

DATE: APRIL 24, 2024

FROM: COMMUNITY RELATIONS

**SUBJECT: RESOLUTION NO. _____ - APPROVAL OF HARBOR
COMMUNITY BENEFIT FOUNDATION CALENDAR YEAR 2024
OPERATIONS BUDGET AND CALENDAR YEAR 2023 ANNUAL
REPORT**

SUMMARY:

The Harbor Community Benefit Foundation (HCBF) requests that the Board of Harbor Commissioners (Board) approve the Calendar Year (CY) 2023 HCBF Annual Review, approve the CY 2023 HCBF Revised Budget *ex post facto* increase, and approve the proposed CY 2024 HCBF Operations Budget of \$265,000.

For the first time ever, the CY 2024 HCBF Operations Budget is structured to cover HCBF's two separate sources of funding for operations and programs: the TraPac Port Community Mitigation Trust Fund (PCMTF), and the China Shipping Air Quality Mitigation Fund (AQMF). This CY budget will be fully funded from prorated reserves with no requirement for a funds transfer from the PCMTF.

The HCBF is a non-profit organization that receives funding from the PCMTF established by the City of Los Angeles Harbor Department (Harbor Department) and provides grant administration for the PCMTF, subject to Board approval of budget, grants and PCMTF fund transfers in accordance with the TraPac Memorandum of Understanding (TraPac MOU) and Operating Agreement of the TraPac MOU (Operating Agreement).

In accordance with the TraPac MOU and Operating Agreement, HCBF has provided the required financial reports and program documentation in support of its budget request. HCBF will be financially responsible for its operating budget. Additionally, HCBF will provide the Board prior notice of any reallocation of authorized funds that exceed 10% of the total annual budget.

The Harbor Department has completed all funding obligations into the PCMTF under the TraPac MOU, which expired in 2013. The proposed CY 2024 Operating Budget will be funded from available reserves as of December 31, 2023.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

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1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Review, receive and file the audited financials for Harbor Community Benefit Foundation for the calendar year ending December 31, 2022;
3. Approve and ratify ex post facto, the revised Harbor Community Benefit Foundation CY 2023 Operating Budget, in the amount of \$254,875, which increased from the \$199,980 approved by the Board in Resolution No. 22-10092 on November 17, 2022 (change exceeded 10%), noting the revised budget was fully funded from TraPac operating reserves;
4. Receive and approve the CY 2023 report of activity from the Port Community Mitigation Trust Fund;
5. Approve the Harbor Community Benefit Foundation CY 2024 Operating Budget of a not-to-exceed amount of \$265,000, noting the budget will be fully funded *pro rata* from TraPac PCMTF and China Shipping AQMF reserves, with the condition that the Harbor Community Benefit Foundation provides the Board of Harbor Commissioners prior notice of any reallocation within the Harbor Community Benefit Foundation budget that exceeds 10% of the total annual budget; and
6. Adopt Resolution No. _____.

DISCUSSION:

Background/Context - On April 3, 2008, the Board approved an MOU between the City of Los Angeles and certain organizations and individuals (TraPac Appellants) to resolve an appeal of the certification of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the TraPac Container Terminal Project (TraPac Project) to the Los Angeles City Council. The TraPac MOU provides for resolution of the EIR/EIS appeals and creation of the PCMTF designated for mitigation projects that mitigate impacts from port and port-related operations and are consistent with the Tidelands Trust and the TraPac MOU. In addition, the MOU required the creation of a nonprofit entity, the HCBF, to operate the PCMTF and oversee the grant selection and grant-making process in accordance with the TraPac MOU.

On October 26, 2010, the Board approved the Operating Agreement of the TraPac MOU, among the Harbor Department, TraPac Appellants, and the HCBF. The Operating Agreement provides specific details regarding administration of the PCMTF and the role and responsibilities of the Board, the nonprofit entity and the bylaws which govern it. The Harbor Department has completed all funding obligations into the PCMTF under the TraPac MOU, which expired in 2013. The terms of the Operating Agreement will remain

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in effect as long as there is a balance in the PCMTF. As of December 31, 2023, the balance of the PCMTF was \$379,901.

Use of the PCMTF by the HCBF is subject to rules, restrictions, compliance, and monitoring imposed by the MOU, Operating Agreement, and Tidelands Trust Doctrine. The approval of PCMTF-funded projects and transfer of funds from the PCMTF to the HCBF is subject to review and approval by the Board as well as approval as to form and legality by the Office of the City Attorney.

Since its inception, HCBF has produced an Off-Port Impact Land Use Study, Noise Assessments in Wilmington and San Pedro (Phase I of the Noise Mitigation Program) and launched three competitive grant programs: Community Benefit Grants, Healthy Harbor Grants, and Harbor Schools STEAM Initiative Grants. To date, HCBF has distributed \$7,368,276 in grants and other programs.

HCBF Operating Budget Requirements – In accordance with Section 5F of the Operating Agreement, HCBF must submit a detailed budget and report to the Board on an annual basis regarding its administrative needs and requirements. HCBF must also provide an update on the balance of the PCMTF as well as a report on the progress of its programs funded by the PCMTF in accordance with Section 5C of the Operating Agreement. The Board shall exercise its independent judgement as to the requested budget; may not arbitrarily or unreasonably decline a budget request; and shall provide written findings relating to reasons for any rejection. Upon Board approval, funds may be transferred from the PCMTF to HCBF for the purposes outlined in the approved annual budget.

