



Legislation Details (With Text)

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Title: CONSIDERATION OF APPROVAL OF LETTER AGREEMENTS WITH PHILLIPS 66 AND MARATHON REFINERIES FOR PAYMENT OF CITY'S COSTS OF SERVICE AGREEMENT WITH EVERBRIDGE, INC. FOR MASS NOTIFICATION SERVICES PURSUANT TO AB 1646 (CITY COUNCIL)

Sponsors:

Indexes:

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Attachments: 1. Marathon Agreement Letter 12-4-20 -Signed, 2. Phillips66 Agreement 12-4-20 -Signed, 3. MJNS - City of Carson_Updated 2-25-21

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, March 16, 2021

Consent

SUBJECT:

CONSIDERATION OF APPROVAL OF LETTER AGREEMENTS WITH PHILLIPS 66 AND MARATHON REFINERIES FOR PAYMENT OF CITY'S COSTS OF SERVICE AGREEMENT WITH EVERBRIDGE, INC. FOR MASS NOTIFICATION SERVICES PURSUANT TO AB 1646 (CITY COUNCIL)

I. SUMMARY

On May 5, 2020, the City Council unanimously approved a master services agreement (MSA) with Everbridge, Inc., for license of Everbridge's Mass Notification Pro Software and related services for a not-to-exceed contract sum of \$127,089.24 over a three-year term, to enable the City to send mass notifications to its residents regarding public safety emergencies and matters pertinent to residents' public health and safety. As stated in the staff report for said item, the contract sum for the MSA would be paid by Marathon and Phillips 66 refineries pursuant to subsequent letter agreements to be prepared by the City Attorney's office and entered into between the City and the refineries.

The letter agreements, which provide for the refineries to each pay 50% of the contract sum, have been prepared by the City Attorney and executed by the refineries and the Los Angeles County Fire Department as the certified Unified Program Agency (UPA) for the

City, and are now being presented for Council approval.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the proposed "Letter Agreement regarding Marathon's Intent to Pay City of Carson's Costs of Proposed Service Agreement with Everbridge, Inc. for Mass Notification Services pursuant to AB 1646" with Tesoro Refining & Marketing Company, LLC (Exhibit No. 1; the "Marathon Agreement").
2. APPROVE the proposed "Letter Agreement regarding Phillips 66's Intent to Pay City of Carson's Costs of Proposed Service Agreement with Everbridge, Inc. for Mass Notification Services pursuant to AB 1646" with Phillips 66 Company (Exhibit No. 2; the "Phillips 66 Agreement").
3. AUTHORIZE the Mayor to execute the Marathon Agreement and the Phillips 66 Agreement, following approval of each as to form of by the City Attorney.

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate, consistent with applicable law.

IV. BACKGROUND

Although the Council's action on May 5, 2020 authorized the City Manager to execute the then-contemplated subsequent letter agreements, the Marathon Agreement and Phillips 66 Agreement are being presented for City Council approval because of the pending AB 1646 implementation process that is implicated by the refineries' payments. That is, Phillips 66 and Marathon have agreed to pay the Everbridge MSA costs only on the condition that they receive legal assurances that their payments will be considered or credited toward their AB 1646 fee payment obligations.

AB 1646, enacted into law effective July 1, 2018, requires a "local implementing agency" ("LIA," defined as "the entity that has been designated by a local governing body to develop, implement, and maintain an integrated alerting and notification system, which may include a local law enforcement or fire agency, joint powers agency, authority, or entity, or other local agency"), to develop an integrated alerting and notification system, in coordination with local emergency management agencies, UPAs, local first response agencies, petroleum refineries, and the public, to be used to notify the community surrounding a petroleum refinery in the event of an incident at the refinery warranting the use of the notification system.

AB 1646 requires a certified UPA, in coordination with the LIA, to establish a fee (separate

from the single fee system that a certified UPA was already required to institute to cover the necessary and reasonable costs of the state agencies which oversee the certified UPA in carrying out their responsibilities in the State's unified hazardous material/waste regulatory program) that a petroleum refinery is required to pay in an amount to cover the reasonable and necessary costs for the design, building, and installation of the notification system, and a fee, as part of the single fee system levied on a petroleum refinery, in an amount sufficient to cover the reasonable and necessary costs for the ongoing operation and maintenance of the notification system.

The Los Angeles County Fire Department, as the certified UPA for the City (under the oversight of the State Secretary for Environmental Protection and Governor's Office of Emergency Services), is the primary agency responsible for implementing and administering AB 1646, including developing and maintaining the required integrated alerting and notification system, and adopting the required fees to be paid by the subject refineries to fund the system (in coordination with the LIA(s)).

The County UPA is working with the City and other jurisdictions in the South Bay region to establish Everbridge's system as the cross-jurisdictional network to provide mass notification services related to incidents at the refineries pursuant to AB 1646. However, the County has not yet taken the actions necessary to formally implement AB 1646 within the City's jurisdictional boundaries. For instance, the County has not yet designated any LIA (which could be the County UPA itself or another County agency) nor determined whether the City should be designated as a LIA. The City also has not taken any action with regards to designation of an LIA.

