



Legislation Text

File #: 2020-0061, **Version:** 1

DATE: March 10, 2020

SUBJECT:

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH DOLE FRESH FRUIT COMPANY, REGARDING LOW CARBON FUEL STANDARD (LCFS) CREDITS FROM THE SHORE POWER PLUG LOCATED AT THE TENTH AVENUE MARINE TERMINAL FOR CREDITS GENERATED FROM JANUARY 1, 2020 THROUGH MARCH 31, 2020.

EXECUTIVE SUMMARY:

The State of California's Low Carbon Fuel Standard (LCFS) expanded its optional participant definition in 2019 to include some operations by the District and its tenants. Specifically, using grid power instead of diesel fuel to energize cruise and cargo vessels when berthed can create credits that can be sold in the LCFS market. The creation, registration, optimization and sale of the credits has resulted in a revenue stream for the District for shorepower operations at the Tenth Avenue Marine Terminal (TAMT) and the Cruise Ship Terminals.

Since the Port owns the shorepower infrastructure at TAMT but Dole Fresh Fruit (Dole) is the direct utility customer and account holder for shorepower at TAMT and Dole's operation is currently the only shorepower use at TAMT, the LCFS credits generated at TAMT stem from a combination of Dole and the District. Dole and the District are currently negotiating a long-term MOU to determine, among other things, the appropriate split in revenues generated from the LCFS credits. However, so as not to forego the current opportunity to monetize the credits during negotiations, the District and Dole have been entering into quarterly MOU's with a 50/50 revenue split beginning in Q2 of 2019. Since the Q1 2020 MOU will potentially bring Dole's cumulative share of the proceeds beyond \$175,000, Board approval of the MOU is required.

RECOMMENDATION:

Approve resolution authorizing the Executive Director to execute a Memorandum of Understanding with Dole Fresh Fruit Company, regarding Low Carbon Fuel Standard (LCFS) credits from the shorepower plug located at the Tenth Avenue Marine Terminal for credits generated from January 1, 2020 through March 31, 2020.

FISCAL IMPACT:

The revenue for Q1 2020 shorepower usage at TAMT is estimated to be \$100,000, based on 2019

average results. With the MOU 50/50 revenue share provision, it is estimated that the District will receive \$50,000 and Dole will receive \$50,000.

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:

The State of California established the Low Carbon Fuel Standard (LCFS) in 2012 and placed it under the direction of the Air Resources Board (CARB). The LCFS is a cap-and-trade-like program where the producers of fossil fuels must either increase the use of plant-based carbon (e.g. ethanol and palm oil) or buy credits to meet the requirement.

LCSF credits are created when vehicles use electricity instead of fossil fuels. The credit represents the difference between the carbon intensity of the electricity versus the carbon intensity of the fossil fuel. Algorithms developed by CARB determine the number of credits created based on the alternative energy and equipment used. The program expires in 2030.

Effective January 1, 2019, CARB included shorepower as an eligible resource for credits. Shorepower from previous years is not eligible. With this change, the creation, registration, optimization and sale of the LCSF credits has resulted in a revenue stream for the District for shorepower operations at the Tenth Avenue Marine Terminal (TAMT) and the Cruise Ship Terminals. The Port registered as an opt-in entity in June 2019 and is monetizing eligible credits for Q2-Q4, 2019 for both cruise and cargo shorepower operations.

Since the Port owns the shorepower infrastructure at TAMT but Dole is the direct utility customer and account holder for shorepower at TAMT and Dole's operation is currently the only shorepower use at TAMT, the LCFS credits generated at TAMT stem from a combination of Dole and the District. . Dole and the District are currently negotiating a long-term MOU to determine, among other things, the appropriate split in revenues generated from the LCSF credits. However, so as not to forego the current opportunity to monetize the credits during negotiations, the District and Dole have been entering into quarterly MOU's with a 50/50 revenue split beginning in Q2 of 2019. Since the Q1 2020 MOU will potentially bring Dole's cumulative share of the proceeds beyond \$175,000, Board approval of the MOU is required.

General Counsel's Comments:

The Office of the General Counsel has reviewed and approved this agenda, proposed MOU, and resolution, as presented, as to form and legality.

Environmental Review:

The Board action to authorize the MOU with Dole Fresh Fruit Company regarding LCFS credits does not constitute an “approval” or a “project” under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of the 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 Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, this Board item complies with Section 87 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.

The Board action 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 because they will not result in, without limitation, a physical change, change in use or increase of the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board’s action in no

way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

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Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Memorandum of Understanding with Dole Fresh Fruit Q1 2020