



Legislation Text

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SUBJECT:

ACTIONS RELATED TO THE TRADE CORRIDOR ENHANCEMENT PROGRAM FUNDS ADMINISTERED BY THE CALIFORNIA TRANSPORTATION COMMISSION (CTC) AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) TO FUND AN ADVANCED MARINE EMISSIONS CONTROL SYSTEM AND SHORE POWER EXPANSION AT THE TENTH AVENUE MARINE TERMINAL:

- A) RESOLUTION AUTHORIZING A MASTER AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS), DIVISION OF RAIL AND MASS TRANSPORTATION FOR THE PURPOSES OF FUNDING DISTRICT PROJECTS UTILIZING GRANT FUNDING FROM THE CALIFORNIA TRANSPORTATION COMMISSION, AND GRANTING INDEMNITY TO CALTRANS.**
- B) RESOLUTION AUTHORIZING A BASELINE AGREEMENT WITH THE CALIFORNIA TRANSPORTATION COMMISSION FOR THE PURPOSES OF FUNDING THE TENTH AVENUE MARINE TERMINAL BEYOND COMPLIANCE ENVIRONMENTAL ENHANCEMENT PROJECT WITH \$5,600,000 FROM THE TRADE CORRIDOR ENHANCEMENT PROGRAM (TCEP), AND OBLIGATING \$2,400,000 IN MATCHING FUNDS. TCEP FUNDS AND DISTRICT MATCHING FUNDS WILL BECOME AVAILABLE FOR ALLOCATION DURING FISCAL YEAR 19/20 AND MUST BE EXPENDED WITHIN TWO FISCAL YEARS.**

EXECUTIVE SUMMARY:

This two-part agenda sheet authorizes staff to enter into agreements with the California Department of Transportation (CALTRANS) for the purposes of using state transportation funds to implement projects on District tidelands.

Projects funded using state transportation funds administered by CALTRANS require implementing agencies to enter into a Master Agreement with CALTRANS. The Master Agreement identifies the terms and conditions that both parties agree to when funding and implementing any transportation projects funded by CALTRANS grants. The Master Agreement does not identify specific projects; instead it is an umbrella agreement that covers all CALTRANS- funded projects for the period of the agreement.

Projects funded using state transportation funds also require individual Baseline Agreements with CALTRANS. The Baseline Agreement outlines project specifics, including: scope of work, schedule, budget, and fiscal years. The Baseline Agreement also acknowledges the project match funding requirements.

The Baseline Agreement that the Board is being asked to consider is for the Tenth Avenue Marine Terminal (TAMT) Beyond Compliance Environmental Enhancement Project. The District will receive \$5.6M, out of a total project cost of approximately \$8M, to expand the terminal's existing shore power system and implement an Advanced Marine Emission Control System, also known as a "bonnet system." The TAMT funds will become available during FY20, and will fund up to 70% of the anticipated cost of the project. The project will have a two year implementation period from the time the funds are distributed. Match funds must be expended concurrently with grant funds. District staff is working to identify potential sources of match funds, including potential funding from sources outside the District. Both the allocation request and match sources will be brought to the Board for consideration at a future meeting.

RECOMMENDATION:

- A) Adopt a Resolution authorizing a Master Agreement with the California Department of Transportation for the purposes of using grant funding from the California Transportation Commission, and
- B) Adopt a Resolution authorizing a Baseline Agreement with the California Department of Transportation for the purposes of funding the Tenth Avenue Marine Terminal Beyond Compliance Enhancement Project.

FISCAL IMPACT:

This action has no fiscal impact during the current fiscal year. TCEP funding will become available during FY20, and must be expended within two fiscal years of requesting allocation. A required match of \$2.4M will be required to be allocated during FY20, and expended in concurrence with the TCEP funds. Staff is working on identifying matching funds from sources outside the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

On October 18, 2017, the California Transportation Commission (CTC) released a notice of funding opportunity for the Trade Corridor Enhancement Program (TCEP). This program is funded as a part of the Senate Bill 1 Road Repair and Accountability Act (SB1). TCEP consolidates funds from the Trade Corridor Enhancement Account, the federal National Highway Freight Program, and funds from the Budget Act of 2015 to create a \$1.3B fund to address transportation infrastructure needs in the state over a five year period. There is a 30% match requirement for projects receiving TCEP funds.

The District submitted two grant applications under this program for independent projects: the Tenth Avenue Marine Terminal (TAMT) Environmental Enhancements, which includes two projects, shore power and the bonnet system, and the National City Marine Terminal (NCMT) Rail Track Extension Project.

In May, the California Transportation Commission (CTC) awarded funding to the District for the Tenth Avenue Marine Terminal (TAMT) Beyond Compliance Environmental Enhancements using Transportation Corridor Enhancement Program (TCEP) funds. The District will receive \$5.6M, out of a total cost of approximately \$8M for the two projects - expansion of the terminal's existing shore power system and implement an Advanced Marine Emission Control System, also known as a "bonnet system." The grant funds will become available during FY20, and will fund up to 70% of the anticipated cost of the shore power and bonnet system. There will be a three year implementation period from the time the funds are distributed. Unfortunately, the NCMT Rail Track Extension Project did not receive construction funding in this grant round.

