AGENDA OF THE SPECIAL MEETING OF THE LOS ANGELES BOARD OF HARBOR COMMISSIONERS 1
THURSDAY, OCTOBER 23, 2008, AT 8:30 A.M.
PORT OF LOS ANGELES ADMINISTRATION BUILDING
425 S. PALOS VERDES STREET
SAN PEDRO, CA 90731

BOARD OF HARBOR COMMISSIONERS
President S. David Freeman
Vice President Jerilyn López Mendoza
Commissioner Kaylynn L. Kim
Commissioner Douglas P. Krause
Commissioner Joseph R. Radisich

A. OPENING STATEMENT – AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THIS BOARD

PERSONS IN THE AUDIENCE MAY ADDRESS THIS BOARD IN CONNECTION WITH ANY AGENDA ITEM OR DURING THE PUBLIC COMMENT PERIOD.

AS PROVIDED BY THE BROWN ACT, THE BOARD HAS LIMITED EACH INDIVIDUAL'S SPEAKING TIME TO THREE MINUTES. ANYONE DESIRING TO SPEAK DURING THE PUBLIC COMMENT PERIOD IS REQUESTED TO COMPLETE A SPEAKER CARD AND SUBMIT IT TO THE COMMISSION SECRETARY, VIA THE SERGEANT AT ARMS, PRIOR TO THE START OF THE MEETING.

Commission actions, except actions which are subject to appeal or review by the Council pursuant to other provisions of the Charter, ordinance or other applicable law, are not final until the expiration of the next five meeting days of the City Council during which the Council has convened in regular session. If the Council asserts jurisdiction during this five meeting day period the Council has 21 calendar days thereafter in which to act on the matter.

Please note that this agenda is subject to revision in accordance with the Brown Act. In the event the agenda is revised prior to the meeting, Port staff will endeavor to post the revised agenda on the Port's web site (http://www.portoflosangeles.org). Updated agendas also will be available in hard copy at the meeting. Live Board meetings can also be heard at: (213) 621-City (Metro), (818) 904-9450 (Valley), (310) 471-City (Westside) and (310) 547-City (Harbor).

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities.

Sign language interpreters, assistive listening devices, and translation services may be provided. To ensure availability, 72-hour advance notice is required. Contact the Commission office at (310) 732-3444.

Interpretes de señas, sistemas auditivos y servicios de traducciones están disponibles. Para asegurar disponibilidad, se requiere solicitarlos con 72 horas de anticipación. Para hacer la solicitud, llame a la oficina de la Comisión al (310) 732-3444.

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B. COMMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

C. REPORT OF THE EXECUTIVE DIRECTOR

D. REPORTS OF COMMISSIONERS

E. BOARD COMMITTEE REPORTS

F. PRESENTATION

1) **Los Angeles City Treasurer, Joya C. De Foor**
2) **PCAC Waterfront Presentation**

G. APPROVAL OF MINUTES OF A PREVIOUS MEETING

Minutes of the special meeting of the Los Angeles Board of Harbor Commissioners of July 2, 2008, for approval.

H. REPORTS OF THE EXECUTIVE DIRECTOR

Consent Items (1-7)

Chief Financial Officer

1. Re: RESOLUTION APPOINTING CHIEF ACCOUNTING EMPLOYEE

Recommendation: Adopt Resolution No. _____.

Real Estate

2. Re: ORDER NO. _____ - PROPOSED COMPENSATION SETTING UNDER PERMIT NO. 708 WITH KINDER MORGAN TANK STORAGE TERMINALS, LLC

SUMMARY: Permit No. 708 grants Kinder Morgan Tank Storage Terminals, LLC (Kinder) [formerly GATX Tank Storage Terminals Corporation (GATX)] use of approximately 631,627 square feet of Los Angeles Harbor Department (Harbor Department) land and approximately 1,000 linear feet of timber wharf located at Berths 118-119 as depicted on the attached map, for a 25-year term, commencing April 14, 1988.

Compensation under Permit No. 708 is currently set at $218,646 per quarter, based on the last reset performed for the period of April 14, 1993 through April 13, 1998. Compensation for the last two compensation reset periods, commencing April 14, 1998 and April 14, 2003, were not completed due to staff turnover in the Real Estate Division, which caused an oversight in resetting the compensation for the previous two compensation periods. Accordingly, it is now necessary to set compensation under Permit No. 708 with Kinder for the last three five-year adjustment periods, beginning April 14, 1998, April 14, 2003, and April 14, 2008, as follows:

2. (Continued)

For the periods commencing April 14, 1998 and April 14, 2003, compensation shall be set at $218,059 per quarter.

