

DATE: JANUARY 31, 2023

FROM: ENVIRONMENTAL MANAGEMENT

SUBJECT: RESOLUTION NO. _____ - APPROVAL OF THE FOURTH AMENDMENT TO GRANT AGREEMENT NO.17-3532 (CEC NO. ARV-16-026) WITH THE CALIFORNIA ENERGY COMMISSION FOR THE EVERPORT ADVANCED CARGO HANDLING DEMONSTRATION PROJECT

SUMMARY:

Staff requests approval of the proposed Fourth Amendment to California Energy Commission (CEC) Grant Agreement No. 17-3532 (Agreement) for the Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project (Project). The proposed Fourth Amendment will modify the project schedule and extend the term of the Agreement until October 31, 2023. The update to the project schedule and extension to the term of the Agreement are due to COVID-19 and supply chain-related delays in the project timeline. Additionally, the proposed Fourth Amendment will add special terms and conditions related to completion of tasks outlined in the scope of work, submission of final report, deadline for grant reimbursement, and payment of liquidated damages if schedule requirements are not met. All other terms and conditions of the Agreement will remain the same. The City of Los Angeles Harbor Department (Harbor Department) has fulfilled its cost share responsibility under the grant by completing the electrical infrastructure development at Berths 226-236 in March 2022. Approval of the proposed Amendment would obligate the Harbor Department to pay \$452,400 in liquidated damages in the event that the scope of work is not completed by October 31, 2023. The CEC has asked for the liquidated damages provision because they are agreeing to a schedule extension that will result in a project completion date that is after the CEC's final funding disbursement deadline.

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 administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) and Article III Class 6(2) of the Los Angeles City CEQA Guidelines;

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2. Approve the proposed Fourth Amendment to Agreement No. 17-3532 between the City of Los Angeles Harbor Department and the California Energy Commission for the Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project;
3. Authorize the Executive Director to execute and the Board Secretary to attest to said amendment for and on behalf of the Board; and
4. Adopt Resolution No. _____.

DISCUSSION:

Background – On November 29, 2016, the CEC released a grant solicitation to implement and administer Sustainable Freight Transportation Projects (GFO-16-604). Nearly \$27,000,000 was made available statewide for all California seaports, marine terminal operators at California seaports, local air districts, and seaport tenants under the solicitation. The Harbor Department submitted a grant application to the CEC on behalf of Everport Terminal Services, Inc. (Everport) on January 26, 2017. On February 22, 2017, the CEC notified the Harbor Department that the application was selected and received a preliminary grant award offer in the amount of \$4,524,000. On May 10, 2017, CEC Commissioners approved the funding of the Project and instructed their staff to enter into agreement negotiations with the Harbor Department. In October 2017, the Harbor Department approved Grant Agreement No. 17-3532 with the CEC and Subrecipient Agreement No. 17-3533 with Everport, BYD Motors LLC (BYD), and Taylor Machine Works, Inc. (Taylor). A Third Amendment to Subrecipient Agreement No. 17-3533 is being presented to the Board for consideration under a separate Board item to align with this proposed Fourth Amendment to the Grant Agreement No. 17-3532.

Port of Los Angeles' Everport Advanced Cargo Handling Demonstration Project – The Project, which began in October 2017, consists of the development and demonstration of three zero-emissions (ZE) battery-electric BYD yard tractors and two ZE battery-electric Taylor top handlers and associated charging infrastructure. The yard tractors are charged with an Electric Truck Smart Plug-In System (smart charging system) utilizing a connection arm to receive its charge, and the top handlers are charged utilizing a conventional system. The development of the yard tractors and smart charging system were delayed due to the COVID-19 pandemic as factory shutdowns and stay-at-home orders affected the project team internationally and within the United States in addition to supply chain disruptions extending lead times for materials. The yard tractors and smart charging system began demonstration in the first quarter of 2022; however, due to data collection issues and yard tractor repairs, the CEC officially recognized the start of the 12-month demonstration period to be May 17, 2022. With a 12-month demonstration required by the CEC, a project schedule change and term extension are necessary.

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The ZE battery-electric Taylor top handlers were delivered at the end of 2019 and put into operation in April 2020. The Project demonstration period for those units was completed in April 2021 and Everport continues to use the equipment.

Grant Agreement First Amendment – The First Amendment to the Grant Agreement was approved by the CEC to extend the term and modify the project schedule. The term was modified from December 31, 2020, to March 31, 2022. The First Amendment was approved by the Board on December 3, 2020.

Grant Agreement Second Amendment – The Second Amendment to the Grant Agreement corrected an administrative error made in the First Amendment that reduced the maximum agreement amount to \$3,600,000. The maximum agreement amount was corrected to reflect the original grant amount of \$4,524,000. The Second Amendment was approved by the Board on February 24, 2022.

Grant Agreement Third Amendment – The Third Amendment to the Grant Agreement extended the term and modified the project schedule. The term was extended from March 31, 2022, to March 31, 2023, due to delays caused by the COVID-19 pandemic. The California legislature extended liquidation dates of all grants due to the impacts of the COVID-19 pandemic. The Third Amendment was approved by the Board on February 24, 2022.