This agenda item represents the first and second steps of a three-step process to formalize the District's grant-funding relationship with CALTRANS for the purpose of utilizing TCEP funds for projects on the District's jurisdiction.

Master Agreement

Item A of this agenda item would authorize the District to enter into a Master Agreement with CALTRANS (Attachment A).

The Master Agreement does not identify a specific project that will be funded using state money. Instead, the Master Agreement identifies the terms and conditions that the funder (CALTRANS) and the Administering Agency (the District) agree to when using state grant funds for projects within the District's jurisdiction. Future agreements between the District and CALTRANS will identify specific projects, including budgets, scope of work, and deliverables. No funds are obligated based on the Master Agreement alone. The Master Agreement does include a clause wherein the District agrees to indemnify, defend and hold harmless the State, the California Transportation Commission and the State Treasurer relative to any misuse by the District of State funds, project property, project generated income or other fiscal acts or omissions of District.

The District has had Master Agreements with CALTRANS in the past. The most recent became effective August 21, 2001. That Master Agreement was used as the grant agreement to fund a ferry demonstration project from San Diego to Oceanside; it terminated in August 2011.

Baseline Agreement

Item B of this agenda item would authorize a Baseline Agreement with CALTRANS in order to fund the TAMT Beyond Compliance Environmental Enhancements using TCEP funds. The District will receive \$5.6M, out of a total project cost of approximately \$8M, to expand the terminal's existing shore power system and implement an Advanced Marine Emission Control System, also known as a "bonnet system."

A small portion of the funds will be used to expand the shore power system at the north end of TAMT, currently serving berth 10/1-2. Shore power systems reduce vessel emissions by providing power to the vessel from the grid, allowing the ship to turn off on-board generators. Improvements to the system are intended to provide a second connection point at berth 10/3-4. The District will continue

to work with tenants, and our utility provider, to manage electrical load demands to serve vessels that are required to use shore power when at berth.

The bonnet system is a mitigation measure in 2016 Final Environmental Impact Report (EIR) for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project and is required to be implemented to reduce vessel emissions while they are at berth regardless of shore power. The bonnet system reduces air emissions from vessels by using equipment to capture the emissions directly from the vessel's exhaust stack. The system then treats the exhaust gasses and stores them as a liquid until they can be discharged as waste. The TCEP funds are intended to allow the District to utilize a "bonnet" in order to capture vessel exhaust from vessels that are not shore power capable, or are not required to use shore power systems. The "bonnet" system will be barge-based, so that it can be moved alongside vessels regardless of the terminal berth, and remain away from landside cargo operations.

The Baseline Agreement serves as the grant terms and conditions. A copy of the Baseline Agreement is attached (Attachment B). Included with the Baseline Agreement is a Project Programming Request (PPR) template (Attachment C), and a Project Report (Attachment D). These attachments provide project details, including budget, purpose and need, scope of work and schedule. While these documents serve as the grant agreement between the District and CALTRANS, they will not result in immediate funds to implement the project, or match allocation. This final action will happen when the TCEP funds become available during FY20. Additional project information will be added to the project file with CALTRANS as the District gets closer to implementation and a request for allocation of funds.

Next Steps

Future steps will include an allocation request in order to disperse TCEP funds to the District. Staff anticipates that the allocation request will be brought to the Board during the second half of FY20. The allocation request will also require the district to begin spending matching funds concurrently with grant funds; staff is working to identify potential sources of match funds including outside funding, and will keep the Board apprised of those efforts. The deadline to request a funding allocation of TCEP funds to the TAMT project is June 2020. The deadline to spend TCEP and match funds is June 2022.

General Counsel's Comments:

The Office of the General Counsel has reviewed the issues set forth in this agenda and have found no legal concerns as presented. Pursuant to the Master Agreement the District is required to indemnify, defend and hold harmless the State of California, the California Transportation Commission and the State Treasurer relative to any misuse by the District of State funds, project property, project generated income or other fiscal acts or omissions of District. This type indemnity clause is a common requirement in State master grant agreements and addresses the State's concerns regarding actions by an Administering Agency such as the District regarding possible misuse of funds, property or other fiscal acts or omissions.

Environmental Review:

Master Agreement with CALTRANS

The proposed Board action related to the Master Agreement with CALTRANS does not constitute a

“project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because no direct or indirect changes to the physical environment would occur. The Master Agreement with CALTRANS would make the District eligible to receive state transportation grant funding from the CTC from a variety of sources, including but not limited to the State General Fund, State Highway Account, Public Transportation Account, Proposition 1B (Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond of 2006), Proposition 1A (Safe, Reliable High-Speed Passenger Train Bond Act), Road Repair and Accountability Act of 2017 (Senate Bill 1), and other existing and future state funding sources. However, the Master Agreement does not identify any particular projects or grants nor does it award any grants to the District. The Master Agreement establishes standard terms and conditions applicable to the District when receiving the future state grant funds, if any, but does not commit CALTRANS to make any such awards or the District to accept any such grant funding. Therefore, the proposed Board action related to the Master Agreement does not constitute an “approval” or a “project” under the definitions set forth in CEQA Guidelines Sections 15352 and 15378. Additionally, pursuant to Section 15378(b)(4) of the State CEQA Guidelines, a project does not include the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project that may result in a potentially significant impact on the environment. CEQA requires that the District adequately assess the environmental impacts of its projects. Any project developed as a result of Board’s action or direction that requires the District or the Board’s discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Considerations, if required. The current Board action in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, the proposed Board action related to the Master Agreement complies with Section 87(a) (1) of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action related to the Master Agreement does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations. Therefore, issuance of a CDP or exclusion is not required for the Master Agreement.

