

**DATE: NOVEMBER 3, 2015**

**FROM: ENVIRONMENTAL MANAGEMENT**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF TWO MEMORANDA OF AGREEMENTS TO TRANSFER CHINA SHIPPING AMENDED STIPULATED JUDGEMENT FUNDS TO THE HARBOR COMMUNITY BENEFIT FOUNDATION TO ADMINISTER AIR QUALITY IMPROVEMENT PROJECTS AND TO THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT TO FUND THE CATENARY TRUCK PROJECT**

**SUMMARY:**

The Environmental Management Division recommends the Board of Harbor Commissioners (Board) approve two Memoranda of Agreements (Agreements) whereby remaining money in the China Shipping Amended Stipulated Judgment (ASJ) community mitigation fund would be transferred from the Harbor Department to the Harbor Community Benefit Foundation (HCBF) for air quality improvement projects that would principally benefit the harbor communities of Wilmington and San Pedro, and to the South Coast Air Quality Management District (SCAQMD) to provide funding for the demonstration of an overhead catenary zero emission truck project that is currently underway.

These Agreements are entered into in accordance with the ASJ, which states that any China Shipping community mitigation funds not committed to particular projects within a certain time period would be transferred to an independent air quality mitigation program available to administer the funds, provided such program is mutually agreeable to the parties of the settlement. The parties to the settlement are the City of Los Angeles Harbor Department (Harbor Department) and the Petitioners, including the Natural Resources Defense Council (NRDC), San Pedro Peninsula Homeowners United, San Pedro and Peninsula Homeowners' Coalition, and the Coalition for Clean Air. A total of \$9,226,944 in funding remains uncommitted. After considerable investigation, discussion, and negotiation, it is proposed that the funds be distributed as follows: \$5,226,944 to the HCBF to fund an air quality improvement program, and \$4,000,000 to the SCAQMD to assist in funding the demonstration of an overhead catenary zero emission truck project.

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**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

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 the Memorandum of Agreement with the Harbor Community Benefit Foundation and China Shipping Petitioners substantially as to the form attached hereto for \$5,226,944;
3. Approve the Memorandum of Agreement with the South Coast Air Quality Management District substantially as to the form attached hereto for \$4,000,000;
4. 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;
5. Upon approval by the City Council, authorize the Executive Director to execute and the Board Secretary to attest to said Memorandum of Agreement, for and on behalf of the Board;
6. Authorize the Executive Director to execute and the Board Secretary to attest to the Memorandum of Agreement with the South Coast Air Quality Management District for and on behalf of the Board; and
7. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background/Context – On March 26, 2003, the Los Angeles County Superior Court approved a settlement agreement between the Harbor Department and Petitioners, including the NRDC, San Pedro Peninsula Homeowners United, San Pedro and Peninsula Homeowners' Coalition, and the Coalition for Clean Air, which enabled the Harbor Department to proceed with the China Shipping Terminal project, subject to the settlement agreement's restrictions and limitations. Among other things, this settlement

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agreement, which was amended in June 2004 (and referred to as the Amended Stipulated Judgment or ASJ), established a community mitigation fund that was initially funded at \$50,000,000 and eventually grew to \$75,030,060, after later augmentation per its terms. The purpose of the fund was to identify local community benefit projects for Wilmington and San Pedro through a process where the local community would select projects, which would eventually be approved by the Board.

In accordance with the ASJ, the funds were divided between aesthetic mitigation projects in Wilmington and San Pedro and air quality mitigation projects which included funding to Gateway Cities for truck grants (prior to the Harbor Department's Clean Truck Program) and the Air Quality Mitigation Incentive Program (AQMIP). A detail of deposits and breakdown of funds is provided in Transmittal 1.

By December 2009, the Board approved projects to commit all of the funding as well as to establish a backup list of projects in the event projects fell through or funding became available. During the contracting and implementation of the projects, some projects failed to proceed to completion and some recipients declined the grant, which resulted in uncommitted funds. According to the terms of the ASJ, any air quality or aesthetic mitigation funds that have not been committed to specific projects within five years of establishment of the ASJ, would be transferred to an independent air quality mitigation program available to administer the funds, provided such program is mutually agreeable to the parties of the settlement. To date, there have been 59 feasible projects committed to under this ASJ (Transmittal 2).