For the period commencing April 14, 2008 and ending April 13, 2013, compensation shall be set at $408,686 per quarter.

This Order will adjust compensation retroactively and will create an outstanding balance due the Harbor Department of $519,491, which shall be paid in 18 equal quarterly installments of $28,861, beginning with the January 1, 2009 quarterly payment and ending with the April 1, 2013 quarterly payment.
This action only allows for resetting of compensation, as provided in the Permit, and is not an opportunity to implement measures referenced in the Clean Air Action Plan.
Recommendation: Board resolve that (1) the Order setting compensation under Permit No. 708 at $218,059 per quarter for the period commencing April 14, 1998 and ending April 13, 2003; at $218,059 per quarter for the period commencing April 14, 2003 and ending April 13, 2008; and at $408,686 per quarter, for the final five-year period, commencing April 14, 2008 and ending April 13, 2013 be approved; (2) the Board Secretary be authorized to attest to the Order setting compensation to be paid by Kinder pursuant to Permit No. 708; and (3) Order No. _____ be adopted.

Construction and Maintenance

3. Re: RESOLUTION NO. _____ - INCREASE CONTRACT AUTHORITY FOR CONTRACT NO. 31027-08 WITH GRAINGER, INC. FOR INDUSTRIAL MATERIALS, PARTS, TOOLS AND ACCESSORIES; APPROVE CONTRACT NO. 39453 WITH GRAINGER, INC.

SUMMARY: The Construction and Maintenance Division requests an increase in the existing annual contract authority from $140,000 to $300,000 for Contract No. 31027-08 with Grainger, Inc. of Los Angeles, CA, for the purchase of industrial materials, parts, tools, and accessories. Construction and Maintenance also requests approval of a new one-year contract with two, one-year renewal options with Grainger, Inc. for an amount not-to-exceed $300,000 per year. Contact No. 39453 will begin December 1, 2008 to replace Contract No. 31027-08. Both the current contract and the new contract with Grainger, Inc., are cooperative arrangements with the Los Angeles General Services Department under Contract No. 54548.

The Construction and Maintenance Division utilizes the Grainger contract to purchase a significant number of tools and materials, but the current contract authority is insufficient due to the requirement to provide parts for current projects such as the Servery and future Harbor Administration Building remodel projects, renovations at Berths 89 and 93, electrical vault repairs at Berths 212-225, among other facility repairs. This action does not require additional funding. It allows the Construction and Maintenance Division to spend previously budgeted funds using the current and new Grainger contracts. Board action is required because the contract authority amount exceeds the threshold of the Executive Director approval.

Recommendation: **Board resolve that (1) the increase in contract authority for Contract No. 31027-08 for the purchase of industrial materials, parts, tools, and accessories with Grainger, Inc., for an annual amount not-to-exceed $300,000, be approved; (2) the new Contract No. 39453 with Grainger, Inc., for a term of one-year with two, one-year renewal options in an amount not-to-exceed $300,000 per year for the purchase of industrial materials, parts, tools, and accessories be approved.**

3. (Continued)

Los Angeles General Services Department (LAGSD) Contract No. 58548 expires November 30, 2008 but has three remaining renewal options; (3) the Executive Director and the Board Secretary be authorized to execute the contract change(s) for Contract No. 31027-08 and execute Contract No. 39453 in accordance with LAGSD Contract No. 58548 on behalf of the Board; (4) the Executive Director to be authorized to exercise two, one-year renewal options in the amounts authorized in the Construction and Maintenance Division budget for subsequent fiscal years for Contract No. 39453 in accordance with LAGSD Contract No. 58548; and (5) Resolution No. _____ approving the increase in contract authority for Contract No. 31027-08 with Grainger, Inc., and approving Contract No. 39453 with Grainger, Inc., be adopted.