TAMT Beyond Compliance Environmental Enhancement Project

The proposed Board action related to the TAMT Beyond Compliance Environmental Enhancement Project would authorize staff to enter into a Baseline Agreement with the CTC to authorize acceptance of grant funds and to obligate matching funds for two distinct and independent projects. The first project is the installation of additional shore power (Shore Power Project). The second project is implementation of an Advanced Marine Emission Control system (AMEC), or “bonnet” project, at TAMT (AMEC Project). While the two projects were applied for in one grant application to the CTC for the sole purpose of acquiring grant funding from the TCEP, they serve different purposes

and could be implemented independently. The Shore Power Project is a voluntary project that was contemplated in 2013 for TAMT. It will allow cold ironing of vessels at the terminal and thereby reduce criteria pollutants. The AMEC Project is a required mitigation measure in the 2016 Final Environmental Impact Report (EIR) for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project and is required to be implemented by the District or tenants when throughput hits a certain level at TAMT. Neither project compels implementation of the other. Additionally, the Shore Power Project is not a reasonable foreseeable consequence of the AMEC Project or vice versa. CEQA does not mandate a single analysis for two unrelated projects simply because the decision-maker is contemplating them at the same time in the same action. (*Aptos County v. County of Santa Cruz* (2017) 10 Cal.App.5th 266.)

The Shore Power Project was analyzed in the Final Mitigated Negative Declaration (MND) for the “Tenth Avenue Marine Terminal Shore Power Project” (UPD #MND-2012-20; SCH #2012101072) which was adopted by the Board on February 12, 2013 by Resolution 2013-32. District staff has reviewed the Shore Power Project and found it consistent with the project analyzed in the MND. Therefore, it is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the Shore Power Project is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

The AMEC Project was required by Mitigation Measure MM-AQ-9 of the Final Environmental Impact Report (EIR) for the TAMT Redevelopment Plan and Demolition and Initial Rail Component Project (SCH #2015031046), which was prepared and certified by the Board on December 13, 2016 by Resolution No. 2016-199. Mitigation Measure MM-AQ-9 requires the District use an at-berth capture and/or control system to reduce vessel hoteling emissions at TAMT prior to reaching annual throughput tonnage identified in the EIR. Although this tonnage trigger has not yet been reached, the proposed Baseline Agreement would help the District to implement Mitigation Measure MM-AQ-9 in anticipation of reaching that tonnage at a future date. Construction and operation of the bonnet system, as well as its impacts, was adequately covered in the Final EIR. Therefore, it is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Accordingly, the AMEC Project is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action related to the TAMT Beyond Compliance Environmental Enhancement Project complies with Section 87(a)(1) of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, this proposed Board action is consistent with the Public Trust Doctrine.

Further, at the February 12, 2013 Board meeting, the Board authorized issuance of a non-appealable CDP (CDP-2013-01) for the “Tenth Avenue Marine Terminal Shore Power Project,” which included installation and operation of shore power at three TAMT berths. Compliance with all applicable

mitigation measures contained within the MND's Mitigation Monitoring and Reporting Program was included as a special condition of the CDP. To date, shore power plugs have been installed at berths 10-2 and 10-3 and the CDP is considered vested. The Shore Power Project would install an additional shore power plug at berth 10-4 and allow for furtherance of the Tenth Avenue Marine Terminal Shore Power Project that was authorized under CDP-2013-01. No further approvals are required pursuant to the California Coastal Act or the District's CDP Regulations for the Shore Power Project.

Finally, the AMEC Project is considered "excluded development" pursuant to Sections 8.a. (Existing Facilities), 8.c (New Construction or Conversion of Small Structures) and/or 8.d Minor Alterations to Land or Water of the District's CDP Regulations because it involves minor alterations involving negligible expansion of the existing use and includes the addition of a health protection device, in conjunction with existing structures, facilities and mechanical equipment and it will result in the installation of new, small equipment and facilities that involves no change to the existing use of the property. Finally, the barge-based AMEC system would result in a minor alteration in the condition of water and have negligible or no permanent impacts on the environment. For these reasons, issuance of a CDP is not required for the AMEC system.

Equal Opportunity Program:

Not applicable.

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Attachment(s):

Attachment A:	San Diego Unified Port District Master Agreement
Attachment B:	051818_SB_1_Baseline Agreement
Attachment C:	State of California Project Programming Request
Attachment D:	Project Report