



**THE PORT  
OF LOS ANGELES**

Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE: JULY 17, 2013**

**FROM: CLEAN TRUCK PROGRAM**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - FIRST AMENDMENT TO DRAYAGE SERVICES CONCESSION AGREEMENTS**

**SUMMARY:**

On June 19, 2008, the Board of Harbor Commissioners (Board) approved the Clean Truck Program (CTP) "Drayage Services Concession Agreement" (Concession Agreement), which contains 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. The City of Los Angeles Harbor Department (Harbor Department) has entered into approximately 1,000 Concession Agreements with LMCs since the October 1, 2008 inception of the CTP. All Concession Agreements will expire September 30, 2013. The proposed action is to approve the template form of the first amendment to the Concession Agreement, to extend the term for one year, at no cost to the LMCs, and to authorize the Executive Director to execute individual amendments with the concessionaires on the approved form. The new term will expire on September 30, 2014.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Approve the template form of the First Amendment to the Drayage Services Concession Agreement to extend the term for one year;
2. Direct the Board Secretary to transmit the proposed template form of the First Amendment to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;
3. Upon approval by the City Council, authorize the Executive Director to execute the First Amendment to the Drayage Services Concession Agreement with individual licensed motor carriers, in the form set forth in Transmittal 1, and authorize the Board Secretary to attest to said amendments, for and on behalf of the Board; 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 (CAAP), has been successful in improving air quality at the Port by replacing older polluting trucks with 2007 U.S. Environmental Protection Agency (EPA) compliant or newer engine trucks (clean trucks). 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 that establishes a contractual relationship between the Harbor Department and the LMC Concessionaires 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 parking, vehicle maintenance, insurance, security, and safety measures.

The Concession Program, which became operational on October 1, 2008, is effective up to a term of five years and all Concession Agreements, no matter when they were executed, are set to expire on September 30, 2013. There are currently 982 Concessionaires signed up in the Concession Program. A one-time Concession Fee (Fee) of \$2,500 was assessed to Concessionaires upon submission of Concession Applications. These fees assist in covering administrative costs of the Concession Program.

American Trucking Association Lawsuit – In July 2008, the American Trucking Association (ATA) filed a lawsuit against the City of Los Angeles (City) challenging several provisions within the Concession Agreement. During 2008-2010, the case was heard in various preliminary injunction proceedings before the United States District Court (District Court) and the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). The Ninth Circuit ordered the Harbor Department to refrain from enforcing several elements of the Concession Agreement under a preliminary injunction issued in April 2009. Following a bench trial, the District Court issued a decision on August 26, 2010 in favor of the City holding that the entire Concession Agreement was enforceable. The ATA appealed the trial judgment to the Ninth Circuit, which affirmed that all provisions of the Concession Agreement are enforceable except for the employee driver hiring requirement. The ATA appealed that ruling to the U.S. Supreme Court, which issued its opinion on June 13, 2013. The Court's opinion makes clear that the Concession Agreement may not be enforced through measures having the force and effect of law, but otherwise provides guidance regarding the parameters for a lawful Concession Agreement.

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Proposed Action – All current Concession Agreements will expire upon conclusion of their initial five-year terms on September 30, 2013. It normally takes some time for Port staff to both develop new agreements and bring them to the Board for approval, as well as to actually get such agreements signed after approval, in this case by approximately 1,000 concessionaires. However, Port staff has had to delay development of the new Concession Agreement pending the Supreme Court's decision. Now that the decision has been published, Port staff will need time to develop the new Concession Agreement in accordance with the Supreme Court's decision. In order to avoid periods of time without valid Concession Agreements between the expiration of the current Agreements and approval of new Agreements, staff requests that the terms of the current Concession Agreements be amended to extend the term one additional year to September 30, 2014 at no additional cost to the Concessionaires. An additional year will give the Harbor Department the necessary time to produce an updated Concession Agreement without allowing the current Concession Agreements to expire. Furthermore, this extension will give the Concession Program Administrator the necessary time to process the applications for approximately 1000 Amendments. The proposed Amendment contains provisions that:

- extend the term for one year,
- specifically delete the following provisions: (i) Section III(d) Driver Hiring, Section III(f) Compliance with Truck Routes and Parking Restrictions, and Section III(l) Placards,
- modify Section 1(b) to delete references to the Driver Hiring requirement, and
- clarify that Schedule 4-Default and Termination consists of contractual remedies only, shall be enforced by the Port only to the extent consistent with the Supreme Court ruling, and that criminal penalties will not be applied for breaches of the Concession Agreement.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an amendment to the Drayage Services Concession Agreement to extend the term of the agreement for one year. 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) under Article II, Section 2 (f) of the Los Angeles City CEQA guidelines.

**FINANCIAL IMPACT:**

The proposed action would extend the expiration date of all Concession Agreements for up to one year. The Harbor Department collected a one-time Fee of \$2,500 from each LMC upon submission of Concession Applications. This Fee has assisted the Harbor Department in administrating the CTP throughout the last five years.

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Since the inception of the program, the Harbor Department has spent approximately \$112 million on CTP implementation including incentives and consultant fees. Conversely, over the same period, the Harbor Department generated approximately \$83 million from Clean Truck Fees, Annual Truck Fees and Concession Application Fees. The overall revenue shortfall of approximately \$29 million is projected to remain constant moving forward as the CTP broke even in fiscal year 12/13 and is expected to continue to break even each fiscal year into the future. The current annual revenue and expenditure of the CTP is approximately \$1.5 million.

**ECONOMIC BENEFITS:**

This Board action will have no employment impact.

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**CITY ATTORNEY:**

The Office of the City Attorney has prepared the First Amendment to Drayage Services Concession Agreement and approved it as to form and legality.

**TRANSMITTAL:**

1. Proposed template form of First Amendment to Drayage Services Concession Agreement

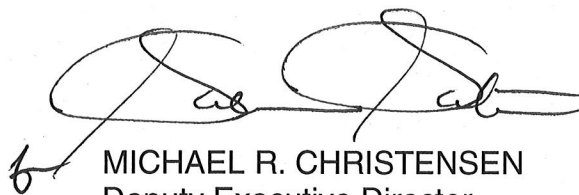
FIS Approval:  (initials)  
CA Approval:  (initials)



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BOARD MEETING: 7/25/2013

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