

DATE: SEPTEMBER 11, 2018

FROM: ENGINEERING

SUBJECT: RESOLUTION NO. _____ MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER AND THE LOS ANGELES HARBOR DEPARTMENT FUND ELECTRIFICATION PROJECTS

SUMMARY:

Staff recommends approval of the Memorandum of Understanding (MOU) between the Los Angeles Department of Water and Power (LADWP) and the Los Angeles Harbor Department (LAHD) to develop and support zero carbon fuel emission mobile sources by funding transportation electrification projects in the Harbor District that are consistent with the San Pedro Bay Ports' Clean Air Action Plan (CAAP) and support the statewide vision for more sustainable freight movement. The MOU's goal is to fund and create projects with methods that create documentable reductions in air emissions.

The MOU will become effective (Effective Date) upon full execution by both parties and shall remain in effect for five years after the Effective Date. LADWP will, at its discretion, provide transportation electrification program funding to LAHD in an aggregate amount up to \$15 million over five years. LAHD will submit to LADWP an Annual Work Plan each fiscal year that will describe the transportation electrification projects to be performed, including corresponding project schedules and milestones. LADWP will provide funding upon written approval of the Annual Work Plan and subject to LADWP budgeting and funding from sale of emission credits and/or other funding sources that may become available. Approval of the funding MOU does not approve any specific electrification projects, which will come to the Board as they are developed. Project costs not funded by the LADWP under the MOU are the responsibility of the Harbor Department.

The Board of the Los Angeles Department of Water and Power (LADWP) approved the MOU on June 12, 2018. City Council approval is not required.

SUBJECT: MOU WITH LADWP FUND ELECTRIFICATION PROJECTS

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 generally exempt from the requirements of the California Environmental Quality Act (CEQA) under Sections 15060(c)(3) and 15378(b)(4) of the State CEQA Guidelines;
2. Approve the Memorandum of Understanding between the Los Angeles Department of Water and Power (LADWP) and the Los Angeles Harbor Department (LAHD) to fund transportation electrification projects in the Harbor District;
3. Authorize the Executive Director to execute and the Board Secretary to attest to the MOU for and on behalf of the Board;
4. Authorize the Executive Director to implement the terms of the MOU on behalf of the Board, including submitting to LADWP the Annual Work Plan and all required reports; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background - In 2006, the ports of Long Beach and Los Angeles (Ports) created and approved the San Pedro Bay Ports Clean Air Action plan (CAAP), a groundbreaking strategy for dramatically reducing air pollution emissions from freight movement in and around the Ports. The CAAP addresses various sources of waterborne freight movement such as drayage trucks, ships, rail, cargo handling equipment and harbor craft, and was updated in 2010. In November 2017, the Ports approved the CAAP 2017 Update, which provides new strategies and emission (including GHG) reduction targets, setting the Ports firmly on the path toward zero-emissions freight movement. The CAAP 2017 Update strategies include GHG reduction targets and goals to transition to zero-emission trucks by 2035 and zero-emission marine terminal equipment by 2030 or as they become feasible. The proposed MOU provides the opportunity for LAHD and LADWP to work together for mutual benefit to each agency to meet their sustainability goals.

LADWP has voluntarily opted into the California Air Resources Board's (CARB) Low Carbon Fuel Standards (LCFS) program that supplies credits to members that have reduced their carbon intensity by switching to carbon alternative fuel products or taking steps to promote the use of carbon alternative fuel products.

SUBJECT: MOU WITH LADWP FUND ELECTRIFICATION PROJECTS

LADWP is also a covered entity under CARB's Cap-and-Trade Program, a key state strategy to reduce greenhouse gas (GHG) emissions and meet state GHG emission targets. Since the program is market-based, entities can purchase and sell California Carbon Allowances (CCAs).

LADWP will be using the proceeds from the sale of CARB LCFS credits and CCAs to fund LAHD's transportation electrification projects. The funding of such projects will be in compliance with CARB requirements with respect to the use of LCFS credits and CCA proceeds.