4. Re: RESOLUTION NO. _____ - AWARD OF CONTRACT NO. 39439 FOR FIVE CNG-FUELED PASSENGER VANS, BID F-596 TO BOB WONDRIES MOTORS; AWARD OF CONTRACT NO. 39440 FOR FOUR CNG-FUELED CREW CAB PICK-UP TRUCKS, BID F-597, TO BOB WONDRIES MOTORS; AWARD OF CONTRACT NO. 39442 FOR THREE CNG-FUELED LADDER RACK PICK-UP TRUCKS, BID F-599, TO BOB WONDRIES MOTORS; AWARD OF CONTRACT NO. 39443 FOR TWO CNG-FUELED WOOD CHIP COLLECTION CREW CAB TRUCKS, BID F-600, TO THORSON MOTOR CENTER GMC TRUCKS

4. (Continued)

SUMMARY: The Construction and Maintenance Division requests the award of three vehicle contracts to Bob Wondries Motors for the purchase of five compressed natural gas (CNG) fueled passenger vans, four CNG-fueled 1-ton crew cab pick-up trucks, and three CNG-fueled pick-up trucks with utility body, roll-top bed cover and ladder rack; and one vehicle contract to Thorson Motor Center GMC Trucks for the purchase of two CNG-fueled wood chip collection crew cab trucks. Funding in the amount of $794,166, including tax, for these new and replacement alternative fueled vehicles is in the approved Fiscal Year 2008-09 equipment budget and will provide operational efficiencies to Construction and Maintenance, Engineering, Port Pilots, and the Vanpool Program.

Recommendation: Board resolve that (1) Contract No. 39439 for the purchase of five CNG-fueled passenger vans with Bob Wondries Motors of Alhambra, CA, for an amount not-to-exceed $233,920, be approved; (2) Contract No. 39440 for the purchase of four CNG-fueled 1-ton, long wheel base, long bed, crew cab truck with Bob Wondries Motors of Alhambra, CA, for an amount not-to-exceed $186,629, be approved; (3) Contract No. 39442 for the purchase of three CNG-fueled 1-ton, standard cab pick-up truck with utility body, roll-top bed cover, and ladder rack with Bob Wondries Motors of Alhambra, CA, for an amount not-to-exceed $167,695, be approved; (4) Contract No. 39443 for the purchase of two CNG-fueled wood chip collection crew cab trucks with Thorson Motor Center GMC Trucks of Pasadena, CA, for an amount not-to-exceed $205,922, be approved; (5) the Executive Director and the Board Secretary be authorized to execute Contract Nos. 39439, 39440, 39442, and 39443 on behalf of the Board; and (6) Resolution No. _____ approving Contract Nos. 39439, 39440, and 39442 with Bob Wondries Motors and Contract No. 39443 with Thorson Motor Center GMC Trucks be adopted.

5. Re: RESOLUTION NO. _____ AWARD OF CONTRACT NO. 39455 WITH MAG-TROL LONG BEACH INC. FOR THE PURCHASE OF CRANE PARTS FOR CRANE NO. 209-15 AT BERTHS 174-176

SUMMARY: Award of Contract No. 39455 to Mag-Trol Long Beach Inc., of Long Beach, CA, in the amount of $202,368, including sales tax, for the purchase of crane parts for Crane No. 209-15 used by Pasha at Berths 174-176. This crane was recently retrofitted by the Engineering Division and requires spare parts to keep it functioning at an optimum level.

Recommendation: Board resolve that, of Long Beach, CA, for the purchase of crane parts in an amount not-to-exceed $202,368; (2) the Executive Director be authorized to execute Contract No. 39455; and (3) Resolution No._____ approving Contract No. 39455 with Mag-Trol Long Beach Inc. be adopted.

Contracts and Purchasing

6. Re: RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND TAYLOR'S MARKETING MANAGEMENT TO PROVIDE CONTRACTOR DATABASE MONITORING AND REPORTING SERVICES

SUMMARY: The proposed three-year Agreement with Taylor's Marketing & Management (TMM), 8927 South Harvard Boulevard, Los Angeles, CA 90047-3614, provides continued contractor database services required for monitoring and reporting on the Department's contracting activities. This database allows contractors to register and be notified of upcoming opportunities, and supports the Department's efforts to create a diverse contracting pool by identifying small, minority, and women-owned businesses, as well as "green technology" firms. The contractor database system, known as DiversityXchange, is being utilized throughout the Department to assist staff in identifying potential contractors, and will be expanded to monitor and report on all aspects of the contract selection process.

