



Executive Director's  
Report to the

Board of Harbor Commissioners

**DATE: OCTOBER 13, 2016**

**FROM: EXECUTIVE OFFICE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF HARBOR COMMUNITY BENEFIT FOUNDATION'S SELECTION OF CALIFORNIA COMMUNITY FOUNDATION AS INDEPENDENT FINANCIAL MANAGER FOR THE AIR QUALITY MITIGATION FUND AND THE TRANSFER OF PORT COMMUNITY MITIGATION TRUST FUNDS PURSUANT TO HARBOR DEPARTMENT AGREEMENT NO. 15-3365**

**SUMMARY:**

Staff requests that the Board of Harbor Commissioners (Board) approve the Harbor Community Benefit Foundation's (HCBF) selection of California Community Foundation as the Independent Financial Manager (IFM) for the Air Quality Mitigation Fund (AQMF) and approve the transfer of \$5,226,944 into the new AQMF special program account with California Community Foundation. Additionally, it is requested that the Board approve advance administration funds in the amount of \$250,000 from the AQMF special program account to administer development and issuance of the Initial Requests for Proposals as detailed in the Memorandum of Agreement Among the City of Los Angeles, acting through the Board of Harbor Commissioners, the Harbor Community Benefit Foundation, and the China Shipping Petitioners Regarding the Independent Air Quality Mitigation Program Required by the China Shipping Amended Stipulated Judgment, Harbor Department Agreement No. 15-3365 (MOA) paragraph 5.g.i. The HCBF, an independent nonprofit organization established in connection with the Tra-Pac Settlement Agreement was also selected to administer and manage the AQMF, created pursuant to the MOA. The MOA requires the utilization of an IFM by HCBF to hold the AQMF and stipulates that the Board must approve the agreement between HCBF and the IFM and requests for disbursements before any funds are released.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve Harbor Community Benefit Foundation's agreement with the California Community Foundation acting as the Independent Financial Manager for the Air Quality Mitigation Funds;

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3. Authorize the Executive Director or his designee to execute a joint letter with the Harbor Community Benefit Foundation to approve the distribution of funds in one lump sum payment of \$5,226,944 to the new Air Quality Mitigation Fund special program account held by the Independent Financial Manager to be used in accordance with Harbor Community Benefit Foundation's request; and
4. Approve an advance of \$250,000 in administration costs to HCBF from the new AQMF special program account to administer development and issuance of the Initial Requests for Proposals.
5. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background/Context - On June 14, 2004, the City and Petitioners became bound by the Amended Stipulated Judgment ("ASJ") to settle the case of Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al., Los Angeles County Superior Court Case No. BS 070017, a case brought by Petitioners challenging the environmental impact report and related findings for the China Shipping Container Terminal Project at Berths 99-109 ("the China Shipping Project"). The ASJ required the City to adopt mitigation for the China Shipping Project and other Port of Los Angeles ("Port") projects, including the provision of \$50 million for the mitigation of air quality and aesthetic environmental impacts of Port operations on the communities surrounding the Port, including both the communities of Wilmington and San Pedro, California ("Mitigation Payment"). Funds from the Mitigation Payment were used to fund projects that mitigated the environmental impacts of the China Shipping Project ("China Shipping Mitigation Projects") and were administered by the City of Los Angeles Harbor Department ("Harbor Department"). The ASJ also provided that the Mitigation Payment be committed for use within five years, but that if at the conclusion of the five years any funds remained that had not been allocated, such funds would be applied to "an independent air quality mitigation program available to administer the funds and mutually agreeable to the Parties, with restrictions sufficient to ensure that such funds are used to reduce Port-related emissions."

That five-year term has lapsed, effective June 14, 2009, and approximately \$9,226,944 million remains unallocated. In November 2015, the Board approved that \$5,226,944 million of these funds would be disbursed to an independent air quality mitigation program, to be administered by HCBF for the reduction of Port-related air emissions (the "Air Quality Mitigation Fund" or "AQMF"). Although the AQMF is to be administered and managed by the HCBF, which is to solicit and select projects and programs to receive funding from the AQMF, the funds themselves were to be held by an IFM, which would release funds to the HCBF only with Board approval. The selection of California

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Community Foundation is the first IFM for these funds, which are being held by the Harbor Department until the selection is approved by the Board of Harbor Commissioners.

Air Quality Mitigation Fund – The Air Quality Mitigation fund totals \$5,226,944 and was approved by the Board in November 2015 for disbursement to the HCBF to manage an independent air quality mitigation program to reduce Port-related air emissions in accordance with the MOA. The selection of an independent financial manager to administer these funds was at the discretion of the HCBF pending Board approval of their agreement.

AQMF Disbursement of Funds – Upon Board approval, a single transfer to the new AQMF in the amount of \$5,226,944 will be authorized by the Harbor Department's authorized signatory. Additionally, upon Board approval, transfer of \$250,000 in advanced administrative costs from the AQMF to HCBF will be requested. Future disbursements to HCBF from the IFM will require the approval of the Board and signature of the Executive Director.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of an independent financial manager and the transfer of funds. This action is limited to the administrative approval for the distribution of funds. Individual projects implemented with the use of funding will be subject to separate environmental review by the lead agency with jurisdiction over the project. Therefore, as an administrative activity, 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:**

The Harbor Department agreed to fund the AQMF initially under the China Shipping Amended Stipulated Judgment and subsequently in further detail pursuant to the terms of the MOA. Approval of the IFM will require that the AQMF monies be transferred to a new account with an independent financial manager from which future air quality mitigation funding will be withdrawn, subject to the approval of the Board of Harbor Commissioners. As of August 31, 2016, the balance in the Air Quality Mitigation Fund was \$9.3 million. The transfer of \$5,226,944 from Fund 702, Account 11954 will reduce the Harbor Department's restricted cash by this amount.

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**CITY ATTORNEY:**

The City Attorney's Office has determined that this matter raises no legal issues at this time.

**TRANSMITTAL:**

1. HCBF Request for approval of appointment of independent financial manager for the Air Quality Mitigation Fund and transfer request

FIS Approval: MB (initials)

CA Approval: JS (initials)

APPROVED:



DOANE LIU  
Deputy Executive Director & Chief of Staff



EUGENE D. SEROKA  
Executive Director

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