LADWP's funding of LAHD's transportation electrification projects allows LADWP to contribute to the CAAP goals and participate in CARB's LCFS and Cap-and-Trade programs. The anticipated benefits include reduced amounts of GHG, particulate and nitrogen oxide emissions for improved air quality, reduced health risk of residents in the Harbor District, and savings from reduced fuel costs. LADWP will also be able to claim LCFS credits by funding LAHD's transportation electrification projects.

LADWP and LAHD have not previously entered into an agreement of this type.

Proposed MOU – The purpose of the MOU is for LADWP to develop and support zero-emissions mobile sources by providing funding in an aggregate amount up to \$15-million over five years for transportation electrification projects at LAHD. LAHD will use the funding to help reduce air emissions consistent with LAHD's CAAP and support the statewide vision for more sustainable freight movement.

Activities for which funding under this MOU may be used include electrical infrastructure installed at LAHD for the following:

- Dredging equipment
- Cargo handling equipment
- Ships and harbor craft docked at berth
- Rail services
- On-road and off-road truck and vehicles supporting activities on LAHD property

LAHD will submit to LADWP an Annual Work Plan for each fiscal year that describes the projects, work to be performed, project schedules and milestones, estimates of emission savings, and the cost estimates to be funded by the MOU in the respective fiscal year. LADWP shall initiate a transfer of funds each year in the amount set forth in the Annual Work Plan at the beginning of the fiscal year. All LADWP funds provided under this MOU shall only be used to fund projects in the Annual Work Plans approved by LADWP.

SUBJECT: MOU WITH LADWP FUND ELECTRIFICATION PROJECTS

LADWP funding will be made available through and subject to the annual LADWP budgeting process using proceeds from the sale of emission credits through CARB's LCFS and GHG Cap-and-Trade Programs and/or other funding sources that may become available. LADWP is not directly required to comply with the LCFS rule but voluntarily opted into the program to generate LCFS credits and, through the sale of the credits, generate proceeds, which may be used under the MOU to benefit EV transportation. Proceeds from selling excess carbon allowances in the Cap-and-Trade Regulation can also be used for projects that reduce GHG emissions.

The Board of Water and Power Commissioners approved and adopted the MOU on June 12, 2018.

ENVIRONMENTAL ASSESSMENT:

The proposed action is a MOU between LADWP and LAHD to fund transportation electrification projects in the Harbor District. As such, the Director of Environmental Management has determined that the proposed action is generally exempt from the requirements of the California Environmental Quality Act (CEQA) under Sections 15060(c)(3) and 15378(b)(4) of the State CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the MOU is an administrative action that would allow the Harbor Department to access funding for future projects which are consistent with the specifications contained within the MOU. This Board action does not authorize any expenditures related to future projects associated with the MOU nor does it commit the Harbor Department to complete future projects associated with the MOU. Award of any capital contracts related to future projects associated with the MOU would require Board approval under separate future actions.

SUBJECT: MOU WITH LADWP FUND ELECTRIFICATION PROJECTS

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality the MOU between LADWP and LAHD.

TRANSMITTAL:

1. MOU between LADWP and LAHD to fund transportation electrification projects

CA Approval: _____
FIS Approval: _____

DAVID M. WALSH, P.E.
Chief Harbor Engineer

ANTONIO V. GIOIELLO, P.E.
Deputy Executive Director,
Development

APPROVED:

EUGENE D. SEROKA
Executive Director

SZ:sc
MGT 3-3
ID 6461

Author: S. Zambrano

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE LOS ANGELES DEPARTMENT OF WATER AND POWER
AND THE LOS ANGELES HARBOR DEPARTMENT TO ESTABLISH
FUNDING FOR TRANSPORTATION ELECTRIFICATION PROJECTS**

BACKGROUND AND INTENT

The City of Los Angeles is a California municipal corporation governed by its Charter. The Charter divides responsibilities and municipal governance among its various entities and departments, two of which are directly involved with reducing greenhouse gas (GHG) emissions in the Harbor District, generally known as the San Pedro area. The City's Harbor Department (LAHD) has possession, management and control of all Harbor Assets in the Harbor District. The City's Department of Water and Power (LADWP) possesses, manages, and controls the City's Water Assets and Power Assets. All assets are respectively defined in the Charter.

