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Antonio R. Villaraigosa

Mayor, City of Los Angeles

Board of Harbor
Commissioners

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Joseph R. Radisich

Geraldine Knatz, Ph.D.

Executive Director

April 20, 2010

Honorable Members of the
City Council of the
City of Los Angeles

CD No. 15

Attention: Ms. Sharon Gin, City Clerk's Office

SUBJECT: CHARTER SECTION 606 – THIRD AMENDMENT TO AGREEMENT
NO. 1989 BETWEEN THE CITY OF LOS ANGELES HARBOR
DEPARTMENT AND PACIFIC HARBOR LINE, INC.

Transmitted herewith, pursuant to Charter Section 606 of the City Charter, is a copy of a Board report, assigned Resolution No. 10-6918, approving proposed Third Amendment to Agreement No. 1989, assigned Harbor Department Agreement No. 10-1989-C, between the City of Los Angeles Harbor Department and Pacific Harbor Line, Inc.

Please note that the Mayor's office is waiving Executive Directive No. 4 review for this item, therefore no CAO report is attached

RECOMMENDATION:

The City Council, subject to approval of the Mayor, approve proposed Third Amendment to Agreement No. 1989, assigned Harbor Department Agreement No. 10-1989-C, between the City of Los Angeles Harbor Department and Pacific Harbor Line, Inc., and return to the Board of Harbor Commissioners for further processing.

Respectfully submitted,

ROSE M. DWORSHAK
Commission Secretary

cc: Trade, Commerce & Tourism Committee
Councilwoman Hahn, encs.
Councilman Rosendahl, encs.
Councilman LaBonge, encs.
Legislative Representative, encs.
Pamela Finley, encs.
Christine Yee Hollis, CLA, encs.
Jenny Chavez, CD 15, encs.

RECOMMENDATION APPROVED;
RESOLUTION NO. 10-6918 ADOPTED AND;
AGREEMENT NO. 10-1989-C APPROVED
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's
Report to the
Board of Harbor Commissioners

April 15, 2010

Rose M. Dewarshak
SECRETARY

DATE: APRIL 7, 2010

FROM: ENVIRONMENTAL MANAGEMENT DIVISION

SUBJECT: RESOLUTION NO. 10-6918 - THIRD AMENDMENT TO AGREEMENT NO. 1989 BETWEEN THE CITY OF LOS ANGELES AND PACIFIC HARBOR LINES, INC.

SUMMARY:

Pacific Harbor Lines, Inc. (PHL) is proposing to upgrade its existing fleet of Tier 2 switcher locomotives operating in the ports of Los Angeles and Long Beach (Ports) to above Tier 3 levels at no cost to the City of Los Angeles Harbor Department (Harbor Department). Upgrading its fleet would result in significant emission reductions compared to its Tier 2 fleet. In order to be eligible for the maximum grant amount of Carl Moyer Program Funds from the South Coast Air Quality Management District (SCAQMD), the upgraded locomotives are required to be in port-related service for a minimum thirteen years. Consequently, to maximize the benefits to the Ports and PHL, PHL is requesting a Third Amendment to its existing Operating Permit (Agreement No. 1989) that would extend the term an additional six and a half years from 2018 to 2024. To accommodate this extension, certain commercial and administrative provisions of the Agreement have been modified and updated and are included in the Third Amendment. The Port of Long Beach (POLB) is proposing a similar amendment to its Operating Permit with PHL. It is anticipated that the POLB Board of Harbor Commissioners will consider approval of the amendment on April 12, 2010.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the proposed Third Amendment to Agreement No. 1989 with PHL (Transmittal 1);
2. Authorize the Board Secretary to transmit the proposed Third Amendment to Agreement No. 1989 to the Los Angeles City Council for approval pursuant to Charter Section 606;
3. Authorize the Executive Director to execute and Board Secretary to attest to the proposed Third Amendment to Agreement 1989 for and on behalf of the Board of Harbor Commissioners upon approval by the City Council; and
4. Adopt resolution No. 10-6918.