6. (Continued)

<u>Recommendation</u>: Resolve that (1) the Board find that the services to be provided under the subject Agreement can be performed in a more efficient and cost-effective manner by TMM; (2) the Agreement between TMM and the Harbor Department for one year, with two one-year options, in the amount of $95,000 for each year, for the total amount not-to-exceed $285,000 for the three-year period be approved; (3) the Executive Director be authorized to execute the Agreement, and each of the one-year options, if required; and (4) Resolution No. _____ be adopted.

Planning and Research

7. Re: RESOLUTION NO._____ - MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES AND THE LOS ANGELES HARBOR DEPARTMENT

SUMMARY: The Los Angeles Harbor Department (Harbor Department) is proposing to enter into a Memorandum of Understanding (MOU) with the Community Redevelopment Agency of the City of Los Angeles (CRA/LA) addressing a potential collaborative development effort at the current Caltrans Site at O'Farrell and Beacon Streets in San Pedro. On October 2, 2008, the CRA/LA Board approved the MOU.

<u>Recommendation</u>: Board resolve that: (1) the MOU between the Harbor Department and CRA/LA be approved; (2) the Executive Director and the Board Secretary be authorized to execute and attest to the MOU; and (3) Resolution No. _____ be adopted.

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REGULAR ITEMS (8-14)

Construction Division

8. Re: RESOLUTION NO. _____ - AWARD OF CONTRACT – CONSTRUCTION MANAGEMENT SERVICES FOR BERTHS 136-147 - CONSULTANT: PARSONS WATER & INFRASTUCTURE INC.

SUMMARY: The Berths 136-147 (TraPac) Improvement projects will redevelop portions of the TraPac Terminal. The projects include upgrade of existing wharves, dredging, and construction of new wharves, backlands, Alternative Maritime Power (AMP) infrastructure, and Leadership in Energy and Environmental Design (LEED)-certified buildings. This Agreement provides for essential construction management services for the Berths 136-147 projects. Parsons Water & Infrastructure, Inc., (Parsons) located in Pasadena, CA, is recommended to provide the required services. The Agreement amount plus 5% contingency is $4,952,850, and the Agreement duration is 1,095 calendar days.

Recommendation: Resolve that (1) the Board find that in accordance with the City Charter Section 1022, work under the subject Agreement can be performed more feasibly by an independent contractor than by City employees; (2) the Executive Director and the Board Secretary be authorized to execute and attest to this Agreement for and on behalf of the Board; and (3) Resolution No. _____ awarding the above-mentioned Agreement to Parsons in the amount of $4,717,000; that a 5% contingency not included in the original Agreement amount be authorized for the total authorized amount of $4,952,850 be adopted; and that payment be authorized from the Construction Management Services account. The Agreement duration for performance of the work will be 1,095 calendar days from the Notice to Proceed.

AGENDA OF THE SPECIAL MEETING OF THE
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Clean Truck Program

9. Re: ORDER AMENDING PORT OF LOS ANGELES TARIFF NO. 4, SECTION 20 – GENERAL RULES AND REGULATIONS – DRAYAGE TRUCKS

***SUMMARY:** The proposed action recommends amendments to the existing Port Tariff No. 4 regarding the Clean Truck Program (CTP) to modify tariff language with respect to (i) clarification of language regarding the drayage truck registry and management of terminal gate access by the marine terminal operators; (ii) clarification of the assessment of the Clean Truck Fee (CTF) on containers with an outside length of 20 feet or less, versus containers with an outside length of more than 20 feet; and (iii) establishment of an exemption from the CTF for military cargo. Each of these amendments is being recommended as a result of discussions with terminal operators, shipping lines and other stakeholders, in order to clarify language to meet the intent of the CTP, be consistent with existing practices, and provide equity to existing constituencies.*

Recommendation: Board resolve that (1) the amendment to Tariff No. 4, Section 20, Item Numbers 2000, 2005, and 2030, be approved, subject to California Association of Port Authorities (CAPA) review and approval, and the Executive Director be authorized to work with CAPA to secure this approval or proceed to take independent action in accordance with CAPA procedure; (2) an Order to amend items 2000, 2005, and 2030 in Section 20, Clean Air Action Plan - General Rules and Regulations, of the Port of Los Angeles Tariff No. 4 be adopted; (3) the Board Secretary be authorized to certify to the adoption of the Order by the Board of Harbor Commissioners and cause the same to be published once in a newspaper printed and published in the City of Los Angeles, to take effect prior to adoption by Ordinance for a period not-to-exceed 90 days pursuant to Charter Section 653(b); (4) the Board Secretary be directed to transmit to the City Council for approval the Order and Ordinance approving and authorizing the amendment to Tariff No. 4 pursuant to City Charter 653(a); and (5) the Board Secretary be authorized to execute the proposed Board Order and Ordinance amending Tariff No. 4, and upon its publication, transmit the Order and Ordinance to the Chief Wharfinger for implementation of the tariff change and posting the amended Tariff No. 4 to the Port's website as regulated by the Federal Maritime Commission.

