



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the

Board of Harbor Commissioners

DATE: FEBRUARY 22, 2012

FROM: CLEAN TRUCK PROGRAM

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF WIND-DOWN OPERATING COST BUDGET UNDER AGREEMENT NO. 08-2720 AMONG CITIES OF LOS ANGELES AND LONG BEACH, PORTCHECK LLC, AND MARINE TERMINAL OPERATORS FOR THE COLLECTION OF CLEAN TRUCK FEES

SUMMARY:

This request is to approve a wind-down operating cost budget under Agreement No. 08-2720 dated October 20, 2008, among the City of Los Angeles Harbor Department (Harbor Department), City of Long Beach Harbor Department (Port of Long Beach), PortCheck LLC (PortCheck), and 13 Marine Terminal Operators (MTOs). Agreement No. 08-2720 established PortCheck as a vendor on behalf of the MTOs to collect a Clean Truck Fee (CTF) and an Infrastructure Fee (IF) enacted under tariffs by the Harbor Department and Port of Long Beach, collectively (Ports). Because the CTF ceased being effective December 31, 2011, and the IF has been deferred until 2014, the parties have agreed to terminate Agreement No. 08-2720 effective February 12, 2012. In accordance with the First Amendment to Agreement No. 08-2720, the parties agreed to certain wind-down tasks and costs following the CTF's termination, which were carried out during the months of January and February of 2012. This wind-down budget memorializes those final activities and authorizes the final payment of the Harbor Department's share of the wind-down costs (\$172,704 or 56.39% of the total wind-down budget of \$306,267), which has previously been appropriated and set aside in Harbor Department Fiscal Year 2011/12 Clean Truck Program budget. The Port of Long Beach's Board of Harbor Commissioners approved this same agreement to pay their share of wind-down costs (\$133,563 or 43.61% of the total wind-down budget of \$306,267) on December 19, 2011.

RECOMMENDATION:

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

1. Approve the proposed Wind-Down Operating Budget for Agreement No. 08-2720, including payment in the amount of \$172,704 (56.39% of \$306,267) to fund the services provided from the period January 1, 2012 through February 11, 2012;

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2. Authorize the Executive Director to execute and the Board Secretary to attest to the Wind-Down Operating Budget for and on behalf of the Board; and
3. Adopt Resolution No. _____.

DISCUSSION:

Background - On November 20, 2006, the Los Angeles and Long Beach Boards of Harbor Commissioners jointly adopted the Clean Air Action Plan (CAAP), a comprehensive program with separate initiatives designed to substantially reduce air emissions from major sources in the two Ports over a five-year period. Emission sources targeted by the CAAP include ships, trains, cargo handling equipment, harbor craft, and heavy duty trucks. The Clean Truck Program (CTP) is a CAAP initiative that targets emissions from heavy duty trucks, specifically drayage trucks that move cargo in and out of marine terminals at the Harbor Department.

A key feature of the CTP is a series of progressive bans adopted by the Harbor Department that gradually restrict older, more polluting drayage trucks from operating at Port marine terminals until eventually all drayage trucks operating at Port terminals will be required to meet U.S. Environmental Protection Agency (EPA) 2007 On-Road Heavy-Duty emission standards (2007 compliant). The first CTP progressive truck ban went into effect on October 1, 2008, when drayage trucks older than the 1989 model year were banned from Port terminals. The next truck ban went into effect on January 1, 2010, when drayage truck engines older than the 1994 model year were banned from Port terminals and drayage truck engines with model years between 1994 and 2003 required emission retrofits for continued operation at Port terminals. The final truck ban went into effect on January 1, 2012, when drayage truck engines older than the 2007 model year were banned from Port terminals.

On January 14, 2008, the Board approved Order No. 6950, which established a new Port of Los Angeles (POLA) Tariff No. 4, Section 21 for collection of the IF to fund various infrastructure projects, commencing January 1, 2009. Tariff Section 21 has been amended several times to defer the commencement of collection of the IF and to date it has never been collected. Most recently, in August 2011, the Board approved Order No. 11-7086, which deferred the commencement of the IF to January 1, 2014.

On May 15, 2008, the Board approved Order No. 6961, which established under POLA Tariff No. 4, Section 20, a CTF to help finance the CTP and to provide an incentive for cargo owners to have their cargo moved by U.S. EPA 2007 compliant trucks (Clean Trucks). The CTF is an imposed \$35/Twenty-foot Equivalent Unit (TEU) fee on cargo

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owners for cargo moved by any truck that was not a Clean Truck. From and after January 1, 2012, the Harbor Department ceased collecting the CTF since all trucks were required to be Clean Trucks after that date.

On October 2, 2008, the Board approved Resolution No. 08-6633, which authorized the Harbor Department to enter into Agreement No. 08-2720 (Transmittal 1) with the City of Long Beach, the MTOs, and PortCheck (acting as vendor for the MTOs), to satisfy the MTOs' Tariff obligations to identify trucks, collect, and remit CTFs and IFs to the Ports.

