



To: Eugene Seroka, Executive Director, Port of Los Angeles

From: Ben Schirmer, Executive Director, Harbor Community Benefit Foundation
David Sloane, Board Chair, Harbor Community Benefit Foundation

Cc: Doane Liu, Deputy Executive Director and Chief of Staff, Port of Los Angeles
Joy Crose, Assistant General Counsel, Port of Los Angeles
Sharron Scheiber, Staff Counsel, State Lands Commission
Michael Jenkins, Jenkins and Hogin, LLP, Counsel for HCBF

Date: **July 8, 2016**

Re: Request for approval of Independent Financial Manager for the Air Quality Mitigation Fund and transfer of funds

INTRODUCTION

In accordance with 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 (MOA), Section 5.a. Independent Financial Manager, the Harbor Community Benefit Foundation (HCBF) hereby submits this request to approve an independent financial manager.

Pursuant to the MOA the City must review and approve the agreement between HCBF and the Independent Financial Manager and such agreement must be in full force and effect before the City disburses any funds under the MOA.

REQUEST

HCBF hereby requests the Board of Harbor Commissioners (BOHC) to:

- 1) Review and approve the agreement between HCBF and the California Community Foundation acting as the Independent Financial Manager for the Air Quality Mitigation Funds (**California Community Foundation Nonprofit Agency Fund Instrument of Gift - Transmittal 1**), and
- 2) Pursuant to section 5.c. of the MOA, Transfer of Funds, within thirty (30) days after the effective date of the agreement with the Independent Financial Manager, transfer \$5,226,944 to the new AQMF special program account held by the Independent Financial Manager, and

- 3) Pursuant to section 5(g)(i) of the MOA, Initial Payment, approve an advance of administrative costs of \$250,000 to HCBF from the AQMF special program account to administer development and issuance of the Initial Requests for Proposals. In support, HCBF staff shall issue a letter to be jointly executed by the City's Executive Director and HCBF, instructing the Independent Financial Manager to transfer to HCBF from the AQMF special program account Two Hundred Fifty Thousand Dollars (\$250,000) within thirty (30) days of the request for payment.

BACKGROUND

The background facts leading up to this request are best explained by the Recitals set forth in the MOA, as follows:

WHEREAS, on or about 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");

WHEREAS, the ASJ required the City to adopt mitigation for the China Shipping Project at the Port of Los Angeles ("Port"), including to provide \$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, which are especially impacted by the operations of the China Shipping Project (the "Mitigation Payment");

WHEREAS, 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");

WHEREAS, the ASJ provided that the Mitigation Payment be committed for use within five years, but that if at the conclusion of the five years any funds remain that had not been allocated, such funds shall 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.";

WHEREAS, that five-year term has lapsed, effective June 14, 2009, and approximately \$9,226,944 remained unallocated;

WHEREAS, by way of a separate agreement, \$4,000,000 of the remaining funds will be provided to the South Coast Air Quality Management District to fund a zero emissions catenary system demonstration project, which the City and the China Shipping Petitioners agree is a project that is reasonably calculated to reduce Port related air emissions; and

WHEREAS, after considerable and extensive investigation, discussion, and negotiation, the Parties have agreed that \$5,226,944 of these funds shall 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");

AD-HOC COMMITTEE REVIEW

The HCBF Board appointed an ad-hoc committee to support staff with developing an agreement with a financial manager, comprised of Board Members Michele Prichard and Gisele Fong. The ad hoc committee met with Staff to consider and evaluate the proposed agreement with the California Community Foundation, the proposed Independent Financial Manager.

Since 1915, the California Community Foundation has worked to transform generosity into impact to realize a stronger, healthier and more prosperous future for Los Angeles. CCF has worked with generations of dedicated L.A. residents to realize their philanthropic visions and transform their communities.

