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**DATE: DECEMBER 4, 2014**

**FROM: OFFICE OF THE CITY ATTORNEY**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - FIRST AMENDMENT TO THE LOS ANGELES AND LONG BEACH PORT INFRASTRUCTURE AND ENVIRONMENTAL PROGRAMS COOPERATIVE WORKING AGREEMENT, FEDERAL MARITIME COMMISSION AGREEMENT NO. 201219, LOS ANGELES HARBOR DEPARTMENT AGREEMENT NO. 12-3101**

**SUMMARY:**

The Cooperative Working Agreement between the Cities of Los Angeles and Long Beach – Federal Maritime Commission (FMC) Agreement No. 201219, City of Los Angeles Harbor Department Agreement No. 12-3101 (Agreement) provides immunity from federal anti-trust laws, as provided for under the Shipping Act of 1984, so that the City of Los Angeles Harbor Department (Harbor Department) and Port of Long Beach (collectively “the Ports”) may discuss and agree upon joint programs and strategies to improve the port-related transportation infrastructure and decrease port-related pollution emissions. The Agreement has been utilized in the past for the Ports to discuss issues of joint interest including implementation of the Clean Truck Program, chassis supply and truck turn-time issues in the San Pedro Bay complex. The Agreement is currently being utilized for the purpose of discussing container chassis supply operations with various industry stakeholders.

The Agreement became effective on March 3, 2013 after a predecessor agreement between the two Ports terminated effective December 31, 2012. The proposed First Amendment clarifies the Agreement purpose and discussion authority to include all the various supply chain sectors operating in and around the two Ports so that the Ports may address current congestion issues; updates agreement language around the Clean Truck Program; and provides an opportunity to address some general agreement administrative items.

The FMC filing fee associated with the revised Agreement is the financial responsibility of both the Harbor Department and the Port of Long Beach, wherein the \$851.00 filing fee will be split equally between the two entities.

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**RECOMMENDATION:**

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

1. Approve the proposed revised Agreement between the City of Los Angeles and the City of Long Beach;
2. Authorize the Executive Director to execute and Board Secretary to attest to said Agreement, for and on behalf of the Board;
3. Authorize the Office of the City Attorney to file the revised Agreement with the Federal Maritime Commission; and
4. Adopt the foregoing as Resolution No. \_\_\_\_\_.

**PREVIOUS BOARD ACTION:**

The Board originally approved a discussion Agreement with the Port of Long Beach in June 2006, known as FMC Agreement No. 201170, which authorized the Ports to discuss and agree upon joint programs and strategies to improve the port-related transportation infrastructure and decrease port-related pollution emissions, including implementation of the Clean Air Action Plan and the Clean Truck Program.

On September 18, 2008, the Board delegated authority to the Executive Director to execute and file revisions to Agreement No. 201170 with the FMC that were related to the Clean Truck Program. The first revised Agreement added authorization for Ports to discuss and implement the Clean Truck Program and the second revised Agreement clarified the authority of the Ports to enter into Clean Truck Program concession agreements.

On December 20, 2012, the Board authorized additional revisions to Agreement No. 201170, including the removal of the December 31, 2012 termination date. However, due to the 45-day waiting period from the date of filing with the FMC, Agreement No. 201170 terminated, and the FMC assigned a new agreement number to the current Agreement.

**DISCUSSION:**

Background and Context - The Shipping Act of 1984 (the Shipping Act), among other things, grants immunity from the anti-trust laws of the United States to marine terminal operators so that they may confer with each other and agree upon services, rates, practices and other operational decisions related to the common carriage of goods by water in the foreign commerce of the United States. In order to receive this immunity, however, the parties must file notice with the Federal Maritime Commission in the form

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of a written agreement outlining the topics and actions the parties will be undertaking together. The Ports of Los Angeles and Long Beach are considered marine terminal operators under the Shipping Act and must comply with its requirements.

Need for the Revised Agreement – Although the Agreement in its present form arguably allows the Ports to discuss supply chain issues, as evidenced by the chassis working group and several truck turn-time meetings held by the two Ports, the Agreement only references discussion regarding “port-related transportation infrastructure” as one of its purposes. The revised Agreement (Transmittal 1) now clearly states that due to recent congestion issues experienced at the Ports, the parties seek to discuss issues relating to vessel, rail, terminal and truck operations. The goal of the Agreement is to allow the Ports to facilitate discussion among all stakeholders and, where appropriate, implement solutions to the issues facing the ocean transportation industry operating through the Ports.

The revised Agreement also updates some language regarding the Clean Truck Program, and provides an opportunity to update the Co-Chair and Secretary sections.

The proposed revisions to the above items are shown in red-line format in Transmittal 2.

Term and Cost of the Revised Agreement - The Agreement provides an open-ended term, subject to termination upon written notification from one party to the other of their intent to cancel the Agreement. The revised Agreement will be filed with the Federal Maritime Commission and there is a 45-day waiting period before the Agreement will become effective. However, upon filing, the City Attorney’s Office will request an expedited review period and request that the Agreement become effective 14 days after notice of the filing is published in the Federal Register.

While the Agreement contains no specific financial obligations, there is a filing fee of \$851.00, which will be shared between the Ports, for a cost to the Harbor Department of \$425.50.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of revised FMC Agreement No. 201219. Joint programs and strategies resulting from the Agreement may require separate evaluation for environmental impacts in accordance with the California Environmental Quality Act (CEQA) prior to implementation. 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.

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**ECONOMIC BENEFITS:**

This Board action will have no employment impact.

**FINANCIAL IMPACT:**



The proposed revised Agreement is subject to a filing fee of \$851.00, pursuant to 46 C.F.R. 535.401(g). The Ports will be sharing the cost of the filing fee equally, so the Harbor Department's share of the fee will be \$425.50. There are no additional on-going direct financial obligations under the Agreement. Funds in the amount of \$425.50 are available in Center 0120, Account 54290, Program 000 in the Fiscal Year 14/15 budget. This item was budgeted for in the FY14/15 budget in the amount of \$425.50.

**CITY ATTORNEY:**

The Office of the City Attorney has prepared and approved as to form and legality the revised Agreement.

**TRANSMITTALS:**

1. Revised Agreement No. 12-3101 - Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement, FMC Agreement No. 201219.
2. Proposed revisions to Agreement No. 12-3101, shown in red-line format.

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

  
JANNA B. SIDLEY  
General Counsel

APPROVED:

  
EUGENE D. SEROKA  
Executive Director

HMM/aw  
Author: H. McCloskey  
Board Meeting: 12/11/2014