



Legislation Details (With Text)

File #: 2021-0358 **Version:** 1 **Name:**
Type: Action Item **Status:** Passed
File created: 9/30/2021 **In control:** Board of Port Commissioners
On agenda: 10/12/2021 **Final action:** 10/12/2021
Title: RESOLUTION APPROVING GRANT OF INDEMNITY TO LORDSTOWN EV SALES LLC RELATED TO PURCHASE OF ELECTRIC TRUCKS

Sponsors:

Indexes:

Code sections:

Attachments: 1. 13. 2021-0358 Draft Resolution

Date	Ver.	Action By	Action	Result
10/12/2021	1	Board of Port Commissioners	adopted	

DATE: October 12, 2021

SUBJECT:

RESOLUTION APPROVING GRANT OF INDEMNITY TO LORDSTOWN EV SALES LLC RELATED TO PURCHASE OF ELECTRIC TRUCKS

EXECUTIVE SUMMARY:

The District is seeking to participate in San Diego Gas & Electric's (SDG&E) Power Your Drive (PYD) for Fleets program to support private and public fleets to adopt electric medium- and heavy-duty vehicles. Through this program, SDG&E pays for and constructs the necessary infrastructure upgrades up to the charging station unit.

To be eligible for the program and enable SDG&E to begin design work on infrastructure upgrades on District owned property in National City, the District is required to procure at least two medium- or heavy-duty vehicles. Accordingly, Staff would like to place a purchase order with Lordstown EV Sales LLC (Lordstown) for two medium-duty electric pickup trucks. As a condition of sale, Lordstown vehicles can only be used within the United States. As part of the purchasing process, Lordstown requires a purchaser to hold harmless and defend Lordstown from and against any demand, claims, causes of action, damages, costs of any kind, including reasonable and necessary attorney fees, expert witness fees and expenses, and courts costs related to, arising from, or as a result of, purchaser's use of vehicles outside of the U.S.

Staff has determined that accepting the hold harmless clause does not pose unreasonable risk to the District, because the District does not intend to use vehicles purchased from Lordstown outside of the U.S.

The purchase of the trucks is within the contract authority of the CEO, and Board approval is only

required as to the indemnity. Staff recommends granting indemnity to Lordstown Motors, by accept the hold harmless clause as written in the Fleet Account Number Application with Lordstown EV Sales LLC.

RECOMMENDATION:

Adopt a resolution approving grant of indemnity to Lordstown EV Sales LLC related to purchase of electric trucks.

FISCAL IMPACT:

Funds to purchase the electric vehicles are included in the Equipment Outlay and Other Capital Projects FY 2022 Budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

SDG&E's Power Your Drive (PYD) for Fleets program is intended to support private and public fleets to adopt electric medium- and heavy-duty vehicles. The program aims to construct and upgrade the necessary power infrastructure at customer locations to enable fleets to install electric vehicle charging equipment. Through this program, SDG&E pays for and constructs the necessary infrastructure upgrades up to the charging unit.

To be eligible for the program, the District is required to procure at least two medium- or heavy-duty electric vehicles or submit a vehicle transition plan detailing the conversion of existing vehicles to electric vehicles. Meeting these requirements will enable SDG&E to begin design work on approximately \$500,000 worth of charging infrastructure upgrades on District owned property in National City.

To enable SDG&E to begin design work on charging infrastructure upgrades in the GS Administrative facility in National City, staff would like to place a purchase order with Lordstown EV Sales LLC (Lordstown) for two medium-duty electric pickup trucks. Lordstown is currently only accepting orders for vehicles from qualified fleet users.

The District must submit an application for a Fleet Account Number (FAN) as the first step to becoming a qualified fleet user with Lordstown. Lordstown currently only accepts orders from customers with a valid FAN. One of the conditions in the FAN is that Lordstown vehicles can only be used within the United States. Lordstown requires a purchaser to hold harmless and defend Lordstown from and against any demand, claims, causes of action, damages, costs of any kind,

including reasonable and necessary attorney fees, expert witness fees and expenses, and courts costs related to, arising from, or as a result of, purchaser's use of vehicles outside of the U.S.

The District does not intend to use vehicles purchased from Lordstown outside of the U.S. Thus, accepting the hold harmless clause does not pose unreasonable risk to the District. Staff recommends the Board accept the hold harmless clause as written in the Fleet Account Number Application with Lordstown EV Sales LLC. Staff will then place a purchase order with Lordstown for two medium-duty electric pickup trucks, meeting one of the eligibility requirements of the SDG&E PYD Program.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda and resolution, as presented, as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution approving a grant of indemnity in relation to the purchase of electric trucks, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the proposed Board action that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The proposed Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The proposed Board action allows for the District to implement its obligations under Sections 35 and 81 of the Port Act, which authorize the Board to do acts necessary and convenient for the exercise of its power; and the use funds for necessary expenses of conducting the District. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because it will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Diversity, Equity, and Inclusion Program:

No direct DEI impact.

PREPARED BY:

Marco Cromartie
Director, General Services Department