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OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney — Harbor Division

DATE: October 21, 2009
To: Honorable Mayor and Members of the City Council
FROM: Dominic T. Holzhaus, Principal Deputy City Attorney
SUBJECT: Settlement in American Trucking Associations, Inc. vs. the City of Long Beach, acting by and through its Board of Harbor Commissioners

On July 28, 2008, the American Trucking Associations (ATA) filed a complaint against Los Angeles and Long Beach for declaratory and injunctive relief from the ports' respective concession agreements. The ATA alleged that the concession agreements were generally preempted by the federal statute deregulating trucking, that the Los Angeles employee-only driver requirement was specifically preempted and that the concession agreements were an undue burden on interstate commerce.

On April 28, 2009, the Federal District Court issued a preliminary injunction against several provisions in each of the concessions on the grounds that they were preempted by federal law. The Court found that the concession provisions relating to safety were not preempted however, because federal law exempts local safety provisions. ATA has appealed that ruling to the Ninth Circuit claiming that the concession agreements should be enjoined in their entirety. The appeal will be heard on November 4.

On October 19, the Board of Harbor Commissioners agreed to settle with ATA. The Board agreed to allow trucking companies to file a registration agreement instead of the current concession agreement. A copy of the registration agreement is attached for your reference.

The registration agreement differs from the concession agreement in a number of respects, none of which will adversely affect the continuing success of the Clean Truck Program:

First, the registration agreement requires trucking companies to agree to comply with all federal, state, municipal, and Port environmental regulations, including the Clean Truck Tariff. The environmental requirements in the concession agreement were enjoined by the Federal District Court on April 29, 2009.

Second, the registration agreement allows access to Port terminals to any trucking company that complies with all applicable environmental, safety and security laws and regulations. The concession agreement retained discretion to deny access to any trucking company. Even though this discretion has never been exercised by the Port, ATA and the Federal Maritime Commission were concerned that it could be used limit competition for drayage services by arbitrarily limiting the number of concessions. That was never the Port's intent so this was not a difficult point to concede.

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Third, the registration agreement gives the Port access to an existing online database of trucking company insurance information. The concession agreement required duplicative processing of insurance data which was a burden for the Port and the trucking companies.

Fourth, the registration agreement has a streamlined enforcement procedure controlled by the Port. The concession agreement had a rigorous but complex enforcement mechanism that distinguished between minor and major defaults and inadvertent and intentional violations with different procedures for each.

Fifth, the registration agreement allows the Port to recommence collecting processing fees. The fee provision of the concession agreement was also enjoined on April 28 this year.

In general, the registration agreement requires trucking companies to submit the same detailed information and enter into a similar binding contract to comply with all environmental, safety and security requirements in order to obtain access to Port terminals. The Port retains the right to turn away any truck that does not comply with all of these requirements. Each concession agreement will remain in force until the trucking company files a registration agreement.

The risk of continuing the litigation was that the concession agreement could be struck down in its entirety. Under the settlement, Long Beach will be able to implement and enforce the registration agreement even if the Los Angeles concession agreement is struck down.

cc: Patrick West
Suzanne Frick
Board of Harbor Commissioners

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