

DATE: OCTOBER 25, 2022

FROM: EXECUTIVE OFFICE

**SUBJECT: RESOLUTION NO. _____ - APPROVAL OF HARBOR
COMMUNITY BENEFIT FOUNDATION REALLOCATION OF AIR
QUALITY MITIGATION PROGRAM (CHINA SHIPPING) GRANT FUNDS**

SUMMARY:

The Harbor Community Benefit Foundation (HCBF) requests that the Board of Harbor Commissioners (Board) approve its proposal to reallocate \$191,050 in undisbursed Air Quality Mitigation Program funds from its grant to Effenco Development Corp. (Effenco) to future project and program funding. The \$191,050 in funds are what remain of the 2018 Air Quality Mitigation Program grant to Effenco, which did not meet its performance obligations under the grant agreement and has since declared bankruptcy. The HCBF is a non-profit organization that receives funding from the Air Quality Mitigation Fund (AQMF) established by the City of Los Angeles Harbor Department (Harbor Department) and provides grant administration for the AQMF, subject to Board approval of budget, in accordance with the China Shipping Memorandum of Understanding (China Shipping MOU). On August 22, 2022, HCBF's Board of Directors approved the proposed reallocation of funds and is requesting Board approval. If the proposed reallocation of \$191,050 is approved, then the AQMF balance will be \$4,468,000.

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 Harbor Community Benefit Foundation proposal to reallocate Air Quality Mitigation Program unspent grant funds from its 2018 grant to Effenco Development Inc. back to the AQMF for future project and program funding;
3. Authorize the Executive Director or designee to transfer \$191,050 internally from the grant funding to Effenco Development Corp. back to the AQMF; and

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4. 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 lapsed, effective June 14, 2009, and \$9,226,944 remained unallocated at that time. In November 2015, the Board approved a disbursement of \$5,226,944 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”). The Board approved Memorandum of Agreement No. 15-3365 which the HCBF administers and manages the AQMF by soliciting and selecting projects and programs to receive funding from the AQMF with Board approval.

In November 2019, the Board approved Air Quality Mitigation Grant, Round 1, in the amount of \$823,050. Details of this first grant and its disposition leading to this Board action are reported in detail below under “AQMF Effenco Grant.”

Agreement No. 15-3365 expired on May 31, 2021, with \$4,365,606.28 AQMF funds still remaining. On November 18, 2021, the Board approved successor agreement 21-9842 naming the HCBF the administrator of the Air Quality Mitigation Fund until May 2026. The City Council approved Agreement 21-9842 under Charter 373 on September 23, 2022. This reallocation action under your consideration would add the \$191,050 to the AQMF and would be available for future project and program funding.

AQMF Effenco Grant -- On November 21, 2019, the Board approved the HCBF Air Quality Mitigation Program, Round 1 Grant, in the amount of \$823,050. This grant was made to

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Effenco for rapid deployment of the electric active STOP-START technology system, which provides zero-emission operation of yard tractors when equipment is idling. This technology was being tested at the Yusen Terminal.

To date only one AQMF grant has been awarded and it was for this Effenco project. HCBF staff, technical experts and internal review panels are currently reviewing applications for Round 2 AQMF grants and anticipate bringing selections forward to the HCBF Board in October and to the Board of Harbor Commissioners soon after that.

The Effenco AQMF grant contained multiple milestones and funding disbursement points, beginning December 21, 2019. Effenco was required to submit milestone reports and monthly updates via email to HCBF staff, which were critical to monitoring project status and delays during the newly evolving pandemic.

OVERVIEW OF CONTRACT WITH EFFENCO DEVELOPMENT INC.

Original Contract: December 1, 2019 – May 31st, 2020

First Amendment: October 9, 2020 – February 28, 2022

Disbursement Schedule:

Disbursement #1: Paid within 30 days of executed agreement			
Amount	Period End Date	Disbursement Date	Status & Notes
\$316,000	Signed Agreement	By Dec. 31, 2019	Completed. HCBF payment received 12/12/2019 (Jan 2020 update email)
Disbursement #2: Paid within 30 days following the activation of the 1st five trucks and reception of...			
Amount	Period End Date	Disbursement Date	Status
\$316,000	November 30, 2020	By Dec. 31, 2020	Completed (modified after M1 report)
Disbursement #3: After mid-term in-use demonstration			
Amount	Period End Date	Disbursement Date	Status
\$95,525	May 30 th , 2021		DENIED/Mid-term in-use demonstration report not received
Disbursement #4: After completion of one-year period			
Amount	Period End Date	Disbursement Date	Status
\$95,525			DENIED Contract expired February 28, 2022.

HCBF experienced several grant-related issues with Effenco, especially related to lack of communication, delayed reporting, unmet contract performance obligations and malfunctioning equipment. For these reasons – delays in reporting and lack of performance - HCBF placed a hold on the third and fourth disbursements to Effenco. HCBF did receive the finalized mid-term report, which was due on May 30, 2021, in

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January 2022. At this time, Effenco requested significant additional funds to complete the project and reduced many of the original deliverables.

These performance and communication issues led HCBF Staff to raise the issue of project performance with the AQMF ad-hoc committee, the AQMF technical consultant, and HCBF legal counsel. HCBF was informed that Effenco had filed for bankruptcy in Canada and they are no longer communicating with project partners. Due to current circumstances with Effenco, HCBF recommends that the remaining \$191,050 in the Effenco award be withheld and re-directed for future project and program funding.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of reallocation of \$191,050 from HCBF's Air Quality Mitigation Program to AQMP future project and program funding, 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 Harbor Department originally funded the AQMF. Approval of the reallocation of Air Quality Mitigation Program, Round 1 grant to future project and program costs will incur no additional drawdown of existing funds from the AQMF and will in-fact bolster the account by \$191,050 making the new estimated balance, managed by California Community Foundation, City National Bank, \$4,468,000 upon Board approval.

CITY ATTORNEY:


The Office of the City Attorney has reviewed the requested for reallocation of funds as to form and legality including compliance with the China Shipping MOA and Amended Stipulated Judgment.

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TRANSMITTALS:

1. HCBF Request for Reallocation of Grant Funds
2. AQMF Grant Round 1 Board Report from November 21, 2019

FIS Approval: MB
CA Approval: JC

APPROVED:

EUGENE D. SEROKA
Executive Director

Author: T. Adams Lopez