initials)  
CA Approval: gmc (initials)



CHRISTOPHER CANNON  
Director of Environmental Management



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APPROVED:



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BOARD MEETING: 07/24/14

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