The City process for entering into this agreement is to have the Board of Harbor Commissioners for the Harbor Department and the Board of Water and Power Commissioners approve the Memorandum of Understanding (MOU). Neither department is required to approve the MOU first, rather each department will seek approval concurrently.

The goal of this MOU is to develop and support zero carbon fuel emission mobile sources by funding transportation electrification projects in the Harbor District, generally known as the Port of Los Angeles (POLA), that are consistent with the San Pedro Bay Ports' Clean Air Action Plan (CAAP), South Coast Air Quality Management District's 2016 Air Quality Management Plan (AQMP), and the State Implementation Plan. In addition, the MOU's goal is to fund and create projects with methods that create documentable reductions in air emissions. In particular, the CAAP outlines strategies to reduce emissions from sources, such as ships, trucks, trains, harbor craft, and cargo-handling equipment, with zero emission alternatives whenever feasible. The anticipated benefits include reduced amounts of GHG, particulate and nitrogen oxide emissions, resulting in improved air quality, reduced health risk of residents living in port communities, and accrued savings from reduced fuel costs.

With this MOU the LADWP and LAHD will detail their various responsibilities with respect to one another.

I. PARTIES

This MOU is entered into by and between LAHD, acting by and through its Board of Harbor Commissioners (BHC) and LADWP, acting by and through its Board of Water and Power Commissioners (BWPC).

II. DEFINED USE

Activities for which funding under this MOU may be used include infrastructure installed at the POLA for electrification of the following:

1. Dredging equipment;
2. Cargo Handling Equipment;
3. Ships and harbor craft docked at Berth;
4. Rail Services;
5. On-Road & Off-Road Trucks and Vehicles supporting activities on POLA property.

III. MOU TERM

The MOU will become effective (Effective Date) upon full execution by both parties and shall remain in effect for five (5) years after the Effective Date. This MOU may be terminated by either party upon sixty days' advance written notice, provided however, that the reporting and auditing provisions shall remain in effect for all funds received by LAHD until termination.

IV. LADWP FUNDING

A. LADWP will, at its discretion, provide transportation electrification program funding to LAHD in an aggregate amount up to \$15 million over five years. Funding will be made available through and subject to the annual LADWP budgeting process using proceeds from the sale of emission credits through the California Air Resource Board's (CARB) Low Carbon Fuel Standard (LCFS) and Greenhouse Gas (GHG) Cap-and-Trade Programs and/or other funding sources that may become available. LADWP is not directly required to comply with the LCFS rule but voluntarily opted into the program to generate LCFS credits and, through the sale of the credits, generate proceeds. The LCFS rule requires that electric distribution utilities use all credit proceeds to benefit current or future EV customers, educate the public on the benefits of EV transportation, or provide rate options that encourage off-peak charging and minimize adverse impacts to the electrical grid. Proceeds from selling excess carbon allowances in the Cap-and-Trade Regulation can also be used for projects that reduce GHG emissions. Funding to LAHD will be made upon the written approval of the Annual Work Plan (described below in Section VI.A.) by the LADWP General Manager or his designee.

B. LADWP Funding to LAHD shall be made as follows:

- LADWP shall initiate a transfer of funds each year in the amount set forth in the Annual Work Plan upon the beginning of the FY.
- Funding will be provided in advance of LAHD's actual performance of the specified work in the Annual Work Plan.
- If the work specified in the Annual Work Plan and all the required reporting is not complete prior to the start of a new FY, LADWP may at its discretion withhold

funding for any subsequent Annual Work Plan projects that have been approved pending completion of said work and/or reporting.