SUBJECT: THIRD AMENDMENT TO AGREEMENT NO. 1989

DISCUSSION:

1. Background- On December 1, 1997, the Board of Harbor Commissioners (Board) entered into the San Pedro Bay Harbor Rail Operating Permit (Agreement No. 1989) with PHL, which granted PHL a license to operate on Port of Los Angeles (Port) rail facilities and additional Port rail facilities.

On June 26, 2002, the Board executed the First Amendment to Agreement No. 1989 that allows the Port or its designee to use tracks and facilities that are part of the Red Car Line, in connection with Streetcar Operation.

On August 31, 2005, the Board adopted and approved the Second Amendment to Agreement No. 1989 to upgrade PHL's 2005 fleet of sixteen diesel-powered locomotives operating in the Ports to Tier 2 emission levels and extend the contract term by 10 years. Agreement No. 1989 was to terminate in 2008 and this was extended to July 31, 2018. The Second Amendment also requires the use of emulsified diesel fuel and diesel oxidation catalysts (DOCs) upon successful demonstration. To date, these requirements have not been enforced due to lack of commercial availability of the fuel and operational concerns of the DOC.

2. Fleet Upgrade and Environmental Benefits of the Third Amendment- Under the proposed Third Amendment, PHL would be required at its own expense to repower its fleet of sixteen Tier 2 locomotives with "Tier 3-plus" engines, which meet Tier 4 emission levels for particulate matter (PM) and Tier 3 emission levels for oxides of nitrogen (NOx), by December 31, 2011. Also, any additional locomotives acquired by PHL after January 1, 2015, would be required to meet Tier 4 locomotive emission standard levels. PHL would be required to cover the entire cost of this transaction. In addition to their own funds, PHL intends to use Carl Moyer Program Funds from SCAQMD and proceeds from the anticipated sale of the sixteen Tier 2 engines. The Ports will not be responsible for any new funding for this transaction. In order to secure the maximum grant funding to upgrade the fleet, PHL would be required to operate the locomotives in port-related service for a minimum thirteen years. To meet this requirement and to achieve the maximum emission reduction benefits for the Ports, PHL has requested an extension of Agreement No. 1989 for an additional six and a half years, from 2018 to December 31, 2024. PHL is also requesting an extension to December 31, 2024 from POLB. It is anticipated that the POLB Board of Harbor Commissioners will consider approval on April 12, 2010.

When compared to the existing PHL Tier 2 fleet, upgrading to Tier 3-plus results in a reduction of PM emissions of 85% and a reduction of NOx emissions of 38%.

The proposed PHL locomotive fleet upgrade and term extension would accomplish substantial reductions in emissions several years before they would have been achieved through the current operating agreement. This is an opportunity to realize immediate and long-term air pollution emission reductions at the ports, thereby

SUBJECT: THIRD AMENDMENT TO AGREEMENT NO. 1989

decreasing the health impacts to the communities surrounding the ports. By utilizing the best available technology, PHL's upgraded fleet would significantly exceed the requirements of the local, state and federal air agencies.

3. Commercial and Administrative Provisions of the Third Amendment- To accommodate the term extension of the Agreement, certain commercial and administrative provisions of the Agreement have been modified and updated and are included in the Third Amendment. The primary modifications are summarized below.