Requirement of Accounting for Non-Tidelands Activities of HCBF - In March 2012, the Board imposed the condition that the Office of the City Attorney and HCBF work together to determine a method that accounts for any HCBF non-Tidelands related activities. This accounting is needed to ensure that the Tidelands-restricted funds released to HCBF for its operating budget are used appropriately for non-Tidelands purposes, while still allowing HCBF to engage in non-Tidelands activities using separate non-Tidelands funds from non-Port sources. HCBF and State Lands Commission (SLC) have agreed upon the current process which was used and reported on in conjunction with the budget approval for CY 2024.

HCBF may only request release of funds from the PCMTF equal to its total proposed operating budget reduced by the projected percentage of non-Tidelands activities. If non-Tidelands activities are estimated to total 5% or less of the budget total request, these activities will be deemed *de minimis* and will not reduce the allowable budget request.

The agreed upon process is as follows:

- 1) Prior to HCBF making its annual operating budget request to the Board of Harbor Commissioners, it shall discuss with representatives of the State Lands

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Commission an estimated projection of the percentage of its non-Tidelands administrative activities for the upcoming year.

- 2) In conjunction with preparation of its annual audit by its outside auditing firm, HCBF will report its actual percentage of non-Tidelands administrative activities from the current year and reconcile it with the previous projection. The amount of this reconciliation shall be taken into account as a debit or credit, as the case may be, calculated into the amount of annual operating budget funds released from the PCMTF to HCBF for the following year. Annual reconciliation based on actual non-Tidelands administrative activities will be delivered following the conclusion of the most recent fiscal year audit.

In accordance with the above methods of accounting for non-Tidelands activities, HCBF is in the process of performing an internal audit of their CY 2023 administrative activities and anticipates that there will be no non-Tidelands expenditures incurred. When complete, the information will be shared with the SLC and the Board. HCBF has provided SLC with its proposed 2024 Operating Budget with a forecast of no non-Tidelands related expenditures for CY 2024 (Transmittal 1).

Annual reconciliation based on actual non-Tidelands administrative activities, was also delivered to the SLC following the conclusion of the most recent CY audit (2022 was completed in December 2022) confirming no non-Tidelands expenditures had been incurred in CY 2022 (Transmittal 2).

2023 Operating Expenses – The HCBF Operating Budget for CY 2023 was approved by the Board in Resolution 22-10092 for an amount not to exceed \$199,980.

On August 25, 2023, a revised CY 2023 Budget totaling \$254,875 was presented to and approved by the Board of Directors of the HCBF. The necessary increase in the revised CY 2023 Budget was prompted by the post-COVID return to public meetings, the reopening of HCBF's San Pedro office, and the search for and hiring of a new Executive Director. The revised CY 2023 Budget included an annual increase of \$54,895 or 27.45%. Funding for the revised budget is covered, in full, by reserves, with no requirement for a transfer from the PCMTF. The revised CY 2023 Operating Budget is hereby submitted to the Board for ex post facto approval and ratification, noting the change exceeded 10%.

Proposed 2024 Operating Budget – The proposed HCBF 2024 Operating Budget is \$265,000, an increase of \$10,125 or 4% relative to the revised CY 2023 HCBF Operating Budget of \$254,875. The increase reflects a rise in payroll and benefits expenses of 6% combined with a modest increase in rent and insurance expenses.

HCBF has two separate sources of funding for operations and programs, namely the TraPac PCMTF and China Shipping Air Quality Mitigation Fund (AQMF). Funding for the CY 2024 Operating Budget shall be charged *pro rata* against each fund in the amount of \$34,450 from TraPac PCMTF operating reserves, and \$230,550 from China Shipping

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AQMF operating reserves (admin funds earned and unspent from AQMF grant Rounds 1 and 2). As a result, no funds transfer is required from the PCMTF held by JP Morgan Bank for the CY2024 Budget.

As approved by the HCBF Board of Directors, operating reserves will essentially be depleted to fund the CY 2024 Operating Budget, with no requirement for a transfer from the PCMTF.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the HCBF's 2024 Operating Budget, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The Harbor Department originally funded the PCMTF. The Harbor Department has completed all funding obligations into the PCMTF under the TraPac MOU, which expired in 2013. As of December 31, 2023, the balance of the PCMTF was \$379,901. The previously approved HCBF Operating Budget for CY 2023 was \$199,980. The revised CY 2023 Operating Budget in the amount of \$254,875, including the *ex post facto* increase of \$54,895, was fully funded from TraPac PCMTF operating reserves.

The proposed HCBF CY 2024 Operating Budget is \$265,000, a 4% increase relative to the revised HCBF CY 2023 Operating Budget, with funding sources as follows:

TraPac PCMTF Operating Reserves	\$34,450
China Shipping AQMF Operating Reserves	\$230,550
Total CY 2024 Funding Sources	\$265,000

As demonstrated above, funding balances on hand are sufficient to fully fund the HCBF CY 2024 Operating Budget, and only require the approval from the Board. There is no request for a transfer of funds from the PCMTF. There will be no financial impact to the Harbor Department from this approval.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed the requested PCMTF CY 2023 revised budget and CY 2024 annual budget approvals, and approved them as to form and legality, including compliance with the TraPac MOU and Operating Agreement.

TRANSMITTALS:

1. HCBF Request for Approval of CY 2024 Operating Budget and CY 2023 Annual Report
2. HCBF Combined Financial Statements for Year Ended December 31, 2022

FIS Approval: *JS*
CA Approval: *SO*

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