- It is acknowledged that actual expenditures may vary from project estimates upon which funding is based; under-expenditure of LADWP funding for any given project will be carried over to fund the costs of a subsequent Annual Work Plan , subject to the approval process. LAHD shall remit to LADWP all unexpended funds that were disbursed under this MOU and were not used in accordance with an approved Annual Work Plan. Such remittance shall be made within 90 days of the completion of the required MOU Summary Report.

C. Interdepartmental Transfer (IDO)

LADWP shall make payment to LAHD by Interdepartmental Order (IDO) into the LAHD account. All such funds deposited pursuant to this MOU shall only be used to fund projects in the Annual Work Plans approved by the LADWP.

V. LAHD RESPONSIBILITIES

This MOU is hereby accepted by LAHD, and MOU funding will be expended for the purpose and defined use described above. In accepting LADWP funding, LAHD agrees to the following terms and conditions:

A. Submission of Annual Work Plan

LAHD will submit to LADWP an annual work plan (Annual Work Plan) for each fiscal year (FY) (July 1 – June 30). Each Annual Work Plan shall describe the projects, the work to be performed, project schedules and milestones, estimates of emission savings, and the cost estimates to be funded by the MOU in the respective FY. The Annual Work Plan for FY 2018-2019 shall be submitted no later than 90 days following the Effective Date.

Each Annual Work Plan shall be incorporated into this MOU during its term as long as each one is approved by LADWP's General Manager or his/her designee. All terms, reservations, covenants, and conditions set forth in this MOU shall apply to any and all Annual Work Plans approved by the LADWP's General Manager or his/her designee.

LADWP and LAHD shall seek to have their respective Boards delegate approval authority to their General Manager and Executive Director, respectively, for approval of and submission of Annual Work Plans.

B. Project Changes, Modification of Annual Work Plan

In the event that LAHD seeks to modify an Annual Work Plan LAHD shall report such changes: (1) to the LADWP MOU project manager who may request additional information and/or a meet-and-confer meeting, and (2) in the Reports listed in Section VI.D. below. Changes from the Annual Work Plan deemed by LADWP to be significant must be approved by the LADWP General Manager following the submission by LAHD

of a proposed Modification of Annual Work Plan. The Modified Work Plan should be based on the approved funding amount and within the LADWP's FY budget for the MOU funding.

C. Use of MOU Funds

LAHD shall use the MOU funds only to implement the projects set forth in the Annual Work Plan approved by LADWP and shall keep records of all MOU expenditures accordingly.

D. Reporting and Environmental Results

LAHD shall submit to LADWP the following reports (collectively, Reports):

1. Final MOU Report: written report summarizing all the MOU project accomplishments
 - Summary of the projects and activities
 - Projects' results including the final emission benefit calculations with detailed methodology
 - Detailed account of all the MOU funds expended, including the administrative cost breakdown
 - Explanation of any significant deviations from the Annual Work Plans' cost estimate
 - Summary description of the work performed
 - Identification and explanation of any prescribed work or task not performed
 - Project timeline showing start and completion dates, and major milestone dates
 - Description of how activities contributed towards compliance with the State Implementation Plan (SIP) and/or National Ambient Air Quality Standards (NAAQS)
 - Report shall be submitted within 90 days of project completion
2. Annual Summary Report: written report summarizing the FY work plan accomplishments as of June 30
 - Work performed
 - Emissions saved
 - Funds expended
 - Other relevant information
 - Copy of each Project Report for the FY
 - Report shall be submitted by September 30 of each year
3. Mid-Year Progress Reports: written report summarizing the FY work plan accomplishments as of December 31
 - Work performed
 - Funds expended

- Percentage complete for each project
- Report shall be submitted by March 31 of each year

4. The Annual Work Plans and all Reports shall be submitted to:

Los Angeles Department of Water and Power
Attention: Mark Sedlacek
111 North Hope St, Room 1050
Los Angeles, California 90012

E. Right to Audit

At any time within three years following the completion of the work funded under this MOU, LADWP shall have the right to conduct an audit of the expenditures associated with the MOU itemized in the written Reports by providing 30 calendar days' notice to LAHD.