- Agreement No. 1989 currently states that, at the conclusion of the Agreement's term, the Harbor Department will issue a Request for Proposal or Bid to permit other firms to compete to provide rail services in the port complex. Under the Third Amendment, this language is modified to give the Harbor Department the discretion to either issue a solicitation or to negotiate directly with PHL as a tenant in good standing to continue to provide rail services.
- Agreement No. 1989 required PHL to compensate the Harbor Department based on the number of carload moves performed by PHL per year once PHL relocated to the replacement yard as defined in the Agreement. This annual Operator Railyard Fee was set to a maximum not-to-exceed amount of \$100,000. Though PHL has yet to be relocated, based on previous years' carload moves, PHL would have owed the Harbor Department varying amounts between \$0 to the maximum \$100,000. To accommodate increased costs of replacement yard construction and to provide a guaranteed income stream that escalates over time, under the Third Amendment, the Operator Railyard Fee has been modified to be a flat rate starting at \$100,000 due to the Harbor Department on the first day of occupancy of the replacement yard. This flat rate will be increased annually thereafter based on the Consumer Price Index. If the Harbor Department terminates the tenancy of a current carloading customer of PHL and that customer represents at least 20 percent total carloading volume in the Port of Los Angeles, the Harbor Department may reconsider the Operator Railyard Fee.
- PHL will attempt to sell all sixteen Tier 2 engines replaced by this upgrade project. The Ports' share of the proceeds from such sale, as provided in Section 16.6.5 of the Operating Agreement, may be used to augment Carl Moyer Program Funds up to a total of 85% of total Project costs. Any remaining net proceeds shall be returned to the Ports in equal shares per Section 16.6.5. Any Project costs above and beyond this provision to use the Ports' share of the engine sale proceeds shall be the sole responsibility of PHL.

SUBJECT: THIRD AMENDMENT TO AGREEMENT NO. 1989

- The upgrade of PHL's locomotive fleet is contingent upon the grant funding from SCAQMD. If by December 31, 2010, PHL has not entered into an agreement with SCAQMD to secure funding, the Third Amendment will be null and void.
 - Under the Third Amendment, PHL is required to dedicate a minimum of 6,000 hours over the term of the Third Amendment to the litter control programs of the Ports, including submittal of a plan and annual reporting.
 - Exhibit B in Agreement No. 1989 has been replaced in the Third Amendment to show the updated rail facilities at the Ports.
4. Los Angeles City Council - Charter Section 606 requires that the Los Angeles City Council approve all permits over five years, and subsequent amendments thereto. Agreement 1989 is a six-year agreement originally approved by the City.

ENVIRONMENTAL ASSESSMENT:

The Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Costs and/or Revenue Impact- There is no cost impact arising from the proposed Third Amendment because the upgrade project is at no cost to the Harbor Department and it merely extends the term of the Agreement for an additional six years, ending on December 31, 2024. The Third Amendment does provide for an increase in PHL's annual Operator Railyard Fee upon their move to the replacement yard.

Alternatives Considered- An alternative to the Third Amendment would be for PHL to continue operating at the Ports under the Second Amendment to Agreement No. 1989 until the Agreement is terminated on July 31, 2018. At that time, the Harbor Department would issue a Request for Proposal or Bid to permit other firms to compete to provide rail services in the port complex and require the bidders to comply with stringent emission reductions. Under this alternative, PHL would continue to operate its existing fleet with no additional emission reductions. A benefit of the proposed Third Amendment is that the upgraded fleet will contribute to immediate and long-term air pollution emission reductions at the ports thereby decreasing the health impacts to the communities surrounding the ports.

DATE: APRIL 7, 2010

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SUBJECT: THIRD AMENDMENT TO AGREEMENT NO. 1989

ECONOMIC BENEFITS:

This Board action will have no direct employment effect in the five-county region.

