

DATE: NOVEMBER 4, 2021

FROM: EXECUTIVE OFFICE

**SUBJECT: RESOLUTION NO. _____ - APPROVAL OF
MEMORANDUM OF AGREEMENT WITH THE HARBOR COMMUNITY
BENEFIT FOUNDATION AND CHINA SHIPPING PETITIONERS
NAMING HARBOR COMMUNITY BENEFIT FOUNDATION AS
ADMINISTRATORS OF THE AIR QUALITY MITIGATION FUND**

SUMMARY:

Staff requests that the Board of Harbor Commissioners (Board) approve the Memorandum of Agreement (MOA) with the Harbor Community Benefit Foundation (HCBF) and China Shipping Petitioners (Petitioners) naming HCBF as administrator of the Independent Air Quality Mitigation Fund (AQMF) arising out of the China Shipping Amended Stipulated Judgement (ASJ) committing settlement fund grants to fund air quality improvement projects. This MOA replaces the prior agreement (Harbor Department Agreement No. 16-3377) which expired in May 2021 and will be in effect for five years, ending in May 2026. The current balance in the AQMF is \$4,365,606.28.

The MOA maintains the California Community Foundation as the Independent Financial Manager (IFM) for the AQMF, which was selected and approved by the Board in 2016. 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 administratively 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 Memorandum of Agreement with the Harbor Community Benefit Foundation and China Shipping Petitioners;
3. Direct the Board Secretary to transmit the Memorandum of Agreement with the Harbor Community Benefit Foundation and China Shipping Petitioners to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;

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4. Authorize the Executive Director to execute and the Board Secretary to attest to the Memorandum of Agreement upon approval by City Council; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context - On June 14, 2004, the City and Petitioners became bound by the 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 lapsed in June 14, 2009, and approximately \$9,226,944 million remained unallocated. By way of a separate agreement, \$4,000,000 of the remaining funds were provided to the South Coast Air Quality Management District to fund a zero-emissions catenary system demonstration project. In November 2015, the Board approved that the \$5,226,944 million in remaining AQMF funds would be disbursed to an independent air quality mitigation program, to be administered by HCBF for the reduction of Port-related air emissions. 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. By Board action on October 24, 2016, the Board approved the selection of California Community Foundation (CCF) as the IFM for these funds, and the transfer of \$5,226,944. To date, HCBF has administered AQMF grants in the amount of \$823,050 with \$4,365,606.28 remaining.

The original five-year agreement, No. 15-3365, expired on May 31, 2021. The term of the new MOA before the Board is June 1, 2021 to May 31, 2026 and retains HCBF as the fund administrator and CCF as the IFM. Staff recommends the approval of the new MOA

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giving HCBF an additional five-year term to administer the remaining monies in the AQMF.

HCBF Role and Responsibilities - HCBF is an independent legal entity that serves as the neutral, third-party to administer the AQMF and solicit, develop, and select projects for grant funding. HCBF must request the Board to approve the selected projects and approve a transfer of funds from the AQMF to fund grant awards. All awards must be Tidelands Trust-compliant and meet the following MOU requirements:

- **Project Requirements.** HCBF shall administer the monies in the AQMF special program account exclusively for projects that are reasonably calculated to reduce Port-related air emissions. This includes emissions resulting from the transport and handling of cargo within, into, out of, to, or from the Port of Los Angeles, including cargo transport and handling by ships, harbor craft, trucks, locomotives, or cargo handling equipment. HCBF shall prioritize funding the demonstration or implementation of zero or near-zero emission freight movement technologies and other emerging technologies that seek to demonstrate significant emissions reductions from conventional diesel-fueled vehicles and equipment that operate in and around the Port (including ships, harbor craft, trucks, locomotives, or cargo handling equipment). Not less than a majority of AQMF funds shall be spent towards the demonstration or implementation of such technologies. Priority shall also be given to technologies that, if they were widely deployed, would significantly reduce air emissions and/or air quality related health risks from the largest sources of air pollution from port operations, namely ships, harbor craft, trucks, locomotives, or cargo handling equipment.
- **Geographical Boundaries.** The projects funded by the AQMF are expected primarily to benefit the communities of San Pedro and Wilmington. Projects funded by HCBF shall demonstrate achievable emissions reduction benefits in communities within approximately 25 miles of the San Pedro Bay, with a primary benefit occurring in the communities of San Pedro and Wilmington, although the benefits may also extend beyond the 25-mile boundary.
- **Other Criteria.** HCBF shall consult with the Petitioners and City regarding HCBF's criteria, including sharing draft criteria with the Petitioners and City and soliciting the Petitioners' and City's input. Such criteria shall include the organizational capacity of the applicant to complete the project, the benefits of the project, the project's community impact, cost-effectiveness, feasibility, potential for reducing emissions and/or health risks, the project's potential to advance deployment of near zero or zero emission technologies or emerging technologies, whether the project is or will receive other additional funding such that the AQMF funds are being leveraged, and other relevant criteria to ensure reduction of Port-related air emissions.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a MOA among the City of Los Angeles, HCBF, and the China Shipping Petitioners naming HCBF as administrator of the AQMF, which is an administrative activity. 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, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The amount of the China Shipping fund administered by HCBF remains the same, with no increase in funding amount, only extending the term by an additional five years for such existing funds to be disbursed in grants. This is administrative an action with no financial impact.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the proposed Agreement as to form and legality.

TRANSMITTAL:

1. Memorandum of Agreement

FIS Approval: *MB*

CA Approval: *SO*

APPROVED:



For
EUGENE D. SEROKA
Executive Director