Note that if the County requests that the City or any City agency be designated as a LIA as part of the AB 1646 implementation process and the City is agreeable to same, then subsequent Council action would be required to make the designation. However, it may be more appropriate for a County agency to serve as LIA because the County serves as the City's Fire Department, and the City itself does not have the same degree of regulatory authority or expertise over the refineries or other hazardous materials operations as the County because the County UPA is tasked with those responsibilities within the City's jurisdiction. The City, as the local governing body, could also presumably designate the County UPA or another agency as the LIA within the City's jurisdiction, but cooperation with the County would be needed in either event.

Because AB 1646 has not yet been implemented, the County and City arguably have not yet established their authority to require payment of AB 1646 fees from the refineries. However, the County UPA is legally obligated to implement AB 1646 (in cooperation with the LIA(s)), and once that process is complete, the necessary authority will be established (to the extent it is not already). Accordingly, it stands to reason that the County UPA (itself, or collectively with the City depending on LIA designation) can currently provide the assurances the refineries require in order to consummate the letter agreements, by agreeing that the refineries' payments will be credited toward their AB 1646 fee payment obligations once the fees become due and payable pursuant to implementation of AB 1646 (to the extent they are not already).

To that end, the proposed letter agreements contain the following language in section 3 of the respective agreements:

“City and County CUPA warrant . . . that they will, collectively or individually, take the actions necessary to establish their authority to collect AB 1646 fees from [Phillips 66/Marathon] . . . , and that [Phillips 66/Marathon]’s payment(s) of the [Phillips 66/Marathon] Portion will be applied toward its fee payment obligations (whether present or future) pursuant to AB 1646. Until the AB 1646 implementation process . . . is complete, payment(s) of the [Phillips 66/Marathon Portion may be requested, by . . . City Manager . . . to be made directly from [Phillips 66/Marathon] to Everbridge, in which case [Phillips 66/Marathon] shall . . . notify City and County CUPA of such payments when made. In the event County Fire or another County agency, and not City, is designated as the [LIA] . . . for purposes of AB 1646, [Phillips 66/Marathon]’s payment(s) . . . shall be made to such County agency for subsequent payment to Everbridge on behalf of City. In the event that (i) AB 1646 has not been implemented . . . by either City or County CUPA as of the date of expiration of the initial three-year term of the MSA, and it is clear to the Parties as of said date that no such implementation will occur within the foreseeable future, or (ii) City and County CUPA at any point in time acknowledge and agree, and inform [Phillips 66/Marathon] . . . that no AB 1646 implementation by County CUPA or City will occur, such that they will not have the requisite authority to accept payment of fees from [Phillips 66/Marathon] pursuant to AB 1646, then City and County CUPA shall notify [Phillips 66/Marathon] to cease payments pursuant to this Agreement, and City and County CUPA will refund its respective share of fees received from [Phillips 66/Marathon] . . . , except to the extent that the payments made . . . can be applied toward [Phillips 66/Marathon]’s fee payment obligations to another applicable [LIA].”

Thus, there is a remote chance that the payments received from the refineries pursuant to the proposed letter agreements would need to be refunded if after three years AB 1646 has not been implemented by either the City or the City or any of their agencies, and it appears at that time that no such implementation will occur within the foreseeable future. For this reason, the Marathon Agreement and Phillips 66 Agreement are being presented for Council approval rather than being approved by the City Manager.

However, as noted above, implementation of AB 1646 by the County or its agencies, without City itself being designated as an LIA, would be sufficient for the refineries’ payments to be made to Everbridge and credited toward their AB 1646 fee payment obligations under the proposed letter agreements. The County UPA is the primary regulatory authority and is legally required to implement AB 1646 with respect to the Phillips and Marathon refineries (subject to cooperation with City as governing body). As such, AB 1646 implementation by the County with respect to the Phillips 66 and Marathon refineries appears to be inevitable and merely a matter of time.

The City cannot force the County to act more quickly to complete the AB 1646 implementation process and City staff has observed that the County is actively working toward that end. The County has been willing to make the necessary representations to facilitate execution of the letter agreements to fund the Everbridge MSA is evidence of a sincere intent on the County’s part to complete the process as soon as practicable.

The refineries have agreed to and executed the proposed letter agreements. Additionally, Everbridge is aware of and agreeable to the proposed payment arrangement contemplated

by the letter agreements, whether that results in direct payment from the refineries or indirect payment via the City or County.

Accordingly, staff recommends approval of the Marathon Agreement and Phillips 66 Agreement to provide for the refineries to fund the costs of the Everbridge MSA in full commencing immediately.

V. FISCAL IMPACT

If the staff recommendation is approved, Phillips 66 and Marathon refineries will pay a total of \$127,089.24 to Everbridge, directly or indirectly via the City and/or the County UPA, thereby funding the entire cost of the Everbridge MSA over its initial three-year term.

VI. EXHIBITS

1. Proposed Marathon Agreement (pgs 6-11)
2. Proposed Phillips 66 Agreement (pgs 12-17)

3. Everbridge Master Services Agreement (Pgs. 18-22)

Executed

Prepared by: David C. Roberts, Jr., Assistant City Manager, Raymond Cheung, Emergency Services Manager.