

HARBOR DIVISION

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DATE: DECEMBER 7, 2012

FROM: OFFICE OF THE CITY ATTORNEY

**SUBJECT: RESOLUTION NO. _____ - PROPOSED REVISIONS TO
THE LOS ANGELES AND LONG BEACH PORT INFRASTRUCTURE
AND ENVIRONMENTAL PROGRAMS COOPERATIVE WORKING
AGREEMENT, FMC AGREEMENT NO. 201170, LOS ANGELES
HARBOR DEPARTMENT AGREEMENT NO. 2476**

SUMMARY:

The Cooperative Working Agreement between the Cities of Los Angeles and Long Beach – FMC Agreement No. 201170, Los Angeles Harbor Department Agreement No. 2476 (“Agreement”) provides immunity from federal anti-trust laws, as provided for under the Shipping Act of 1984, so that the Los Angeles and Long Beach Harbor Departments (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 Air Action Plan and the Clean Truck Program. The Agreement is currently being utilized for the purpose of discussing container chassis operations with various industry stakeholders.

The Agreement is currently set to expire on December 31, 2012. The proposed revised Agreement modifies the termination date so that the Agreement will remain in effect until written notification to terminate is provided by one party to the other. The Agreement is also revised to change the filing agent from a law firm to the City of Los Angeles City Attorney’s Office.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

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;

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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 previously approved this Agreement in June 2006, 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 Agreement revisions 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.

DISCUSSION:

Background and Context - The Shipping Act of 1984 ("the Shipping Act") 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 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.

The Port of Long Beach will be seeking approval for the proposed revised Agreement at their Board of Harbor Commissioners meeting on December 19, 2012.

Need for the Revised Agreement - Pursuant to the first revised Agreement in 2008, the term was set to expire on December 31, 2012. The revised Agreement (Transmittal 1) modifies the termination date to be open-ended. The Agreement will terminate only upon written notification from one party to another of their intent to cancel the Agreement. The Ports are currently utilizing the authority of the Agreement to hold joint meetings with industry stakeholders to gather information on container chassis operations. As such, an extension of the Agreement is desired by the Ports, and an open-ended termination will provide an administrative convenience to continue these discussions on an on-going basis.

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Should the Agreement be allowed to expire, and the Ports hold joint discussions on topics under the jurisdiction of the Federal Maritime Commission, the Cities would potentially be subject to federal enforcement actions alleging violations of the Shipping Act, as well as violation of the various anti-trust laws of the United States.

The revised Agreement also changes the filing agent from a law firm, utilized during the implementation of the Clean Truck Program and related litigation, back to the City of Los Angeles City Attorney's Office.

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

Term and Cost of the Revised Agreement - The revised 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. 201170. 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.

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 will be no additional on-going direct financial obligations under the Agreement, however additional filing fees will apply in the event future amendments are necessary for additional agreement authority

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or other purposes. Funds in the amount of \$425.50 are available in Center 0120, Account 54290, Program 000 in the FY12/13 budget. This item was budgeted for in the FY12/13 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. 2476 - Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement, FMC Agreement No. 201170.
2. Proposed revisions to Agreement No. 2476, shown in red-line format.

FIS Approval: LAP (initials)

CA Approval: JMC (initials)



HEATHER M. McCLOSKEY
Deputy City Attorney

APPROVED:

By J.M. Crose
JOY M. CROSE
Assistant General Counsel, Harbor Department

CONCURRED:

By Geraldine Knatz
GERALDINE KNATZ, Ph.D.
Executive Director

Author: H. McCloskey
Board meeting: 12/20/2012

HMB/anw