

HARBOR DIVISION

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**DATE: FEBRUARY 13, 2012**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - SETTLEMENT AGREEMENT AND  
MUTUAL RELEASE OF CLAIMS WITH SWIFT TRANSPORTATION  
COMPANY, INC.**

**SUMMARY:**

The City of Los Angeles Office of the City Attorney is transmitting to the Board of Harbor Commissioners (Board) for consideration a Settlement Agreement and Mutual Release of Claims (Settlement Agreement) with Swift Transportation Company, Inc. (Swift), a Clean Truck Program Drayage Concessionaire. If approved, the Settlement Agreement resolves a dispute regarding the parties' performance under Swift's Concession and Incentive Addendum to the Concession.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Consider the Settlement Agreement and Mutual Release of Claims (Settlement Agreement) to be entered into with Swift Transportation Company, Inc., and, if approved:
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Settlement Agreement and Mutual Release of Claims;
3. Adopt the foregoing as Resolution No. \_\_\_\_\_.

**DISCUSSION:**

**Background**— As part of the Clean Truck Program, the Harbor Department provided Early Commitment Incentives of \$20,000 per truck to licensed motor carrier Concessionaires that: (1) put EPA 2007-compliant drayage trucks into service at the Port of Los Angeles by January 2009; and (2) committed to make 300 annual trips at the Port of Los Angeles for 5 years. In order to receive such incentives, Concessionaires entered into Incentive Addenda to their Concession Agreements which included a repayment obligation for any truck that failed to make the required minimum annual trips in any of the five years. Last year, the Board of Harbor Commissioners

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(Board) approved lowering the annual trip requirement and offering other benefits to Concessionaires. Swift Transportation Company, Inc. (Swift) is one of the Concessionaires that received Early Commitment Incentives. Swift received incentives for 591 trucks totaling \$11,820,000.

According to the Harbor Department, many of Swift's trucks failed to make the required number of trips in years one and two of the program and therefore Swift owes repayment of a portion of incentives under the terms of the Incentive Addendum in an amount of approximately \$3.8 million for years 1 and 2 combined. Swift disagrees and states that it does not owe any such repayment. A discussion of various legal issues involved in this dispute can be found in a separate attorney-client privileged memorandum.

Transmittal No. 1 is a Settlement Agreement acceptable to Swift that, if approved, resolves the dispute. The terms are as follows:

- Swift will pay \$4 million to the Harbor Department simultaneously with execution of the Settlement Agreement;
- Swift's Incentive Addendum as amended will be terminated and Swift will have no further obligation from the Incentive Addendum;
- Swift's Concession Agreement will remain in effect; and
- Both parties will release each other from all known and unknown claims arising prior to the Settlement Agreement relating to the Concession Agreement or Incentive Addendum.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of a settlement agreement with Swift Transportation Company, Inc. (Swift) which would eliminate the possibility of the Harbor Department initiating litigation and avoid the threat of litigation by Swift. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) under Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

**ECONOMIC BENEFITS:**

This Board action will have no employment effect.

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**FINANCIAL IMPACT:**

While the total repayment the Harbor Department claims Swift would owe over the five-year term of the Incentive Addendum is not known as only 2 of 5 years has been completed, based on performance in years 1 and 2, Swift would owe approximately \$7.65 million over the term of the Incentive Addendum.

The agreement provides for the following financial benefits to the City:

- certainty in receiving repayment of \$4 million in incentives in contrast to Swift claiming it would not owe any repayment;
- release from Swift of any claims relating to the Concession and Incentive Addendum; and
- avoidance of litigation costs by the City.

**CITY ATTORNEY:**

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

**TRANSMITTAL:**

1. Settlement Agreement and Mutual Release of Claims with Swift Transportation Company, Inc.



SIMON M.KANN  
Deputy City Attorney

FIS Approval: SK (initials)  
CA Approval: SK (initials)

APPROVED:



THOMAS A. RUSSELL  
General Counsel