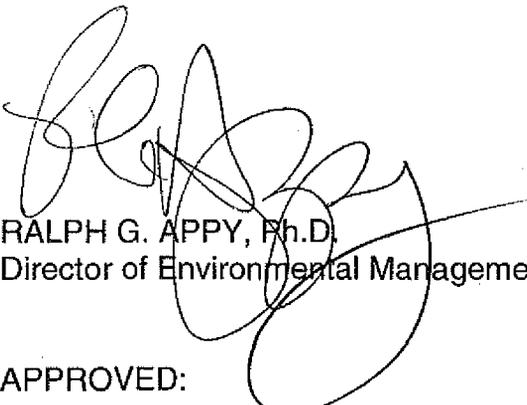
CITY ATTORNEY:

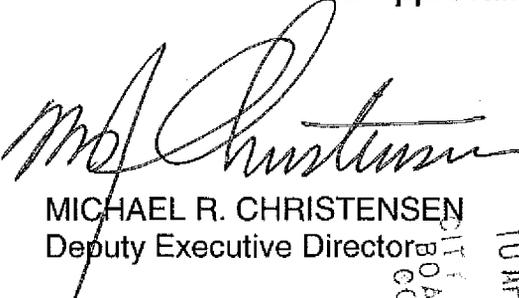
The Office of the City Attorney has reviewed the Third Amendment and approved it as to form.

TRANSMITTAL:

1. Proposed Third Amendment to Agreement No. 1989 between the City of Los Angeles and PHL.

FIS Approval: Erf


 RALPH G. APPY, Ph.D.
 Director of Environmental Management


 MICHAEL R. CHRISTENSEN
 Deputy Executive Director

APPROVED:

