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DATE: JUNE 8, 2011

FROM: OFFICE OF THE CITY ATTORNEY – HARBOR DIVISION

**SUBJECT: ALAMEDA CORRIDOR TRANSPORTATION AUTHORITY
FUNDING AGREEMENT REGARDING DOMINGUEZ OIL
RELEASE – U.S. ENVIRONMENTAL PROTECTION AGENCY
ORDER NO. OPA CWA 311-09-2011-001**

SUMMARY:

City proposes to execute the attached Funding Agreement Regarding Dominguez Oil Release, an agreement among the Alameda Corridor Transportation Authority (“ACTA”), the Port of Los Angeles, and the Port of Long Beach which provides the terms under which the two Ports are advancing funds to ACTA to assist with its response to the oil spill. The agreement also governs the reimbursement of such funds to the Ports should ACTA recover any response costs from a third party and/or the Oil Spill Liability Trust Fund.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Funding Agreement Regarding Dominguez Oil Release among Alameda Corridor Transportation Authority, the Port of Los Angeles, and the Port of Long Beach;
2. Authorize the Executive Director to execute and the Board Secretary to attest to the Funding Agreement Regarding Dominguez Oil Release; and
3. Adopt Resolution No. _____.¹

¹ Section 10.5 of the City Administrative Code exempts contracts with other governmental agencies from the requirement that contracts longer than three years be approved by the City Council.

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DISCUSSION:

Oil Release and Initial Response

On December 21, 2010, in the midst of heavy rains, oil was seen entering the Dominguez Channel from the outfall of a City storm water pump station. Oil in the City storm sewer was traced to the outfall of a storm water drainage system that underlies the road bed of the Alameda Corridor. The drainage system consists of two French drains, one on the east side and one on the west side of the tracks, formed from perforated pipes surrounded by pea gravel and landscape fabric and laid in trenches cut into the sub-ballast. The east and west side drains, which begin north of Pacific Coast Highway, join together and discharge in a single outfall at the corner of Leeds Avenue and East Grant Street in Wilmington. Oil that had entered the ACTA drain system from a then unknown source was being carried by storm water onto Leeds Avenue and then into the City storm sewer from which it was pumped into the Dominguez Channel.

The State Office of Spill Prevention and Response was notified and, in conjunction with the U.S. Environmental Protection Agency ("EPA"), provided the initial response and cleanup. A containment and oil recovery system was set up on Leeds Avenue to prevent any further oil discharge to the Dominguez Channel. Another containment system was set up at the Shell Lubricants plant some 500 feet to the north, where oil had emitted from the rail bed due to an apparent blockage in the storm drain system. Additional background on the early response to the spill can be found on the EPA's web site at: http://www.epaossc.org/site/site_profile.aspx/site_id=6580

On January 7, 2011, the EPA issued Order No. OPA CWA 311-09-2011-001 to ACTA, the Port of Los Angeles and the Port of Long Beach directing them, among other things, to assume responsibility for maintenance of the containment systems. The potential liability of the two Ports is based on their status as joint owners of the property on which ACTA operates.

ACTA, through a contractor, took over operation of the containment system and further expanded it so that it could accommodate higher flow rates. ACTA also cleaned the City storm sewer and pump station so that it could be put back into regular service. ACTA also improved the containment system at the Shell Lubricants plant. Finally, ACTA located the apparent source of the oil by first inserting a camera into the drain lines and then excavating the drain system in the area where oil intrusion had been observed. On March 29, the casing of an oil pipeline that crosses beneath the rail line was found to be punctured. The EPA determined that the punctured casing is the source of the oil that leaked into the railroad drainage system and, on March 30, issued

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a similar Order to the pipeline operator, Crimson Pipeline Co. (No. OPA CWA 311-09-2011-0002).

ACTA Assistance

ACTA estimated that its response costs in the first ninety days after the Order was issued would total \$1.7 million and requested financial contributions in the amount of \$750,000 from each Port. The Board authorized an advance of \$250,000 on February 3, 2011 (Resolution No. 11-7071) and a subsequent advance of \$500,000 on March 17, 2011 (Resolution No. 11-7099).

The Port of Long Beach authorized an advance of \$250,000 on February 14, 2011 but withheld transfer pending approval of the Funding Agreement. The Long Beach Board of Harbor Commissioners approved the agreement at its meeting of May 23.

The ACTA Board authorized execution of the agreement at its meeting of March 10, 2011.

As of May 12, costs incurred total \$1,929,833 as detailed on Transmittal 2. An additional \$531,551 is forecasted through June 30, 2011 bringing the total to \$2,461,384.

Funding Agreement

The proposed Funding Agreement provides the terms under which funds are advanced and provides for reimbursement of the advances in case ACTA is able to recover from a third party or the federal Oil Spill Liability Trust Fund.

The Agreement calls for ACTA to maintain an accounting of all funds contributed and expended in response to the oil spill and the EPA Order. Although the Agreement explicitly addresses the initial advances of \$250,000 from each Port, it covers any additional funds subsequently advanced.

The ultimate cost of the spill and the amount of any additional Port contributions cannot be determined at this time. First of all, a method for decontaminating the French drain system has not been conceived nor has there been any assessment of contamination of the soil underlying the roughly half-mile of railroad bed that was likely affected. Furthermore, negotiations with the pipeline owner to assume responsibility for these costs are still in the early stages. For the same reason, the Agreement does not have a

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fixed term as the remediation and cost recovery efforts associated with this incident will likely last for many years.

The Agreement does call for ACTA to pursue recovery of all such expenses from third parties and/or state and federal sources such as the Oil Spill Liability Trust Fund. Any funds recovered will be used to reimburse ACTA and the Ports on a pro-rata basis after first deducting the costs and fees associated with the recovery effort.

Finally, the Agreement does not attribute legal responsibility for the spill response costs to any of the three parties nor prejudice claims that either Port or ACTA might have against other parties to the Agreement with respect to the spill or the EPA Order.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of a funding agreement among ACTA, the Port of Los Angeles and the Port of Long Beach for advancing funds to assist with the Dominguez oil release. The proposed action does not include any cleanup activities associated with the release. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) and under Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC BENEFITS:

This Board action will have no employment effect.

FINANCIAL IMPACT:

The expenditures of \$750,000 from Other Operating Expenses that are associated with the proposed Agreement have previously been authorized by the Board (Resolution No. 11-7071 of February 3, 2011 for \$250,000 and Resolution No. 11-7099 of March 17, 2011 for \$500,000).

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CITY ATTORNEY:

The proposed Agreement has been approved as to form and legality by the City Attorney.

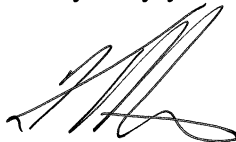
TRANSMITTALS:

1. Funding Agreement Regarding Dominguez Oil Release
2. ACTA Response Cost Summary

FIS Approval: ef (initials)

City Attorney: TR (initials)

Very truly yours,



KENNETH F. MATTFELD
Deputy City Attorney

KFM/dls
Author: K. Mattfeld

CONCURRED:

By TR
THOMAS A. RUSSELL
General Counsel