

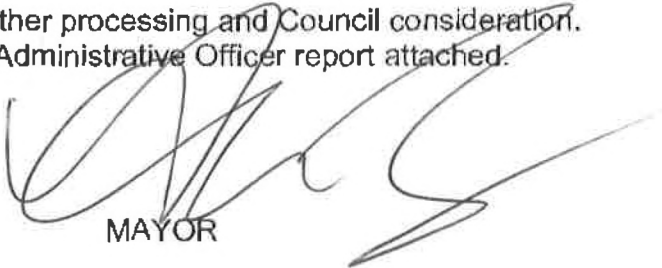
0150-10562-0000

TRANSMITTAL

TO Eugene D. Seroka, Executive Director Harbor Department	DATE FEB 01 2016	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT 15	

**PROPOSED MEMORANDUM OF AGREEMENT TO TRANSFER CHINA SHIPPING
AMENDED STIPULATED JUDGEMENT FUNDS TO THE HARBOR COMMUNITY BENEFIT
FOUNDATION TO ADMINISTER AIR QUALITY IMPROVEMENT PROJECTS**

Transmitted for further processing and Council consideration.
See the City Administrative Officer report attached.



MAYOR

MAS:ABN:10160044t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: January 29, 2016

CAO File No. 0150-10562-0000

Council File No.

Council District: 15

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Correspondence from the Harbor Department dated December 1, 2015; referred by the Mayor for report dated December 4, 2015

Subject: **PROPOSED MEMORANDUM OF AGREEMENT TO TRANSFER CHINA SHIPPING AMENDED STIPULATED JUDGEMENT FUNDS TO THE HARBOR COMMUNITY BENEFIT FOUNDATION TO ADMINISTER AIR QUALITY IMPROVEMENT PROJECTS**

SUMMARY

The Harbor Department (Port) Board of Harbor Commissioners (Board) requests approval of Resolution No. 15-7878 to authorize Memorandum of Agreement (Agreement) No. 15-3365 with the Harbor Community Benefit Foundation (HCBF) to transfer China Shipping Terminal Project (China Shipping) Amended Stipulated Judgement (ASJ) funds from the Port to the HCBF for air quality improvement projects in the harbor communities of Wilmington and San Pedro. The proposed Agreement includes settlement funds from the China Shipping ASJ which come from funds that were not committed to previously approved projects. In accordance with the ASJ, the Port is required to transfer these funds to an independent air quality mitigation program to administer the funds upon mutual agreement by parties of the ASJ settlement. The Port states that the parties to the settlement include the Port and the following Petitioners: Natural Resources Defense Council (NRDC); San Pedro Peninsula Homeowners United; San Pedro and Peninsula Homeowners' Coalition; and, the Coalition for Clean Air. The Port states that there is a total of \$9,226,944 in ASJ funds that are uncommitted. After considerable negotiation, the Port and the Petitioners decided to distribute a portion of the ASJ uncommitted funds, in the amount of \$5,226,944, to HCBF to fund the air quality improvement program. The Port and petitioners decided to distribute the remaining \$4 million to the South Coast Air Quality Management District (SCAQMD) to assist in funding an overhead zero emission truck project demonstration.

The above referenced Resolution No. 15-7878 authorizing approval of the proposed Agreement and this report incorporate revised information received from the Port subsequent to the initial request submittal. The Port states that two Agreements were forwarded to the Mayor's Office for review and consideration, when only one of the two Agreements should have been sent for Council consideration. The proposed Agreement No. 15-3365 with HCBF is attached for processing and consideration by the Mayor and Council. The Port states that Agreement No. 15-3364 for the SCAQMD was inadvertently included and should not have been forwarded at this time.

