

DATE: JUNE 8, 2021

FROM: ENVIRONMENTAL MANAGEMENT

SUBJECT: RESOLUTION NO. _____ - RESCIND SECOND AMENDMENT TO AGREEMENT NO. E6967 BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND PIERPASS, LLC TO PROVIDE TRUCKING GATE MOVE DATA

SUMMARY:

Staff requests the Board of Harbor Commissioners (Board) to rescind a Resolution adopted on April 15, 2021, which approved the Second Amendment to Agreement No. E6967 between PierPass, LLC (PierPass), located in Long Beach, California, and the City of Los Angeles Harbor Department (Harbor Department). Due to administrative delays affecting Federal Maritime Commission (FMC) review, the Second Amendment will be replaced by a new proposed agreement that falls within the authority of an Executive Director Agreement. The proposed Executive Director Agreement will match all terms of the previously approved Second Amendment except that the new Executive Director Agreement will not include any options to extend.

RECOMMENDATION:

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

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Rescind the Second Amendment to Agreement No. E6967 with PierPass, LLC;
3. Adopt Resolution No. _____; and
4. The Secretary shall certify to the adoption of Resolution No. _____ by the Board of Harbor Commissioners and shall cause a copy of the same to be presented to the City Clerk to be added, as a supplemental item to Council File No.15-0876.

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SUBJECT: RESCIND SECOND AMENDMENT TO PIERPASS AGREEMENT NO. E6967

DISCUSSION:

Past Board Action – Second Amendment to Agreement No. E6967 (Second Amendment) – Agreement No. E6967 (Agreement) is an agreement under which PierPass provides trucking gate move data collected from electronic gate management equipment at the seven major container terminals in order to support the Clean Truck Program (CTP) and the annual Port of Los Angeles emissions inventories. The Agreement’s current term will expire on June 10, 2021. On April 15, 2021, the Board approved the Second Amendment to the Agreement that extends the term of the Agreement by one year and gives the Harbor Department the option to renew for an additional year. For the extended term, the cost for services will remain at \$4,000 per month for an annual cost of \$48,000. The Second Amendment extended the Agreement term to June 10, 2022, with the option to approve another extension to June 10, 2023. The Agreement includes a clause that allows the Harbor Department to terminate the Agreement within 30 days’ written notice. The option to renew for an additional year was delegated to the Executive Director to determine whether the option to extend is in the best interest of the Harbor Department, and to execute the option.

Current Status of the Second Amendment – The Second Amendment was approved by the Los Angeles City Council (Council) on May 26, 2021, pursuant to Los Angeles City Charter Section 373 and Los Angeles Administrative Code Section 10.5 for long-term contracts exceeding three years.

The Second Amendment was also required to be filed with the FMC for a 45-day review. Because the Second Amendment could not be signed and submitted to the FMC until after Council approval, the Agreement’s June 10, 2021 expiration date would occur during the 45-day review period. The FMC is unable to approve an extension amendment to an expired agreement, even if all party approvals and signatures occurred prior to expiration. Hence, the Second Amendment cannot comply with the Shipping Act to become effective.

Proposed Executive Director Agreement – In order for the Harbor Department to continue to receive the collected trucking gate move data, counsel for PierPass suggested submission of a new agreement within the Executive Director’s authority. The City Attorney worked with PierPass counsel to develop a new Executive Director Agreement, for the same services and cost (\$48,000) for a one-year term (June 11, 2021, to June 10, 2022). This new Executive Director Agreement is consistent with the Second Amendment approved by both the Board and City Council. However, the new Executive Director Agreement does not include any options to extend. If an extension becomes necessary, Board action will be required at that time. No City Council approval is required for this Executive Director Agreement. The Executive Director Agreement has been filed for FMC review, on June 2, 2021, with a request to expedite to go effective at the earliest possible date.

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Request to Rescind the Second Amendment – Because of the technical and administrative delays precluding FMC review and Shipping Act compliance, the Second Amendment cannot become legally effective and should be rescinded. It will be replaced by a new Executive Director Agreement (Transmittal 1) that is able to comply with the Shipping Act's FMC review requirement. As a new agreement, the replacement Agreement does not have the problem of the Agreement E6967's lapse during the FMC's review period for the Second Amendment, or limitation that an expired agreement cannot be amended.

ENVIRONMENTAL ASSESSMENT:

The proposed action is to receive and file a status report on a previously approved Second Amendment to Agreement No. E6967 with PierPass, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively 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:

The proposed action is to receive and file a status report on a previously approved Second Amendment to Agreement No. E6967, an administrative activity that has no incremental financial impacts beyond what had originally been considered under the Second Amendment. Under the previously approved Second Amendment, the Harbor Department had agreed to extend Agreement No. E6967 by one year through June 2022, with an additional one-year option to renew at an annual cost of \$48,000 (\$96,000 in total if the option to extend through June 2023 was exercised).

Due to administrative delays in filing the Second Amendment with the FMC, the previously approved Second Amendment will be replaced by a proposed Executive Director Agreement that will likewise extend Agreement No. E6967 by one year through June 2022 at an annual cost of \$48,000. However, the proposed Executive Director Agreement will not include a one-year extension option, and the proposed Executive Director Agreement will expire in June 2022.

CITY ATTORNEY:

The Office of City Attorney has reviewed this report, and has reviewed and approved the Executive Director Agreement as to form and legality.

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TRANSMITTAL:

1. Executive Director Agreement with PierPass, LLC

FIS Approval: MB
CA Approval: SO



CHRISTOPHER CANNON
Director of Environmental Management

Michael DiBernardo

MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

CC/yo
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FILE: Y:_ADMIN_BOARD REPORTS_AIR QUALITY\CTP\PIERPASS\PIERPASS - E6967 AMEND 2 - RESCIND\Environmental_PierPass Rescind 2nd Amendment_Board Report - FINAL.docx
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