10. Re: RESOLUTION NO. _____ - CLEAN AIR ACTION PLAN – CLEAN TRUCK PROGRAM – REVISED CONCESSION AGREEMENT AND ADDENDUM REGARDING 2007 COMPLIANT TRUCK INCENTIVE PROGRAM

SUMMARY: On September 15, 2008, the Port of Los Angeles authorized the Executive Director to (i) direct staff to complete the City contracting process with concessionaire Licensed Motor Carriers (LMCs) that have been determined to meet concession requirements in accordance with direction previously provided by the Board, and (ii) execute on behalf of the Board Concession Agreements in substantially the form approved by the Board of Harbor Commissioners. Since that time, staff has conducted significant outreach on the contracting process and has received suggestions from LMCs regarding possible clarification or simplification of various provisions in the Port of Los Angeles Concession Agreement. Under the Executive Director's guidance, staff has made a series of modifications to the previously approved Concession Form. In general, the modifications clarify and simplify certain provisions and address the issues raised by LMCs without changing the basic concession requirements. This Board Letter requests that the Board of Harbor Commissioners approve the changes made by the Executive Director to the Concession Agreement and affirm any such Concession Agreements in this form executed by the Executive Director. The revised Concession Agreement is set forth in Transmittal 1.

On August 21, 2008, the Port of Los Angeles Board of Harbor Commissioners approved certain incentives to encourage LMCs to cost effectively accelerate the emission reductions identified in the Clean Truck Program (CTP) and bring United States Environmental Protection Agency (USEPA) 2007 compliant trucks more quickly into the Port drayage market. Response to the incentives was overwhelming, with more than 100 LMCs offering to bring more than 7,000 USEPA 2007 emissions compliant trucks into the drayage marketplace by the end of 2009, in each case earlier than the ban schedule would otherwise require. Staff closed the incentive program on September

10. (Continued)

19, 2008. Subsequent discussions with the LMCs that responded to the program indicated that these LMCs are likely to bring approximately 2,200 trucks into the marketplace by the end of calendar year 2008. Staff has now developed an Agreement for LMCs participating in the incentive program. The Agreement is designed to be an addendum to the Concession Agreement for incentive program LMCs, and it will establish terms and conditions for performance in exchange for payment of identified incentive monies from the Clean Truck Fund. This Board Letter recommends granting incentives to a maximum of 2,200 trucks in 2008, approval of the form of Incentive Addendum attached hereto as Transmittal 2, and requests authority for the Executive Director to execute such addendums in substantially the form set forth in Transmittal 2.

Recommendation: Board resolve that (1) the revised Concession Agreement set forth in Transmittal 1 hereto be approved; (2) all Concession Agreements of the form set forth in Transmittal 1 hereto that have already been executed by the Executive Director be ratified; (3) the Concession Agreement Incentive Addendum set forth in Transmittal 2 be approved; (4) the Executive Director be authorized and empowered to execute Concession Agreement Incentive Addendum set forth in Transmittal 2; (5) such incentives for 2,200 trucks in 2008 be authorized; and (6) Resolution No. _____ be adopted.

Environmental Management

11. Re: RESOLUTION NO. _____ - FIRST YEAR FUNDING OF THE TRAPAC COMMUNITY MITIGATION TRUST FUND

SUMMARY: In accordance with the Memorandum of Understanding (MOU) with the Appellants of the Final TraPac Environmental Impact Report (EIR), staff recommends transfer of $11,240,000 from the Harbor Revenue fund into an interest-bearing account to be known as the "Community Mitigation Trust Fund." The proposed trust fund would be invested by City of Los Angeles Treasury pending further discussions with the Appellants and restricted in use to the purposes specified in the MOU.