In March 2003, the Port stated that the Los Angeles County Superior Court approved a legal settlement agreement between the Port and Petitioners to enable the Port of Los Angeles (POLA) to proceed with the China Shipping project, subject to the restrictions and limitations of the settlement agreement. In 2001, the Council approved a contract agreement with China Shipping for the long term use of Port property in the West Basin area of the POLA to construct and lease a three-phase container terminal for a term of 25 years, with an option to extend the term. The agreement was subsequently put on hold because a lawsuit filed by NRDC requesting China Shipping to complete an additional environmental impact report (EIR). China Shipping filed a countersuit because of delays and additional costs to its project. The Port and China Shipping entered into negotiations and agreed on the terms and conditions of a final settlement. The settlement agreement has been amended several times since that date. The ASJ established a community mitigation fund that grew to approximately \$75 million.

The Port and Petitioners instituted a process in which they would identify and fund local community air quality and aesthetic mitigation projects in San Pedro and Wilmington, subject to approval by the Board. In 2009, the Board approved projects that committed the use of all the funding and established a backup list of projects in case any funds would become available in the future. The Port states that some scheduled projects failed to proceed to completion during the contracting, implementation and grant approval stages, which resulted in the funds becoming available for other projects. 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 can be transferred to a mutually agreed upon, independent air quality mitigation program available to administer the funds.

The Port and Petitioners decided to provide funding to HCBF, under the settlement agreement, to administer and manage \$5,226,944 for air quality improvement and mitigation projects. The proposed projects will be used for the following: to develop and issue requests for proposals; evaluate, fund and administer grants, consistent with the proposed Agreement; and, to implement, replace, upgrade or test equipment or new technologies to mitigate, reduce emissions and improve air quality in San Pedro and Wilmington. All HCBF projects will be submitted to the Port and Board for consideration and approval. The Port states that HCBF would be authorized to withdraw funds annually to pay for administrative costs that do not exceed ten percent of the annual funding amount of the approved grant for air quality mitigation projects. If any other funds become available, the Port states that such monies will be considered as additional funding for the air quality mitigation program.

CITY CONTRACTING COMPLIANCE

The City Attorney has reviewed and approved the proposed Agreement between the Port and HCBF as to form. The proposed Agreement is in compliance with all applicable provisions of City Ordinances and contracting requirements. The proposed Agreement is subject to the Living Wage, Service Worker Retention, Equal Benefits, Affirmative Action and Minority, Women, and Other Business Enterprises compliances. The proposed Agreement with HCBF will approve the transfer of funds of the remaining China Shipping ASJ community mitigation funds for the air quality improvement projects to benefit the local harbor communities. The Port Director of Environmental Management has determined that the proposed Agreement is an administrative action and is therefore exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f), of the Los Angeles City CEQA Guidelines.

RECOMMENDATION

That the Mayor approve the Harbor Department (Port) Board of Harbor Commissioners' proposed Resolution No. 15-7878 to authorize Memorandum of Agreement (Agreement) No. 15-3365 with the Harbor Community Benefit Foundation (HCBF) to transfer China Shipping Terminal Project Amended Stipulated Judgement funds from the Port to the HCBF in the amount of \$5,226,944 for air quality improvement and mitigation projects in the harbor communities of Wilmington and San Pedro, and return the document to the Port for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

The proposed Agreement with HCBF will transfer \$5,226,944 in uncommitted funds which are available from a total of \$9,226,944 from a legal settlement between the Harbor Department (Port) and the China Shipping Terminal Project Amended Stipulated Judgement to fund air quality mitigation projects in the local communities. The Port states that the balance of the fund in the amount of \$4 million, to be used by the South Coast Air Quality Management District (SCAQMD) to assist in funding the demonstration of an overhead zero emission truck project at the Port. There is no impact to the City General Funds.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 373, "Long Term Contracts Approved by Council," and the Los Angeles Administrative Code Section, "Limitation and Power to Make Contracts," unless the Council takes action disapproving a contract that is longer than three years within 60 days after submission to Council, the contract will be deemed approved.

MAS:ABN:10160044