CCF is dedicated to fiscal responsibility, transparency and careful stewardship of donor contributions that has resulted in them being entrusted with more than 1,600 funds and nearly \$1.5 billion in assets. Since 2000, CCF has tripled their assets, received more than \$2.2 billion in donor contributions and given out almost \$2 billion in grants, making CCF the fourth largest community foundation in the United States based on total giving. They are stewards of donor intentions. All of their donor funds are managed for utmost efficiency and effectiveness, balancing short- and long-term goals, in accordance with their specific missions.

Upon review of the Staff evaluation, followed by discussion, the ad-hoc committee approved Staff's recommendation to enter into an agreement with the California Community Foundation.

BOARD RECOMMENDATION - HCBF BOARD ACTION

On June 17, 2016, HCBF's Board of Directors reviewed and discussed the proposed agreement between HCBF and the California Community Foundation for the Air Quality Mitigation Funds at a regularly scheduled board meeting. **(HCBF Board Meeting Agenda for June 17, 2016 - Transmittal 2).**

Following a discussion, the Board:

1. Unanimously approved the proposed agreement between HCBF and the California Community Foundation for the Air Quality Mitigation Funds, and
2. Authorized the Executive Director to:
 - a. Execute the agreement between HCBF and the California Community Foundation for the Air Quality Mitigation Funds, and
 - b. Execute a letter to the BOHC requesting approval of the agreement between HCBF and the California Community Foundation.

TRANSMITTALS

TRANSMITTAL 1 - California Community Foundation Nonprofit Agency Fund Instrument of Gift

TRANSMITTAL 2 - HCBF Board Meeting Agenda for June 17, 2016



CALIFORNIA COMMUNITY
FOUNDATION NONPROFIT
AGENCY FUND
INSTRUMENT OF GIFT

This Agreement is made this 25th day of August, in the year 2016, between the Harbor Community Benefit Foundation, a California nonprofit public benefit corporation having its principal office in San Pedro (the "Agency" or "HCBF"), and the California Community Foundation, (the "Foundation"), a California nonprofit public benefit corporation having its principal office in the City of Los Angeles and State of California, to create a philanthropic and charitable fund.

1. **Creation of Fund.** The fund hereby created shall be known as the China Shipping Air Quality Mitigation Fund (the "Fund").
2. **Management of Fund.** The Foundation shall hold, manage, invest and reinvest the Fund, shall collect the income and shall make distributions from the Fund exclusively for general charitable uses and purposes in strict conformance of the requirements of the MOA between HCBF and the City of Los Angeles Harbor Department. The Articles of Incorporation have been adopted by the Board of Directors of the Foundation, and their provisions, as they may be amended from time to time, are hereby incorporated by reference and conclusively assented to and adopted. The phrase "charitable uses and purposes" shall be defined as all of those activities, uses and purposes described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").
3. **Purpose of the Fund.** Income and principal of the Fund shall be disbursed to HCBF for the charitable purpose of supporting an independent air quality mitigation program for the reduction of Port-related air emissions (the "Air Quality Mitigation Fund") as outlined in the MOA between HCBF, the China Shipping Petitioners and the City of Los Angeles, Acting through the Harbor Commissioners, which is attached to the agreement and incorporated by reference.
4. **Distributions from the Fund.** Foundation is serving as the Independent Financial Manager as provided by Section 3 of the MOA referenced in paragraph 3 above. The Agency is the beneficiary of the Fund.

China Shipping Air Quality Mitigation Fund

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Distributions from the Fund shall be in accordance with the spending policy established by the Board of Directors of the Foundation and as is consistent with the MOA between HCBF and the City of Los Angeles Harbor Department. Distributions shall be made at least annually, or more frequently, as the parties may from time to time agree.

5. **Costs of Administration.** Foundation charges administrative fees to cover general operating costs for gift establishment, receipt of assets and contributions, grants and fund administration, research on nonprofit agencies and issue areas, and its other charitable purposes. Investment management and consulting fees related to the foundation's investment pools are charged separately. Additional fees may be charged for extraordinary legal, banking, separately managed investment accounts or other services rendered on behalf of a fund if agreed to by HCBF in accordance with the distribution procedures previously set forth in paragraph 4 of this Services Agreement. Foundation shall charge the Fund for reasonable and proper compensation for services and expenses ("Fee"). The administrative fee for this Fund will be the standard annual fee charged for Agency Funds at Foundation as set forth in the attached fee schedule. Foundation shall give the Fund Contact prior written notification of any intended change in the Fee.