Allocation of Remaining Funds - The amount remaining and uncommitted is \$9,226,944. This amount, in accordance with the ASJ, is eligible to be transferred to an independent air quality mitigation program available to administer the funds. Discussion with the Petitioners for identification of an independent third party to administer the funds began in 2011. After extensive discussion, investigation, analysis and negotiations among the litigants, the HCBF was identified as a candidate for the third party fund administrator and the SCAQMD's overhead catenary zero emission trucks demonstration project was identified as a project that the parties to the ASJ were interested in funding. As a result, the Harbor Department, Petitioners, HCBF, and SCAQMD have now negotiated two Agreements (Transmittals 3 and 4) that are consistent with the requirements of the ASJ.

As negotiated with the parties, HCBF will administer and manage a total of \$5,226,944 for an Air Quality Mitigation Fund (AQMF), including but not limited to the development and issuance of requests for proposals, evaluation, funding, and administration of grants, in a manner consistent with this Memorandum of Agreement. Projects selected

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for funding by the HCBF Board of Directors will be presented to the Harbor Department for consistency with this proposed agreement and for Board approval. HCBF shall annually withdraw funds from the AQMF to pay for actual administrative costs not to exceed ten percent of the annual dollar amount of the grants approved and shall provide an annual account statement to the Harbor Department listing expenditures.

As requested by the parties of the ASJ, \$4,000,000 of the remaining funds will be transferred to the SCAQMD to contribute to the demonstration of an overhead catenary zero emission truck project designed by Siemens. The project, which provides electricity to heavy duty trucks via an overhead wire system, is currently being constructed along a one mile span of Alameda Street in the City of Carson and is estimated to have a total project cost of approximately \$16 million. The roadway infrastructure, commissioning, and testing of the power supply will be completed by September 2015 and the first of four trucks which are being developed for the project will be tested shortly thereafter. Test track construction and test trucks are expected to be completed by March 2016. The one-year demonstration is expected to be complete by February 2017. Payments to the SCAQMD will be based on the achievement of specific project milestones. The four zero emission trucks will be available for continued demonstration in the Port of Los Angeles after completion of the catenary project.

Staff therefore recommends approval of two Memoranda of Agreements to reallocate the remaining \$9,226,944 in China Shipping ASJ Community Mitigation Fund. One between the Harbor Department, Petitioners, and HCBF to transfer \$5,226,944 from the Harbor Department to the HCBF, and one between the Harbor Department and SCAQMD to transfer \$4,000,000 from the Harbor Department to the SCAQMD to fund the demonstration of an overhead catenary zero emission truck project. If the overhead catenary zero emission truck project does not go forward, the funds from it would go to the HCBF. Additionally, if any ongoing projects to which the Harbor Department has committed air quality or aesthetic mitigation funds end with a balance, those funds would also subsequently be committed to the independent air quality mitigation program agreed to by the parties, to wit, the HCBF.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of Memoranda of Agreements with HCBF and SCAQMD to transfer the remaining China Shipping ASJ community mitigation funds to the two groups for air quality improvement projects to benefit harbor communities and to fund the demonstration of an overhead catenary zero emission truck project, respectively. The proposed action is limited to the transfer of funds and any projects

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utilizing the funds would be required to undergo an environmental assessment pursuant to California Environmental Quality Act (CEQA) by the appropriate lead agency. Therefore, as an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

As of August 31, 2015, the uncommitted balance of the China Shipping AQMF is \$9,226,944. Upon approval of these two Memoranda of Agreements with the Petitioners and HCBF and the SCAQMD, \$9,226,944 will be fully committed as follows: HCBF will administer and manage a total of \$5,226,944 for an AQMF and \$4,000,000 of the remaining funds will be transferred to the SCAQMD to contribute to the demonstration of an overhead catenary zero emission project whose total project cost is approximately \$16 million. Funds for FY 2015/2016 in the amount of \$9,226,944 are available in Account 21951, Center No. 7000, Program 000.

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**CITY ATTORNEY:**

The Agreements must be approved as to form and legality by the City Attorney's Office before they are executed by the Executive Director and become effective.

**TRANSMITTALS:**

1. ASJ Deposits and Breakdown of Funds
2. List of Projects funded with ASJ Mitigation Funds
3. Agreement with ASJ Parties and the Harbor Community Benefit Foundation
4. Agreement with Southern California Air Quality Management District

FIS Approval: MB (initials)  
CA Approval: MB (initials)

*for*   
CHRISTOPHER CANNON  
Director of Environmental Management

*for*   
MICHAEL DiBERNARDO  
Deputy Executive Director

APPROVED:

*for*   
EUGENE D. SEROKA  
Executive Director

APP NO. 030507-513  
AUTHOR: TERESA PISANO  
BOARD MEETING: 11/10/2015

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