



File #:2023-0293

DATE: December 5, 2023

SUBJECT:

ADOPT AN ORDINANCE TO AMEND THE FISCAL YEAR (FY) 2024 DISTRICT BUDGET, INCREASING THE FY 2024 NON-PERSONNEL EXPENSE APPROPRIATION BY \$12,394,500.00 TO BE FUNDED FROM LOW-CARBON FUEL STANDARD PROGRAM FUNDING

EXECUTIVE SUMMARY:

The District was the first port in California to join the Low Carbon Fuel Standard (LCFS) program in April, 2019. Since that time the District has partnered with multiple tenants to utilize the District's existing contract with Anew EV, LLC (Anew) formerly Blue Source, LLC at a relatively low cost. The tenants provide the electricity use for qualified functions, Anew determines the number of credits and monetizes them for the District, and the District provides each tenant with its share of the proceeds.

The agreement with the Navy (District Clerk Doc. No. 74536, Sep. 23, 2022) differs from the contract with the other partner tenants. Instead of providing the Navy a direct payment, the District will be responsible for developing and managing LCFS-qualified projects at Navy Base San Diego. The District will pay for the projects directly from the Navy's share of the funds. The District will also pay from its own share of Navy generated LCFS revenues for District personnel who will develop the projects and manage the project construction.

The purpose of this action is to move a substantial part of earned NAVY LCFS revenue into the District Budget in an account whereby it can be utilized to fulfill the District's obligations to the Navy.

RECOMMENDATION:

Adopt an ordinance to amend the Fiscal Year (FY) 2024 District Budget, increasing the FY 2024 Non-Personnel Expense appropriation by \$12,394,500 to be funded from Low-Carbon Fuel Standard Program funding

FISCAL IMPACT:

Approval of this action will amend the FY 2024 Budget in the Non-Personnel Expense appropriation increasing it by \$12,394,500 to be funded from the Low Carbon Fuel Standard Program funding.

The agreement with the US Navy through FY 2024 will generate roughly \$10-15 million for Navy projects, District expenses and other projects. Per guidance from the California Air Resources Board the funds will be spent on further electrification projects, which will benefit the communities near the

working waterfront.

COMPASS STRATEGIC GOALS:

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

- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

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 soy bean oil) or buy credits to meet the requirement.

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. CARB included shore power as an eligible resource starting January 1, 2019, and the program expires in 2030. Shore power from previous years was not eligible.

In order to benefit from the LCFS program the District requires the services of a qualified and experienced marketing consultant. The Board of Port Commissioners approved the initial agreement between the District and Blue Source, LLC (District Clerk Doc. No. 69872) effective April 22, 2019. The contract with Blue Source, now doing business as Anew EV, LLC, was extended through December 31, 2030. The new agreement also decreases the fee that Anew will receive from 5% to 4.25%.

The District currently has collaborative LCFS partnerships with tenants that have qualifying resources. The partnership with the Navy is significantly different than the District's other LCFS partnerships. Under the agreement with the Navy, the District will use the Navy's portion of the LCFS proceeds to build projects on Navy Base San Diego, and the District will use its share for qualifying LCFS expenses of its choice.

The proposed action amends the District FY 2024 Budget by adding \$12,394,500 to the Non-Personnel Expense appropriation funded from the Low Carbon Fuel Standard Program funding for use in performing under the Navy contract.

General Counsel's Comments:

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

Environmental Review:

The proposed Board action, including without limitation, increasing the non-personnel expense appropriation to be funded from low-carbon fuel standard program funding through adoption of an ordinance amending the FY 2024 District Budget, does not constitute a project under the definition 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 proposed Board action requiring the District or the Board's discretionary approval resulting in a physical change to the environment would 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 exercise of this discretion is in no way limited by this proposed Board action. Therefore, no further CEQA review is required.

The proposed Board action complies with Section 87 of the Port Act. 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 proposed 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 there will not be, without limitation, a physical change, change in use or increase 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 would remain subject to its own independent review pursuant to the District's certified CDP Regulations, Port Master Plan (PMP), and the relevant chapter(s) of the Coastal Act. The exercise of the District's discretion under the District's CDP Regulations is in no way limited by the proposed Board action.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on District workforce or contract reporting at this time.

PREPARED BY:

Thomas MacLean
Program Director, Policy and Energy