Grant Agreement Fourth Amendment – The proposed Fourth Amendment to the Grant Agreement (Transmittal 1), if approved, will extend the term and modify the project schedule. The term will be extended from March 31, 2023, to October 31, 2023 – a seven-month period. The additional time is necessary to complete the Project due to delays caused by the COVID-19 pandemic, supply chain disruption, equipment repairs, and data collection issues. Additionally, the proposed Fourth Amendment adds Exhibit C-1, Special Terms and Conditions, that requires the completion of all tasks described in the scope of work by the end of the new term, the submission of the final report by August 31, 2023, and acceptance of new contract language regarding grant reimbursement deadlines and payment of liquidated damages.

The reimbursement deadline clause in Exhibit C-1 requests that all invoices for reimbursement be submitted by March 31, 2023, prior to the funding liquidation deadline of June 30, 2023. As a result, the CEC will pay all Agreement funds, including release of retention, before all Project work is scheduled to be complete. Typically, the CEC withholds some or all retention until the end of the Agreement to help ensure grantees fully perform. The liquidated damages clause in Exhibit C-1 states that damages may result from the CEC distributing funds prior to all reports being submitted by the Harbor Department. If any remaining tasks are not completed by the end of the Agreement term,

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the Harbor Department will be required to reimburse the CEC ten percent of the total Agreement funds disbursed as of the end date of the Agreement or \$452,400. The tasks remaining include completion of the 12-month demonstration, submission of the final report, and convening of a final meeting. The risk to the Harbor Department for completing the remaining tasks is minimal because:

- The 12-month demonstration is currently underway and will end May 17, 2023. The equipment is performing at this time, but the demonstration period will end satisfactorily under the terms of the grant program even if the equipment cannot complete the work for any reason;
- The final report will be written by the Port and submitted by August 31, 2023; it will describe whatever work is completed; and
- The final meeting between the CEC and the Port will be scheduled and convened by staff before October 31, 2023.

Staff is working very closely with the CEC grant manager to ensure all tasks are completed in accordance with the new schedule.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of the Fourth Amendment to a Grant Agreement to fund a demonstration project to develop and demonstrate five pieces of ZE cargo handling equipment, which is an administrative activity involving basic data collection, field testing, and research of City Departments which do not result in serious or major disturbances to an environmental resource. The approval of the amendment is considered an administrative activity, and the demonstration project involves data collection, field testing and research which would not result in a serious or major disturbance to an environmental resource.

Therefore, the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of CEQA in accordance with Article II Section 2(f) and Article III Class 6(2) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Fourth Amendment will extend the term of the Grant Agreement to October 31, 2023, and accept the terms listed in the added Exhibit C-1, Special Terms and Conditions. With acceptance of Exhibit C-1, the Harbor Department accepts the risk of reimbursing the CEC ten percent of the total Agreement funds disbursed as of the end

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of the Agreement or \$452,400 if all tasks described in the scope of work are not completed.

Under the grant, the Harbor Department's cost share responsibility is \$2,000,000 for the development of electrical infrastructure, which is budgeted in Capital Improvement Program Work Order 25453 – B. 226-236 Advanced Cargo Handling Demonstration. The development of the electrical infrastructure was completed on March 30, 2022, at a Total Project Cost of \$2,950,000.

The table below summarizes the costs and grant funds for the overall Project.

Project Partner	Vehicle Type	# Units	CEC Funds	Cost Share	TOTAL
BYD	Yard Tractor	3	\$870,000	\$189,634	\$1,059,634
Taylor	Top Handler	2	\$3,654,000	\$121,500	\$3,775,500
Everport			0	\$856,000	\$856,000
Harbor Department			0	*\$2,000,000	\$2,000,000
TOTAL			\$4,524,000	\$3,167,134	\$7,691,134

*The Harbor Department's Cost Share under the grant agreement was \$2,000,000 to develop electrical infrastructure; however, the total development cost for this activity was ultimately \$2,950,000, an increase of \$950,000 relative to the grant cost share requirement.

To date, the total grant funding received by the CEC is \$4,437,000. The remaining balance of \$87,000 will be requested at the completion of the Final Report.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved as to form and legality the proposed Fourth Amendment to Agreement No. 17-3532.

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TRANSMITTAL:

1. Fourth Amendment to Grant Agreement No. 17-3532 with the California Energy Commission

FIS Approval: MB
CA Approval: SO



CHRISTOPHER CANNON
Director of Environmental Management

Michael DiBernardo

MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

CC/yo
AUTHOR: T. Pisano

FILE: Y:\ADMIN_BOARD REPORTS\AIR QUALITY\GRANTS\CEC - SUST FREIGHT TRANS PROJECTS 2016 GRANT (Taylor and BYD)\2022 GRANT FOURTH AMENDMENT\Environmental_CEC 4 Amendment_Board Report - FINAL.docx
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