



ORD-29

The Port of Long Beach

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August 15, 2006

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to approve the Settlement and Release Agreement and First Amendment to Amended and Restated Joint Exercise of Powers Agreement, and declare the Ordinance, approving the First Amendment to Alameda Corridor Use and Operating Agreement to implement the transloading settlement between the Alameda Corridor Transportation Authority and the Union Pacific Railroad Company and the BNSF Railway Company, read the first time and laid over to the next regular meeting of the City Council for final reading.

DISCUSSION

The Alameda Corridor Transportation Authority (ACTA) is a joint powers authority created by the City of Long Beach and the City of Los Angeles. In December 1996, the Cities of Long Beach and Los Angeles entered into an Amended and Restated Joint Exercise of Powers Agreement pursuant to California Government Code for the purpose of developing, financing, constructing and operating the Alameda Corridor. This Agreement amended and restated an original 1989 Joint Powers Agreement entered for the same purpose.

ACTA collects fees from the Union Pacific Railroad Company (UPRR) and the BNSF Railway Company (BNSF), collectively referred to as the "Railroads," on, among other things, containerized cargo that is transported by rail, or in some cases could have been transported by rail, on the Corridor in accordance with a Use and Operating Agreement approved by both City Councils in 1998. The Railroads pass these fees on to their customers. ACTA uses these collected fees to pay certain expenses including, but not limited to, the repayment of revenue bonds that were issued to construct the Corridor.

Some cargo that arrives by ship is now trucked from the Ports of Long Beach and Los Angeles to inland distribution centers to be reloaded into different containers prior to leaving Southern California by rail. This commercial practice is called transloading.



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Transloading has reduced the amount of fees ACTA collects from the Railroads. A dispute with the Railroads has existed for over two years as to whether fees should be paid to ACTA for cargo that is subject to transloading.

In order to avoid protracted litigation, a tentative settlement between ACTA and the Railroads was reached through a formal mediation process. Approval of the settlement by the Board of Harbor Commissioners and City Council of both Long Beach and Los Angeles is recommended based on the uncertainty as to the outcome of litigation to validate ACTA's rights to collect fees on transloaded cargo. (Bond counsel has also reviewed the settlement and determined that it does not violate the bond financing documents for the Corridor.)

This settlement, when approved, resolves a complex contractual dispute and provides substantial financial relief not only to ACTA, but also to both Ports, which are obligated under the bond financing documents to loan funds to ACTA to cover a portion of shortfalls in revenue to meet semi-annual debt service payments and certain related expenses.

Approval of three documents is required to implement the settlement: 1) the Settlement and Release Agreement (a five-party agreement among ACTA, the Railroads and the Ports), 2) First Amendment to Amended and Restated Joint Exercise Powers Agreement (a two-party agreement between the Cities), and 3) First Amendment to the Alameda Corridor Use and Operating Agreement (also a five-party agreement), which requires an ordinance that must have a first and second reading. (Attached is additional information concerning this issue.)

This matter was reviewed, and the Ordinance prepared, by Deputy City Attorney Charles Gale on July 28, 2006.

TIMING CONSIDERATIONS

City Council action on this matter is requested on August 15, 2006, in order to facilitate the processing of the settlement documents between the Ports of Long Beach and Los Angeles, Cities of Long Beach and Los Angeles, and the respective Railroads.

FISCAL IMPACT

None.

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SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



RICHARD D. STEINKE
EXECUTIVE DIRECTOR
HARBOR DEPARTMENT

RDS:nm

Attachments:

Attachment #1
Ordinance