11. (Continued)

<u>Recommendation:</u> Board resolve that (1) the Chief Financial Officer be authorized to establish the "Community Mitigation Trust Fund" as an interest bearing account pending further discussions with the Appellants for the express purposes established in the Community Mitigation Memorandum of Understanding; (2) the transfer of $11,240,000 from the Unappropriated Balance to the "Community Mitigation Trust Fund" be authorized; (3) Resolution No. _____ transferring the $11,240,000 and establishing the "Community Mitigation Trust Fund" be adopted; and (4) the Board Secretary be directed to transmit the Resolution to the Mayor for approval pursuant to Section 343(b) of the City Charter.

12. Re: RESOLUTION NO. _____ - STAFF RESPONSE TO PORT OF LOS ANGELES COMMUNITY ADVISORY COMMITTEE RECOMMENDATIONS NO. 23, 52, AND 69

SUMMARY: The Port Community Advisory Committee (PCAC) Recommendation No. 23 requests that any increased diesel emissions from Port projects be mitigated down to zero, and that the Board of Harbor Commissioners (Board) adopt as policy that the offsetting reductions be done as closely as possible to each individual project. This recommendation was made prior to the Board's adoption of the Clean Air Action Plan (CAAP). Reduction of health risk as a result of diesel particulate matter is the major focus of the CAAP. While reduction of diesel emissions is a high priority, total elimination of diesel emissions on a project basis is not feasible. Staff recommends denial of the recommendation as the CAAP provides a comprehensive strategy to address air emissions and establishes a health standard that requires mitigation to be applied as close as possible to the emission source.

12. (Continued)

PCAC Recommendation No. 52 requests that the Board initiate immediate review and consideration for implementation of the No Net Increase (NNI) Task Force Report and Plan. Since the time of this recommendation, the Los Angeles and Long Beach Boards of Harbor Commissioners have approved the CAAP, which incorporated and expanded upon the NNI Report. In light of the adoption and ongoing implementation of the CAAP, staff recommends denial of Recommendation No. 52 as having been superseded by the CAAP.

The PCAC submitted Recommendation No. 69 to the Board requesting that "Board direct POLA to consider both cancer and non-cancer health risks in their planned Health Risk Assessment (HRA) in a manner consistent with the California Air Resources Board (CARB) and the South Coast Air Quality Management District (AQMD)." Currently, the Port HRAs in Environmental Impact Reports (EIRs) are consistent with the requirements of CARB and AQMD. Staff recommends approval of PCAC Recommendation No. 69.

<u>Recommendation</u>: Resolve that (1) the Board consider and deny Recommendation No. 23 to reduce emissions down to zero as the Port has implemented diesel emission reductions through the CAAP; (2) the Board consider and deny PCAC Recommendation No. 52, since the NNI measures have been considered and incorporated as appropriate in the CAAP which supersedes the NNI report; (3) the Board find and approve PCAC Recommendation No. 69, as the HRAs contained in Port EIRs are currently consistent with the requirements of CARB and AQMD; (4) staff's findings and recommendations be confirmed as set forth in the following Board Report discussion; and (5) Resolution No. _____ be adopted.

Marketing Division

13. Re: RESOLUTION NO. _____ - LOS ANGELES HARBOR DEPARTMENT MARKETING INCENTIVE PROGRAM

SUMMARY: ***The Audit Committee of the Board of Harbor Commissioners (Board) requested staff to develop a Marketing Incentive Program in response to the current decline in container volumes and extraordinary market conditions. This Marketing Incentive Program would provide an incentive to container terminal tenants (tenants) when they have secured new container volumes to the Port of Los Angeles (Port).***

Staff is proposing to adopt a Marketing Incentive Program for tenants estimated to provide a marginal benefit to the Los Angeles Harbor Department (Harbor Department) of $9.5 million. Incentive funds would be available to tenants bringing new container volumes to the Port in the amount of $10 per twenty-foot equivalent unit (TEU) to be paid on new container volumes during a 12-month period. The new container volumes (as defined in Section III below) must begin calling at a Port terminal commencing between the period beginning upon the date this program is approved by the Board and ending on December 31, 2009. This financial incentive will be a one-time payment and will be paid after the service has called for 12 months and appropriate documentation has been received. Tenants achieving estimated new container volumes would be receiving a combined benefit of $3.5 million for the duration of the program.