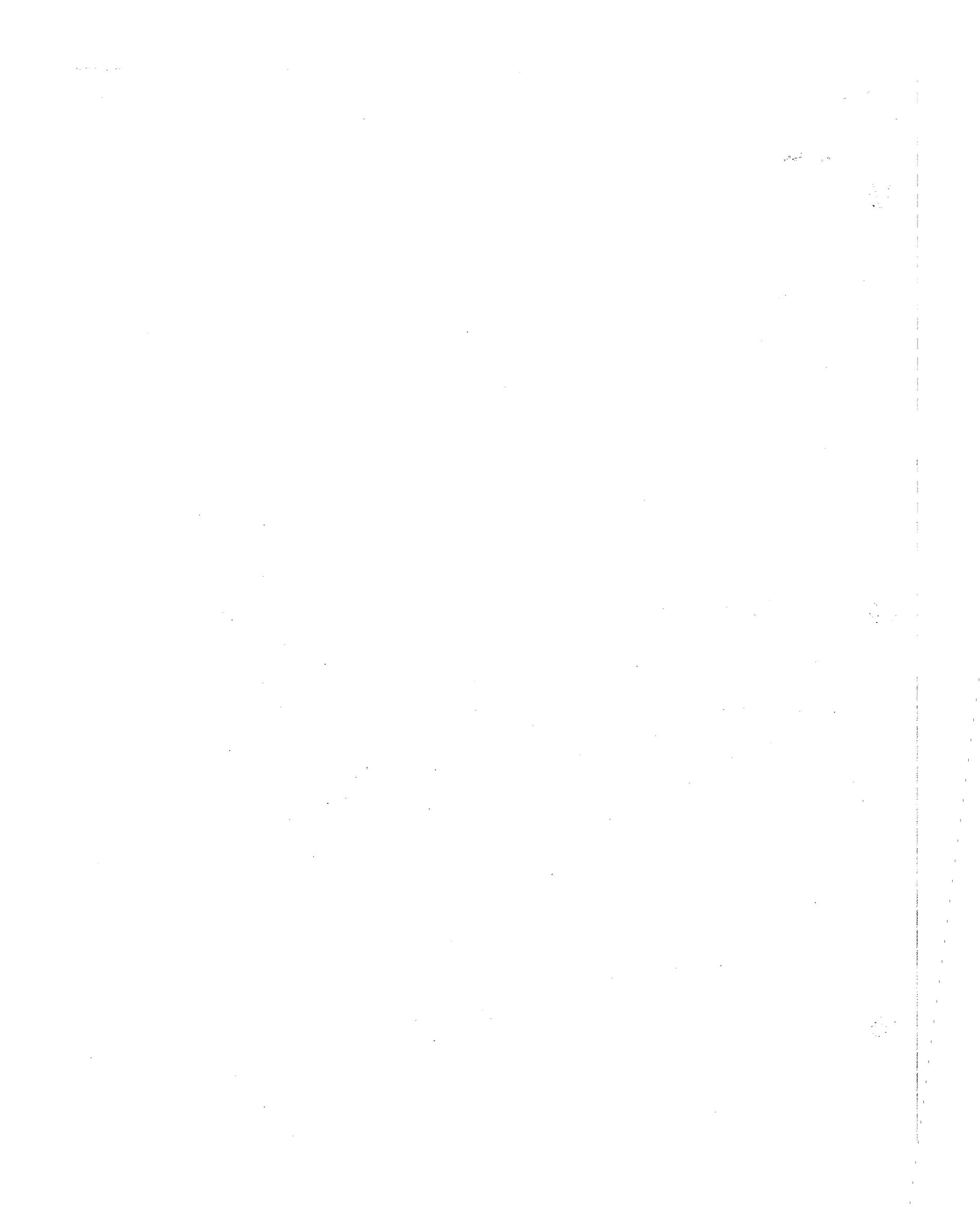

 GERALDINE KNATZ
 Executive Director

RECEIVED
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 SECRETARY
 10 APR -9 AM 11:51
 CITY OF LOS ANGELES
 BOARD OF HARBOR
 COMMISSIONERS

RGA:CLP:KM
 ADP No.: 010227-513
 BOARD MEETING: 4/15/10

FILE: G:\ADMIN\BOARD REPORTS\AIR QUALITY\PACIFIC HARBOR LINES\AGREEMENT 1989\AMENDMENT 3\PHL - FINAL.docx

UPDATED: 4/7/2010 8:27 AM - YO



THIRD AMENDMENT TO AGREEMENT NO. 1989-A
BETWEEN THE CITY OF LOS ANGELES
AND PACIFIC HARBOR LINE, INC.

Harbor Department
Agreement 10-1989-C
City of Los Angeles

AGREEMENT NO. 1989-A between the City of Los Angeles (the "Owner") and Pacific Harbor Line, Inc., ("PHL" or "Operator") is hereby amended a third time (the "Third Amendment") as follows:

WHEREAS, Pacific Harbor Inc, Inc. has successfully performed the services required by Agreement No. 1989-A, as amended (the "Agreement"); and

WHEREAS, the Agreement as amended, will automatically terminate on February 15, 2018; and

WHEREAS, the Owner and Operator desire to achieve more immediate improvements in air quality than would otherwise be required by the locomotive emissions standards of the United States Environmental Protection Agency ("EPA") by upgrading 16 switching locomotives operating in the Ports of Los Angeles and Long Beach (the "Ports") from Tier 2 to Tier 3 switcher locomotives that will exceed EPA's current standards; and

WHEREAS, PHL in order to accommodate the Owner's desires for better air quality and cleaner rail operations, has requested an extension of the term of the Agreement; and

WHEREAS, the Parties desire to continue the successful unified joint rail operations in the Ports; and

WHEREAS, the Owner also desires to reach agreement with Operator on aspects of contemplated future infrastructure improvements; and

WHEREAS, for the foregoing, it is in the best interest of the City to extend the Agreement for an additional term to provide cleaner and safer unified rail operations in the Port.

NOW, THEREFORE, the Agreement, as amended, between the City, acting by and through its Board of Harbor Commissioners, and PHL shall be further amended in order to achieve emission reductions, to extend the term of the Agreement, and to make such other revisions to the Agreement as are beneficial to the parties as follows:

1. Delete Paragraph 2 of the Second Amendment to Agreement No. 1989-A (Agreement No. 1989-B).

2. ARTICLE 2, Section 2.6 of the Agreement is amended in its entirety to read as follows:

"2.6 Replacement Railyard Fees. Operator shall pay directly to Owner when due all fees or other amounts payable in connection with the Replacement Railyard in

accordance with Exhibit I—Amended, which is attached to the Third Amendment, in place and instead of the original Exhibit I attached to Agreement 1989.”

