



# CITY OF CARSON

## Legislation Text

File #: 2019-169, Version: 1

### Report to Mayor and City Council

Tuesday, February 19, 2019

Discussion

#### SUBJECT:

**CONSIDER A TRIPARTY SETTLEMENT AGREEMENT BETWEEN SHIPPERS TRANSPORT EXPRESS, INC. ("SHIPPERS"), TESORO LOGISTICS OPERATIONS LLC ("TESORO"), AND THE CITY OF CARSON TO EXTEND THE DEADLINE BY WHICH SHIPPERS MUST TERMINATE OPERATIONS AND VACATE THE SITE LOCATED AT 1150 EAST SEPULVEDA BOULEVARD, CARSON ("SITE") AND TO SETTLE THE PARTIES' DIFFERENCES REGARDING THE AMOUNT OF EXTENSION FEES, DEPOSITS, AND DELINQUENT DEPARTURE PENALTY PAYMENTS DUE FROM SHIPPERS AND/OR TESORO TO THE CITY (CITY COUNCIL)**

#### I. SUMMARY

On February 5, 2019, the City Council continued this item and gave direction for City staff, Shippers, and Tesoro ("**Parties**") to negotiate a settlement agreement to resolve the disputes between the Parties regarding the payments due from Shippers and Tesoro under Resolution 17-088 ("**Compliance Resolution**") in order to allow for an extension to the deadline by which Shippers must terminate operations and vacate the Site. Per Council direction at the February 5, 2019 Council meeting, the City Attorney, acting through the Council Subcommittee, negotiated with Shippers to reduce the amount of the extension fee payments and deposits due from Shippers/Tesoro under the Compliance Resolution. It is important to note although the Council asked for Tesoro to be involved in these discussions, Tesoro participated in the initial conference call but then completely stayed out and Shippers was the only entity negotiations. Originally, the City and Shippers agreed to the following:

- Shippers/Tesoro would not be required to pay the delinquent departure penalty fee payments that have accrued under the Compliance Resolution (i.e., \$180,000).
- Although the City is entitled to recover all of its attorneys' fees incurred in the negotiation of the Settlement Agreement, the Subcommittee has agreed to waive payment of the attorneys' fees due under the Compliance Resolution.
- Shippers/Tesoro would pay \$150,000 ("**Compliance Fee**") for each quarterly extension to the original deadline of December 31, 2018 until July 31, 2019 instead

of the legally required \$250,000 per quarter.

- Shippers will promptly file a CUP application to relocate its operations to 2149 E. Sepulveda Blvd. & vacate the Site by July 31, 2019 ("**Compliance Date**") so it can be entitled by July 2019.
- If Shippers has not vacated by the Compliance Date, Shippers/Tesoro would pay \$200,000 ("**Extension Fee**") for each quarterly extension of the Compliance Date after July 31, 2019.
- Shippers/Tesoro would pay a deposit to the City equal of \$400,000 (the "**Deposit**") if it extends its operations after the Compliance Date, to ensure the City is timely paid the Extension Fees due and City costs of enforcement.

However, Shippers has changed its position or it misunderstood these points during the negotiations. Shippers has now taken issue with the Extension Fee amount and the Deposit amount, among other things. Shippers is not agreeing to going to \$200,000 after the first 2 quarters. It insists on keeping the \$150,000 payment requirement. Shippers also claims it should not be required to pay the \$400,000 Deposit to go beyond the 2 quarter extension. The City Council is being asked to consider a Settlement Agreement containing the original terms the Parties agreed to (Exhibit 2) as well as a revised version of the Settlement Agreement with the terms proposed by Shippers (Exhibit 3) and to provide direction to staff in finalizing the settlement agreement.

## **II. RECOMMENDATION**

1. Provide direction to staff as to terms of SETTLEMENT AGREEMENT
2. APPROVE entering into a Settlement Agreement between Shippers Transport Express, Inc., Tesoro Logistics Operations LLC, and the City of Carson to extend the deadline by which Shippers Transport Express, Inc., must terminate operations and vacate the Site located at 1150 East Sepulveda Boulevard, and to reduce the amount of extension fees and other payments due from Shippers and/or Tesoro under the Resolution 17-088.
2. AUTHORIZE the Mayor to execute the Settlement Agreement, after approval as to form by the City Attorney.