Recommendation: **Board resolve that (1) the Marketing Incentive Program as described in this Board Report be approved; and (2) Resolution No._____ be adopted.**

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Clean Truck Program

14. Re: RESOLUTION NO. _____ - APPROVAL OF CLEAN TRUCK PROGRAM PARTICIPATION AGREEMENTS AND DELEGATION OF AUTHORITY TO THE EXECUTIVE DIRECTOR TO EXECUTE PARTICIPATION AGREEMENTS

SUMMARY: The Clean Truck Program (CTP) is a key component of the San Pedro Bay Ports Clean Air Action Plan (CAAP) that will require the entire fleet of approximately 17,000 drayage trucks serving the Port of Los Angeles and Port of Long Beach (Ports) to meeting United States Environmental Protection Agency (USEPA) 2007 standards through replacement or retrofit within a period of approximately five years.

This letter recommends approval as to substantial form, and delegation of authority to the Executive Director to finalize, three forms of Participation Agreements (for subsidized leases, for loans, and for Proposition 1B funds) to be entered into between the Port and grant recipients of CTP funds. The proposed action also recommends the delegation of authority to the Executive Director to execute Participation Agreements with CTP grant recipients approved in accordance with CTP Requirements.

The Participation Agreement is an agreement to establish a legal relationship between the Port and applicants approved for a subsidized lease or grant from the CTP to acquire a new Clean Truck or retrofit an older truck to comply with USEPA 2007 standards. The Participation Agreements: 1) obligate the Port to make subsidy payments under the Proposition 1B grant or subsidized lease or loan programs of the CTP, and 2) obligate CTP Participants to certain responsibilities as conditions to the grant, over the term of their agreement.

Recommendation: Resolve that (1) the Board approve as to substantial form, and the Executive Director be authorized to make minor modifications and finalize, the forms of three (3) Participation Agreements between the Port and CTP grant recipients: a) San Pedro Bay Ports Clean Trucks Program Truck Replacement Funding Participation Agreement (Subsidized Lease) (Transmittal-1); b) San Pedro Bay Ports Clean Truck

14. (Continued)

Program Truck Replacement Funding Participation Agreement (Proposition 1B) (Transmittal 2); and c) San Pedro Bay Ports Clean Truck Program Truck Replacement Funding Participation Agreement (Purchase Subsidy) (Transmittal 3); (2) the delegation of authority to the Executive Director to execute individual Participation Agreements be approved. In the aggregate, the delegation of authority for the Participation Agreements may not exceed $250,000,000. The not-to-exceed per truck authorities for the Executive Director or Designee are as follow: 1) Lease Subsidy or Purchase Subsidy Participation Agreement is $160,000 for an alternative fuel truck; 2) Lease Subsidy or Purchase Subsidy Participation Agreement is $100,000 for a diesel truck; and 3) Proposition 1B Participation Agreement is $50,000 for a clean truck; (3) Resolution No. _____ approving the Participation Agreements as to substantial form be adopted, and the delegation of authority to the Executive Director to finalize the forms of Participation Agreements and to execute them; and (4) the Board Secretary be authorized and directed to forward Resolution No. _____ and the three approved forms of Participation Agreements to the City Council for its approval pursuant to Section 373 of the City Charter.

I. <u>CLOSED SESSION</u>

1. Discussion of pending litigation entitled: <u>American Trucking Associations, Inc. v. City of Los Angeles, et al.</u>, United States District Court Case No. 08-04920-CAS, and United States Court of Appeals for the Ninth Circuit Case No. 08-56503, pursuant to subdivision (a) of Section 54956.9 of the California Government Code.

2. Discussion of pending litigation entitled: <u>Federal Maritime Commission v. City of Los Angeles, et al.</u>, Order of Investigation and Hearing, Docket No. 08-05, pursuant to subdivision (a) of Section 54956.9 of the California Government Code.

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I. CLOSED SESSION (Continued)

3. Discussion of pending litigation entitled: The United States of America ex rel. State of California ex rel. Stanley D. Mosler v. City of Los Angeles, et al., United States District Court Case No. 02-02278-SJO, pursuant to subdivision (a) of Section 54956.9 of the California Government Code.

4. Discussion with legal counsel concerning significant exposure to litigation [two (2) potential cases], pursuant to subdivision (b)(1) of Section 54956.9 of the California Government Code.