F. Right to LCFS Credits

LADWP will have the authority to install meters to measure electricity consumption from electric vehicles. LADWP will receive all LCFS credits accrued from LAHD projects funded in whole or in part by LADWP.

G. Disputed Expenditures

LADWP shall notify LAHD regarding any challenged funded project expenditure under the MOU. The parties' division heads shall meet and confer regarding the subject expenditure(s), including the exchange of additional information. If LADWP determines that an expenditure should be disqualified and the LAHD disputes the determination, the LADWP General Manager and LAHD Executive Director shall meet to resolve the issue.

Expenditure that is resolved as improper by LADWP after such process will be refunded by LAHD within 60 days from the date of the determination.

H. Right of Field Verification

LADWP will, at its discretion, perform progress and/or completion verification activities at the POLA upon 48 hours' reasonable notice to LAHD.

I. Permits. LAHD shall obtain all permits necessary for any and all projects in the Annual Work Plan.

J. Grant of Access to Harbor District for Meters and Inspections. LAHD hereby grants to LADWP employees, agents, contractors and subcontractors (LADWP Staff) access to Harbor District facilities to install any and all meters required for projects designated on the Annual Work Plan upon giving of advance notice in section J, below. LAHD shall identify access areas and designate areas where LADWP Staff may work to install any and all meters and other equipment, as needed, for the projects.

K. Notice and Parking. LADWP Staff shall provide LAHD at least 12 hours advance notice for when they will be arriving to the Harbor District to perform work or inspections. LAHD shall designate areas for LADWP Staff to park their vehicles to perform any work or inspections. LADWP Staff shall not be charged for parking their vehicles while performing any work or while inspecting any work.

L. Insurance. LAHD shall maintain acceptable levels of General Liability insurance, Property insurance, Auto Liability insurance and Workers' Compensation coverage, which can be in the form of Commercial or Self-Insurance, to cover its activities on Harbor District property. LAHD shall require each of its contractors under its construction and personal services contracts to carry and maintain General Liability, Auto Liability, Workers' Compensation coverage, Professional Liability, if appropriate, and construction bonding requirements as applicable. Evidence of required insurance must be maintained current by the contracted parties throughout the term of this Agreement.

LADWP maintains a program of Self-Insurance that encompasses General Liability, Auto Liability and Workers' Compensation insurance covering any LADWP staff activities that may occur on Harbor District property. The parties agree to cooperate with each other regarding submission of insurance claims in the event a loss or claim is experienced from the work undertaken under the MOU.

M. Signs. LADWP and LAHD shall not erect or display, or permit to be erected or displayed on or near the facilities, or upon works, structures and improvements made by LAHD, any advertising matter of any kind, including signs, without first obtaining the joint written consent of the Executive Director of LAHD and LADWP's General Manager, and a Harbor Engineer's General Permit.

N. Disposal of Equipment. LAHD shall be solely responsible for disposing of any equipment for the projects at any point in time during or after the MOU, whether they have expended their useful life or no longer function.

O. Indemnity. LAHD undertakes and agrees to indemnify and hold harmless LADWP, the members of the BWPC, and all of their officers, agents, successors in interest, assigns, and employees (individually and collectively, "Indemnitees"), from and against any and all liens and claims of lien, suits, causes of action, claims, judgments, civil fines, penalties or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including LAHD's employees and agents, or damage or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of or connected in any manner with the acts, errors, omissions to act, willful misconduct, or nonperformance or breach by LAHD of any term and/or condition of this MOU, incident to the presence upon or performance of activities by LAHD or its personnel with respect to the Annual Work Plan projects, including their installation, operation, maintenance, or

lack thereof, on the part of LAHD, or LAHD's officers, agents, employees or contractors of any tier, except for the sole negligence or willful misconduct of Indemnitees. In such case, LAHD, the members of the BHC, and all of their officers, agents, employees and contractors shall be held harmless. This indemnity shall apply whether occurring during the term of this MOU and any time thereafter, and shall be in addition to any other rights or remedies which Indemnitees have under law or under this MOU.