## **III. ALTERNATIVES**

1. TAKE another action that the City Council deems appropriate.

## **IV. BACKGROUND**

During the February 5, 2019 Council meeting, Council directed City staff to enter into good faith settlement negotiations regarding the payments due from Shippers and Tesoro under

the Compliance Resolution. Council made clear both Shippers and Tesoro should be in settlement discussions. Shippers had raised objections to the amount of the extension fee payments due under the Compliance Resolution, which were set at \$250,000 for each 3 months of extension past the original "Compliance Deadline" of December 31, 2018. Shippers continues to occupy the Site in violation of the terms of the Compliance Resolution.

The City Attorney, acting through the Council Subcommittee has negotiated the terms for a reduction in the payments due from Shippers and/or Tesoro under the Compliance Resolution. The Parties agreed to the following terms:

- Shippers / Tesoro would not be required to pay the delinquent departure penalty fee payments that have accrued under the Compliance Resolution (i.e., \$180,000 between January 1, 2019 and February 5, 2019) unless Shippers continued in occupancy past July 31, 2019 and failed to pay the Extension Fees (described below).
- Shippers / Tesoro would pay \$150,000 ("**Compliance Fee**") for each quarterly extension to the original deadline of December 31, 2018 until July 31, 2019.
- Shippers must file a CUP application to relocate its operations to 2149 E. Sepulveda Blvd. & vacate the Site by July 31, 2019 ("**Compliance Date**").
- If Shippers has not vacated by the Compliance Date, Shippers / Tesoro would pay \$200,000 ("**Extension Fee**") for each quarterly extension of the Compliance Date after July 31, 2019 until December 31, 2020.
- Shippers / Tesoro would submit a deposit equal to \$400,000 (the "**Deposit**") if it extends its operations after the Compliance Date, to ensure the City is timely paid the Extension Fees due and City costs of enforcement.

However, after the draft Settlement Agreement was sent by the City Attorney's office to Shippers and Tesoro, Shippers raised objections to the amount of the Extension Fee and the Deposit due to the City, among other things. Shippers has proposed a revised Settlement Agreement with the following revised terms:

- The Extension Fee would be reduced from \$200,000 to \$150,000 for each 3 month period of extension past the Compliance Date.
- There is no Deposit required if Shippers extends operations after the Compliance Date.
- Shippers / Tesoro would not be required to pay the delinquent departure penalty fee payments that have accrued under the Compliance Resolution (i.e., \$180,000) regardless of whether Shippers fails to vacate the Site by the Compliance Date and fails to pay any Extension Fees.

Under Shipper's proposed terms, the reduction in payments would amount to potentially

\$800,000 less than the amount the City is entitled to receive under the Compliance Resolution. If City staff's proposed version of the Settlement Agreement is approved, the reduction in payments due to the City would be \$500,000 less than the amount the City would otherwise be entitled to under the Compliance Resolution (if Shippers remains on-Site until the outside date under the Settlement Agreement (i.e., December 31, 2020)).

In addition, during the February 5, 2018 Council meeting, Shippers was directed to file a CUP application for 2149 E. Sepulveda Blvd. in order to relocate its operations there (which Shippers had previously indicated it was willing to do). However, to date, Shippers has not filed the CUP application.

During the negotiations between City staff and Shippers, Tesoro has not raised any objections to the payments due under the Compliance Resolution or under the Settlement Agreement, though it has the same obligations as Shippers to make the payments per the terms of the Compliance Resolution.

## **V. FISCAL IMPACT**

While the primary purpose of the Compliance Fees is to ensure compliance with the provisions of the original agreement, the scale and size of the Shippers operation suggested a significantly large fee would be necessary. The If the City Council approves either version of the Settlement Agreement, the City's General Fund will realize a loss of revenue compared to the approved Compliance Resolution which required Shippers/Tesoro to pay the City \$250,000 for each 3 month period of extension in operations. If City staff's proposed version of the Settlement Agreement is approved, the City will realize potentially \$500,000 less than would otherwise be due under the Compliance Resolution. If Shippers' proposed version of the Settlement Agreement is approved, the City will realize potentially \$800,000 less than otherwise would have been due under the Compliance Resolution. In addition, through the Settlement Agreement the City has elected not collect \$180,000 in delinquent departure penalty payments due under the Compliance Resolution.

## **VI. EXHIBITS**

1. City Council Staff Report with Attachments, February 5, 2019 (pgs. 5-16)
2. Settlement Agreement (prepared by City Attorney) (pgs.17-27)
3. Settlement Agreement (proposed by Shippers / Tesoro) (pgs. 28-37)

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