



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: NOVEMBER 7, 2017

FROM: EXECUTIVE OFFICES

SUBJECT: RESOLUTION NO. _____ - FIRST AMENDMENT TO AGREEMENT NO. 2634 AMONG THE CITY OF LOS ANGELES HARBOR DEPARTMENT, THE CITY OF LONG BEACH AND THE WEST COAST MARINE TERMINAL OPERATOR AGREEMENT, FEDERAL MARITIME COMMISSION AGREEMENT NO. 201178

SUMMARY:

Staff requests approval of a first amendment to Federal Maritime Commission (FMC) Agreement No. 201178 among the Cities of Los Angeles, Long Beach and the West Coast Marine Terminal Operators Association (WCMTOA), City of Los Angeles Harbor Department Agreement No. 2634 (Agreement) in order to update WCMTOA member names and addresses and update WCMTOA membership information. The Agreement provides immunity from federal anti-trust laws, as provided for under the Shipping Act of 1984, so that the City of Los Angeles Harbor Department (Harbor Department), the Port of Long Beach (collectively "the Ports") and WCMTOA may collect and exchange information, engage in discussion and reach agreement with respect to the administration and operation of environmental programs, supply chain efficiencies at the terminals, and reduce and/or prevent congestion at the Port facilities. The Harbor Department is financially responsible for payment of one-third or \$175.33 of the \$526 FMC filing fee. There will not be any other ongoing costs directly associated with the Agreement.

RECOMMENDATION:

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

1. Find 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 as determined by the Director of Environmental Management;
2. Approve the Amended Agreement between the City of Los Angeles Harbor Department, the City of Long Beach, and the West Coast Marine Terminal Operators Association;
3. Authorize the Executive Director to execute and Board Secretary to attest to said Agreement, for and on behalf of the Board;
4. Adopt the foregoing as Resolution No. _____.

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AGREEMENT NO. 2634, FMC AGREEMENT NO. 201178**

DISCUSSION:

Background and Context - The Shipping Act of 1984 (the Shipping Act), among other things, 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, Long Beach and the members of WCMTOA are considered marine terminal operators under the Shipping Act and must comply with its requirements. The Agreement authorizes the parties to discuss and exchange information on a variety of matters, including security, congestion and environmental issues at the ports of Los Angeles and Long Beach. There is continued need for the Agreement as it may be used as a forum for the Ports to discuss implementation of the Clean Air Action Plan and the Clean Truck Program with the terminal operators.

On June 2, 2016, the Board approved an initial first amendment to the Agreement that was intended to broaden the topics for discussion among the parties to include measures to reduce or prevent congestion on marine terminals and/or at the gates or in the vicinity of such terminals. After filing the amendment on June 30, 2016, FMC staff expressed concern that the added language appeared to allow for implementation of measures without additional amendment to the Agreement. Although the parties did not intend for the language to allow for such implementation authority, in light of an anticipated request for additional information from the FMC regarding the proposed first amendment, and the existence of a separate FMC Agreement No. 201219-001 between the Port of Los Angeles and the Port of Long Beach which allows the ports to seek input from marine terminal operators as stakeholders on the same topics, the parties withdrew the original first amendment before it became effective.

Need for the Amendment – WCMTOA and its members have requested the amendment in order to update various names and addresses of the WCMTOA members. The amendment also removes California United Terminals as a member to the Agreement and removes Seaside Transportation Service LLC (STS) which is replaced by Everport Terminal Services, Inc. the successor terminal operator to STS. See Transmittal 1.

The complete FMC Agreement incorporating the first amendment revisions is attached as Transmittal 2.

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Term and Cost of the Revised Agreement - The Agreement has an open-ended term subject to termination upon written notification from one party to the others 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.

The Agreement contains no specific financial obligations other than the filing fee of \$526.00, which will be shared equally by the parties with the Harbor Department's share being \$175.33.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the first amendment to Agreement No. 2634. 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 administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed revised Agreement is subject to a filing fee of \$526.00, pursuant to 46 C.F.R. 535.401(g). The Harbor Department will be financially responsible for one-third of the filing fee in the amount of \$175.33. Funds in the amount of \$175.33 are available in Center 54290, Account 0210, Program 000. There are no additional on-going direct financial obligations under the Agreement.

CITY ATTORNEY:

The Office of the City Attorney has approved the first amendment to Agreement No. 2634 as to form and legality.

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TRANSMITTALS:

1. First Amendment to Agreement No. 2634/FMC Agreement No. 201178 - Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement.
2. FMC Agreement No. 201178-001.

FIS Approval: MB (initials)
CA Approval: gpc (initials)

Michael DiBernardo

MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Mark Bleavin for

EUGENE D. SEROKA
Executive Director

MAD/ci
Author: M. DiBernardo
Board Meeting: 11/16/2017