3. ARTICLE 4, Section 4.3 of the Agreement is hereby amended in its entirety to read as follows:

“4.3 Term of Agreement. Provided Operator fulfills all of its obligations pursuant to the Repowering Project (as defined herein), the term of this Agreement shall terminate on December 31, 2024. In the event the Operator fails to complete the Repowering Project, this Agreement shall terminate on February 15, 2018.”

4. Section 8.1.1 is hereby added to ARTICLE 8 of the Agreement as follows:

8.1.1 Litter Control Program. “Operator shall participate in a Litter Control Program under which Operator shall submit to the Owner by September 30, 2010 a Maintenance Plan reasonably acceptable to the Owner demonstrating how Rail Property will be cleaned of litter and debris, with particular attention to areas of high litter accumulation. Owner may designate one special event area of the Rail Property per year, in which case the Operator shall perform the Litter Removal Services in that area prior to the special event. Operator shall devote a minimum of 6,000 person-hours per year, approximately equivalent to three full time employees per year to remove litter, (“Litter Removal Services”) under this Litter Control Program. Operator shall submit a written report to the Railroad Oversight Committee each year that describes in reasonable detail its cleanup activities for the previous year. Operator shall use its best efforts to equitably allocate Litter Removal Services between the Ports. Owner shall provide reasonable access to trash bins and other litter receptacles of adequate capacity for the deposit of litter. Owner shall support in front of the Railroad Oversight Committee Operator’s inclusion of the Litter Removal Services in the annual Maintenance Plan Budget submitted to the Railroad Oversight Committee. Failure of the Railroad Oversight Committee to adopt a budget that includes the Litter Removal Services shall not relieve Operator of its obligation to implement the Litter Removal Services and shall not constitute a breach of this Agreement.

5. Add Section 12.4.1 to ARTICLE 12 of this Agreement as follows:

12.4.1 Construction of Rail Support Facilities. Owner is in the conceptual planning phase of a project that, if built, would impact the Port Rail Facilities on Terminal Island (the “Rail Support Facilities Project”). The Rail Support Facilities Project is in the conceptual stage and may or may not be constructed in the sole discretion of Owner. Said construction may require the shifting or relocation of Trackage on Rail Property located within the Port Rail Facilities on a temporary or permanent basis.

a. Operator acknowledges and agrees that the Rail Support Facilities Project constitutes a major undertaking that will have significant construction-related impacts including, but not limited to, noise, vibration and dust, track

- e. If construction of the Rail Support Facilities has resulted in Impacted Trackage, Operator shall, at the conclusion of construction, promptly inspect such Impacted Trackage and may reject the same only if Operator determines that the facilities are in an unsafe condition. In the event Operator rejects any Impacted Trackage, Operator's sole remedy for such rejected trackage being unavailable for use by Operator shall be limited to Owner returning such track to a safe condition at Owner's expense. Operator shall be deemed to have accepted the Impacted Trackage if it has not rejected the Impacted Trackage in writing within 30 days of it being put back into service.
- f. Notwithstanding anything to the contrary set forth in this Operating Agreement, Owner is not in any way obligated to construct the Rail Support Facilities, or to construct the Rail Support Facilities within any specified time period, or at all. Rather, the purpose of this Section 12.4.1 is to provide for the parties' respective rights and obligations if design and construction of the Rail Support Facilities is commenced at the sole discretion of Owner.