P. Cost of Construction. All construction by LAHD pursuant to this Section shall be at LAHD's sole expense. LAHD shall keep the Projects and improvements constructed free and clear of liens for labor and materials and shall hold LADWP harmless from any responsibility in respect thereto.

VI. MISCELLANEOUS

A. Amendment. This MOU may be modified only in writing signed by LAHD and LADWP.

B. Assignment. This MOU and any permission herein given is personal to LADWP and LAHD, and the MOU or any rights granted in the MOU is not assignable. LADWP and LAHD will not assign, transfer or sell this MOU or any privilege hereunder in whole or in part, and any attempt to do so without either party's prior written consent shall be void and shall confer no right on any third party.

C. No Real Property Interest. LADWP hereby acknowledges that this MOU or any permission to temporarily access any land or right of way within the Harbor District for work or inspection is limited and temporary only and does not constitute a lease of, or any interest in, real property in the Harbor District.

D. Counterparts. This MOU may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument as if all signatories had signed the same instrument, and the execution thereof may be transmitted by email correspondence or facsimile.

VII. NOTICES

Official notices and reports under this Agreement shall be sent to:

Los Angeles Harbor Department
Attn: Gene Seroka, Executive Director
425 South Palos Verdes Street, San Pedro, CA 90731

With a copy to:
Los Angeles Harbor Department
Attn: David Walsh, Director of Engineering Division
425 South Palos Verdes Street, San Pedro, CA 90731

Los Angeles Department of Water and Power
Attn: Nancy Sutley, Chief Sustainability and Economic Development Officer

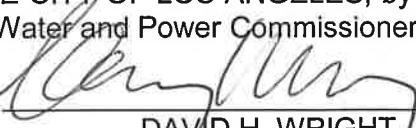
1230 West Third Street, 1st Floor, Los Angeles, CA 90012

With a copy to:

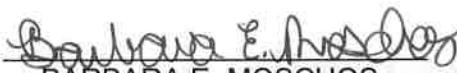
Los Angeles Department of Water and Power
Attn: Mark Sedlacek, Director of Environmental Affairs
111 North Hope St, Room 1050, Los Angeles, CA 90012

IN WITNESS WHEREOF, LADWP and LAHD have caused this Memorandum of Agreement to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES, by its Board of Water and Power Commissioners

By 
DAVID H. WRIGHT
General Manager

Dated: 6/29/18

Attest: 
BARBARA E. MOSCHOS
Board Secretary

Dated: _____

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By _____
EUGENE D. SEROKA
Executive Director

Dated: _____

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: _____

JUN 12 2018

AUTHORIZED BY RES. 018249

APPROVED AS TO FORM AND LEGALITY

April 23, 2018
 MICHAEL N. FEUER, City Attorney
 JOSEPH A. BRAJEVICH, LADWP General Counsel

By [Signature]
 Deputy/Assistant

APPROVED AS TO FORM AND LEGALITY

September 11, 2018
 MICHAEL N. FEUER, City Attorney
 JANNA B. SIDLEY, LAHD General Counsel

By [Signature]
 Joy M. Crose, Assistant General Counsel

Account #	<u>N/A</u>	W.O. #	<u>N/A</u>
		Job Fac.	
Ctr/Div #	<u>N/A</u>	#	<u>N/A</u>
Proj/Prog #	<u>N/A</u>		
Budget		FY: Amount:	
	<u>NO</u>	<u>FUNDS</u>	
	<u>REQ</u>	<u>AT</u>	
	<u>THIS</u>	<u>TIME</u>	
	<u>TOTAL</u>		
For Acct/Budget Div. Use Only:			
Verified by:	<u>[Signature]</u>		
Verified Funds Available:	<u>N/A</u>		
Date Approved:	<u>9/11/18</u>		