Agreement No. 08-2720 Requirements - Agreement No. 08-2720 required PortCheck to provide the following primary deliverables including, but not limited to: (i) identify and obtain relevant truck information servicing terminals at the Ports by accessing the Harbor Department's Drayage Truck Registry system to determine exempt or non-exempt status for CTF allowance; (ii) collect, on behalf of the Ports, all CTFs and IFs related to cargo moving to and from the terminals of the MTOs in accordance with the Ports' respective tariffs; (iii) develop an information system and model that would facilitate the collection of CTFs and IFs; and (iv) provide daily operational mechanics which would include receiving truck, cargo and LMC information from terminal operators and other associated activities to support CTF functions. The Ports agreed to compensate PortCheck under Agreement No. 08-2720 by payment of incremental development and operating costs for such services as set forth in the approved Agreement.

To date, PortCheck has provided, on a monthly basis, all relevant truck information and has collected CTFs in accordance to the respective Ports' tariffs to substantiate the CTFs collected. Further, PortCheck continues to collect CTFs on behalf of the Ports and provides daily operational mechanics to support the CTF functions and associated processes. The costs for the operational mechanics are billed proportionally to each Port for services rendered.

In December 2010, the Board approved the First Amendment to Agreement No. 08-2720 (Transmittal 2), which increased the contract authority and approved the monthly expenses through the end of the contract. The First Amendment also provided that the Ports and PortCheck would discuss in good faith and agree upon the details of the wind-down cost budget for the final tasks to be performed after cessation of the collection of the CTF. This Board action memorializes those final activities.

Because of the cessation of the CTF collection on December 31, 2011, and the deferral until 2014 until the commencement of IF collection, the Ports have delivered written notices to vendors of the termination of the Agreement effective February 12, 2012.

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The Agreement provides for the parties to agree upon a budget and duration of post-termination Operating Costs in pertinent part in Section 2.2:

“The Ports and Vendor acknowledge and agree that if the TF is terminated, Operating Costs may continue to be incurred after collection of the TF ceases. The Ports and Vendor agree to discuss in good faith and agree on a projected budget and duration for post-termination Operating Costs as soon as the Ports notify the Vendor of the proposed termination date of the TF. Following such agreement, such Operating Costs shall be invoiced, paid and reconciled per the procedures in this Section 2 in the same manner as any other Operating Costs.”

The parties have agreed upon the “Post-Collection Truck Fee Responsibilities, Schedule and Costs” and staff requests Board approval at this time.

Proposed Operating Budget - Staff recommends that the Board approve the Wind-Down Operating Cost Budget (Transmittal 3), which would authorize payment of the Harbor Department’s share of the identified final wind-down costs (56.39% of the total wind-down budget of \$306,267 in the amount of \$172,704) to compensate PortCheck for Agreement wind-down services provided from January 1, 2012 through Agreement termination on February 12, 2012. This money has already been appropriated and is set aside in the Harbor Department’s Clean Truck Program budget for Fiscal Year 2011/12.

The percentage of wind-down cost that each port agreed to pay is proportional to the amount of the Clean Truck Fees collected at each port. The Port of Long Beach’s Board of Harbor Commissioners approved this same agreement to pay their share of wind-down costs (\$133,563 or 43.61% of the total wind-down budget of \$306,267) on December 19, 2011.

At this time, the Ports are no longer collecting CTFs nor are they receiving data from PortCheck under the Agreement. The Ports intend to soon begin receiving that information directly from the terminals.

CTF Revenue and Administrative Expenses - From the CTF collection inception date of February 1, 2009, through October 31, 2011, PortCheck has collected and paid approximately \$56,700,000 to the Harbor Department in CTFs. The Harbor Department is awaiting payment of CTF revenues totaling approximately \$600,000 collected from November through December 2011. Through December 2012, PortCheck has invoiced the Harbor Department \$9,773,310. The wind-down cost will increase the total expense to \$9,946,014.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval and appropriation of the proposed operating budget for Agreement No. 08-2720 with PortCheck to fund the services provided for post-termination wind-down costs. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City Guidelines.

ECONOMIC BENEFITS:

This Board action will have no economic impact.

FINANCIAL IMPACT:

This request approves the costs of wind-down services required to finish the collection and accounting process following cessation of the collection of CTF. The Port's pro rata share of wind-down costs total \$172,704 and covers the period from January 1, 2012 to February 11, 2012. These funds are available in the current fiscal year in Account 59965, Center 330, Program 000.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality, the agreement evidencing the parties agreement to the proposed wind-down cost operating budget.

TRANSMITTALS:

1. Agreement No. 08-2720
2. First Amendment to Agreement No. 08-2720
3. Proposed Wind-Down Operating Cost Budget for Agreement No. 08-2720

FIS Approval: ef (initials)

CA Approval: gm (initials)



CHRISTOPHER CANNON
Director of Environmental Management



JOHN HOLMES
Deputy Executive Director

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

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BOARD MEETING: 3/1/2012

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