6. In the event that prior to December 31, 2010 Operator enters into an agreement with the SCAQMD whereby Operator shall receive CMP Funds for up to 85% of the Repowering Project costs, or a lesser percentage of CMP funds at the discretion of the Operator, Section 16.3 Operator's Equipment shall be amended to delete the phrase "1) Sixteen (16) Tier 2 switcher locomotives and the demonstration of one (1) diesel-electric hybrid locomotive and one liquid natural gas (LNG) powered locomotive for one (1) year, more particularly described below." and to insert in its place: "1) at least Sixteen (16) switcher locomotives, which as of the execution of this Amendment, are designated by the EPA as Tier 2 locomotives, and which following the Repowering Project shall be Tier 3 switcher locomotives."

7. Delete that portion of the first paragraph of Section 16.6.1., beginning with the sentence "In addition to the above switching locomotives" and continuing to the end of the last sentence of the first paragraph of Section 16.6.1.

8. Delete Sections 16.6.9.1 and 16.6.9.2.

9. Section 16.6.9.5 of the Operating Agreement is hereby amended by adding the following to the end of the existing paragraph:

"To the extent that any Tier 2 compliant locomotive acquired hereunder is converted to a Tier 3 compliant locomotive pursuant to the Repowering Project, the re-verification provisions of this Section 16.6.9.5 do not apply. For Tier 3 compliant locomotives, Operator shall provide Owner copies of all verification reports provided by Operator to the South Coast Air Quality Management District, pursuant to CMP grant compliance requirements."

10. Section 16.7 Repowered Locomotives is hereby added as follows:

“16.7.1 Repowered Locomotives - General. At the effective date of this Third Amendment, Operator will begin to repower all sixteen Tier 2 locomotives referenced in Section 16.6 of the Agreement (and further described in Exhibit “J” attached hereto and incorporated herein by this reference) to meet Tier 3 emissions standards for switching locomotives established by the EPA. Operator will replace the existing Tier 2 diesel engines with new engines that meet Tier 3 EPA emission standards at switcher duty cycle and achieve 0.036 grams per brake horsepower hour (0.036g/bhp-hr) in particulate matter (“PM”) at the switcher duty cycle and place the locomotives with Tier 3 engines into revenue service in the Ports (the “Repowering Project”). Operator shall complete the Repowering Project and deploy all Repowered Locomotives in the Ports on or before December 31, 2011, subject to extension by the Owner which shall not be unreasonably withheld for events beyond the reasonable control of Operator.

“16.7.2 Repowering Cost/Funding. Except as provided in Section 16.7.3 below, no portion of the Repowering Project shall be paid by the Owner. Promptly upon execution of this Amendment, Operator shall apply to SCAQMD for a Carl Moyer Program (“CMP”) grant to cover up to 85% of the Repowering Project cost. The balance of the total actual cost of the Repowering Project shall be paid by Operator.

“16.7.3 Sales of Tier 2 Engines/Use of Proceeds. Operator shall use reasonable efforts to sell the Tier 2 engines that are replaced in the Repowering Project. Except as provided in this Section 16.7.2, if the Tier 2 engines replaced in the Repowering Project are sold, net proceeds of such sales (“Proceeds”) shall be allocated between Owner and Operator as provided for in the case of Tier 2 locomotives in Section 16.6.5 of the Operating Agreement unless SCAQMD or the California Air Resources Board (“CARB”) otherwise restricts the sale of such engines or the Proceeds from the sale thereof, in which case proceeds shall be allocated in accordance with such restrictions. If the Operator accepts a CMP grant received by the Operator from the SCAQMD which is less than 85% of the total actual cost of the Repowering Project, then the Operator shall be entitled to equal shares of the Proceeds allocable to Owner and the City of Long Beach in such amounts that, when added to the CMP grant, at least equal but do not exceed 85% of the total actual cost of the Repowering Project. The remaining net Proceeds, if any, shall be allocated to Owner, the City of Long Beach, and the Operator as provided in Section 16.6.5.”

11. Effective Date. This Third Amendment shall become effective on the last to occur of (1) the date that the City of Long Beach and Operator enter into an Agreement to Amend their Operating Agreement on substantially the same terms as this Third Amendment, or (2) the approval of this Third Amendment by the Los Angeles City Council.