6. **Disbursement upon Termination of Fund Agreement.** HCBF and Foundation, upon mutual agreement, have the right to terminate this Services Agreement with or without cause upon written notice of no less than sixty (60) business days. If the Fund is terminated by mutual agreement of HCBF and Foundation, Foundation shall promptly distribute all monies in the Fund, including any investment profits, as directed by joint instructions issued by HCBF and City of Los Angeles Harbor Department.

7. **Not a Donor Advised Fund.** The Fund is not intended to be a donor advised fund under Section 4966(d) of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and to conform to the requirements of the foregoing provisions of the Federal tax laws and any regulations issued thereunder.

8. **Foundation's Tax Status.** All transfers of property under this Agreement are subject to the condition that the Foundation, as of the date of transfer, is classified in good standing by the Internal Revenue Service as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation as defined in Section 509(a) of the Code. Nothing in this Agreement shall affect the status of Foundation as an organization (i) described in Section 501(c)(3) of the Code and (ii) which is not a private foundation within the meaning of Section 509(a) of the Code.

9. **California Law.** The Fund created by this Services Agreement shall be administered in and under the laws of the State of California, and this Agreement and the validity thereof shall be governed by and construed in accordance with the laws of the State of California.

China Shipping Air Quality Mitigation Fund

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10. **Termination of Independent Financial Manager Obligation.** In the event that the agreement between HCBF, the City of Los Angeles and the China Shipping Petitioners that established the Independent Air Quality Mitigation Program and the AQMF is terminated or expires, or in the event that HCBF, or its successor, is declared by City to be in default under said agreement, or in the event there are no projects funded under the AQMF special program account for a period longer than eighteen (18) months, unless excused by the Executive Director, the obligation of the Independent Financial Manager shall be terminated and all documents, money, or other items held by the Independent Financial Manager shall be disbursed, delivered and returned to the City of Los Angeles, Harbor Department within thirty (30) days of the occurrence of such event. In the event of the termination of the AQMF special program account, whether it shall result from the request of the principals or otherwise, the fees and charges due to it for its costs, charges, fees, and expenses, including expenditures incurred for insurance and other purposes, shall be paid from the remaining funds in the AQMF special program account prior to the disbursement of the remaining funds to the City of Los Angeles Harbor Department.

11. **Entire Agreement.** This agreement constitutes the entire agreement between the parties, and supersedes all prior or contemporaneous agreements, negotiations, representations and understandings, oral or written, between the parties hereto with respect to the subject matter of this Agreement.

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Agency and the Foundation have executed this Agreement as of the date first above written.

HARBOR COMMUNITY BENEFIT FOUNDATION:

By  _____

Ben Schirmer
Executive Director

CALIFORNIA COMMUNITY FOUNDATION:

By  _____

Paul Schulz
Vice President, Development and Donor Relations

ATTACHMENT A

ADMINISTRATIVE FEE SCHEDULE

Administrative fees charged to funds cover general operating costs including gift establishment, receipt of assets and contributions, grants and fund administration, research into nonprofit agencies and issue areas and other donor services. Investment management and consulting fees related to the foundation's investment pools are charged separately. Additional fees may be charged for any mutually agreed upon extraordinary legal, banking or other services rendered on behalf of a fund.

TYPE OF FUNDS	ANNUAL FEE STRUCTURE
NON-PROFIT AGENCY FUNDS & ENDOWMENT PARTNERS Minimum of \$100,000 to open a fund	0.50% of assets < \$1M 0.33% of assets > \$1M > \$5M 0.25% of assets > \$5M Assessed quarterly.