12. Except as amended herein, all remaining terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement No. 1989-A between the City of Los Angeles and Pacific Harbor Line, Inc. on the date to the left of their signature.

THE CITY OF LOS ANGELES, by
its Board of Harbor Commissioners

Dated: _____, 2010

By: _____
Executive Director

Attest: _____
Secretary

PACIFIC HARBOR LINE, INC.

Dated: 9 April, 2010

By: Andrew Fox
ANDREW FOX President
(Print/type name and title)

Attest: _____

(Print/type name and title)

APPROVED AS TO FORM

April 12, 2010
CARMEN A. TRUTANICH, City Attorney

By Christopher B. Bobo
CHRISTOPHER B. BOBO, Assistant

CBB:jpr
Attachment
04/09/10

Account #	_____	W.O. #	_____
Ctr/Div #	_____	Job Fac. #	_____
Proj/Prog #	_____		
	Budget FY:	Amount:	
	TOTAL		
For Acct Budget Div Use Only			
Verified by: _____			
Verified Funds Available: _____			
Date Approved: _____			

EXHIBIT I-AMENDED

ECONOMIC TERMS FOR REPLACEMENT RAILYARD

1. If at any time during the term of this Agreement (No. 1989-A), as amended Operator uses the Replacement Railyard, then Operator shall pay to Owner a Minimum Annual Fee (the "Minimum Annual Fee"), as follows:
 - (i) For the first year of use of the Replacement Railyard, \$100,000 Minimum Annual Fee, which shall be adjusted annually upward in accordance with an increasing Consumer Price Index (CPI) after the first year. Payment of the Minimum Annual Fee will begin when the Pier A Replacement Yard is made available to Operator by the Owner. Payment of the fee will terminate when the Pier A Replacement Railyard ceases operations.
 - (ii) The Annual Fee shall be prorated for any calendar year in which Operator uses the Replacement Railyard for less than the entire year.
 - (iii) Each January 1st, the Annual Fee shall be adjusted by the CPI to account for inflation by application of the Consumer Price Index (i.e. Minimum Annual Fee is subject to a CPI-adjusted floor), as follows: The Minimum Annual Fee shall equal the prior year's Minimum Annual Fee adjusted for inflation by multiplying the prior year's Minimum Annual Fee by the CPI of the current year and then dividing it by the CPI of the prior year (Adjusted Minimum Annual Fee = Minimum Annual Fee \times (CPI October 20CY_(CY=Current Year) \div CPI October 20PY_(PY=Prior Year))). CPI is the Consumer Price Index for All Items, All Urban Consumers ("CPI - U") for the Los Angeles-Riverside and Orange Counties, as published by the U.S. Department of Labor, Bureau of Labor Statistics as series CUURA421SAO for October of each year. If the publication of said index is discontinued, then a successor index selected by the Executive Director in his/her sole but reasonable discretion shall be substituted. CPI will have a 3% cap during the first ten-year period. In no event shall the Minimum Annual Fee be lower than the Minimum Annual Fee for the preceding year.
 - (iv) In the event the Owner terminates the Permit of one of its shipping tenants that is one of Operator's carloading customers as identified [on the list to be supplied by Operator and attached hereto prior to the Effective Date of the Third Amendment] and which represents at least twenty (20) percent of Operator's total carloading volume handled by Operator originating from the Port of Los Angeles, then the Owner will meet and confer with Operator concerning a revision or reduction of the Minimum Annual Fee as provided herein.

EXHIBIT J

Locomotives Subject to the Repowering Project

1. PHL 20
2. PHL 21
3. PHL 60
4. PHL 61
5. PHL 62
6. PHL 63
7. PHL 64
8. PHL 65
9. PHL 66
10. PHL 67
11. PHL 68
12. PHL 69
13. PHL 70
14. PHL 71
15. PHL 72
16. PHL 73