



Executive Director's

Report to the

Board of Harbor Commissioners

DATE: FEBRUARY 23, 2012

FROM: EXECUTIVE OFFICE

**SUBJECT: RESOLUTION NO. _____ APPROVE NINE-MONTH
OPERATING BUDGET FOR THE HARBOR COMMUNITY BENEFIT
FOUNDATION**

SUMMARY:

The TraPac Memorandum of Understanding (TraPac MOU) between the TraPac Appellants and the City of Los Angeles Harbor Department (Harbor Department), along with the Operating Agreement to the TraPac MOU, jointly created the Port Community Mitigation Trust Fund (PCMTF) and established a nonprofit, the Harbor Community Benefit Foundation (HCBF), to operate the PCMTF. Pursuant to Section 5(F) of the Operating Agreement, the HCBF shall submit a detailed budget and report to the Board of Harbor Commissioners (Board) on an annual basis regarding its administrative needs and requirements. This \$379,200 request by the HCBF Board of Directors (HCBF Board) is the second portion of the annual budget for calendar year 2012; the initial request in the amount of \$137,500 for a four-month interim budget to cover the months of December 2011 through March 2012 was approved by the Board on November 3, 2011. Staff is recommending the Board approve HCBF's proposed budget with two conditions:

- (1) In accordance with the Operating Agreement, all PCMTF funds approved for transfer under this action shall be used by HCBF for Tidelands Trust-compliant purposes only, including without limitation, any other funds raised using Tideland Trust funds shall be subject to Tidelands Trust restrictions, and the HCBF shall work with Harbor Department staff prior to the next request for annual funding to propose a method of accounting for any non-Tidelands activities of the HCBF; and
- (2) The HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget.

Staff also recommends the Board approve disbursement of these funds to the HCBF by California Community Foundation (CCF), the independent financial management organization which is holding the PCMTF, subject to these two conditions.

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RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Approve the Harbor Community Benefit Foundation nine-month budget for a not-to-exceed amount of \$379,200 with two conditions: (1) in accordance with the Operating Agreement, all PCMTF funds approved for transfer under this action shall be used by HCBF for Tidelands Trust-compliant purposes only, including without limitation, any other funds raised using Tidelands Trust funds shall be subject to Tidelands Trust restrictions, and the HCBF shall work with the Harbor Department staff prior to the next request for annual funding to propose a method of accounting for any non-Tidelands activities of the HCBF; and (2) the HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget;
2. Authorize the Executive Director or her designee to execute a joint letter with HCBF to approve the distribution of funds in one lump sum payment of \$379,200 from the California Community Foundation to the HCBF subject to the same two conditions; and
3. Adopt Resolution No. _____.

DISCUSSION:

History - On December 6, 2007, the Board certified the Final Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Berth 136-147 (TraPac) Container Terminal and approved the TraPac project. Subsequent to that project approval, certain entities, individuals, and organizations (TraPac Appellants) appealed the certification/project approval to the City Council under the provisions of the California Environmental Quality Act (CEQA). On April 2, 2008, the Board approved a Memorandum of Understanding (TraPac MOU) between the City of Los Angeles and the TraPac Appellants. The TraPac MOU provides for settlement of the appeals and creation of a PCMTF to be operated by a nonprofit entity. The PCMTF is currently funded at approximately \$10 million and the nonprofit created to provide administrative services for this fund is the HCBF.

About Harbor Community Benefit Foundation (HCBF) – Pursuant to the TraPac MOU, the HCBF was created for the purpose of overseeing administration of grants from the PCMTF and allocating money for projects that will protect, improve and assess public

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health by off-setting past, present, and future off-port impacts from port operations for the communities of Wilmington and San Pedro.

Operating Agreement – The Operating Agreement (Transmittal 1) to the TraPac MOU establishes the creation of the PCMTF and requires the establishment of a nonprofit to operate the PCMTF. Pursuant to Section 5(F) of the Operating Agreement, the HCBF shall submit a detailed budget and report to the Board on an annual basis regarding its administrative needs and requirements. Also, the Board of Harbor Commissioners shall exercise its independent judgment 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.

Background - In November 2011, the Board approved a transition budget and transferred \$137,500 to HCBF to cover the period ending March 2012, to facilitate a transfer of services from Mission Infrastructure, Inc. consultant team (Mission) to permanent HCBF staff. To complete funding for the calendar year 2012, HCBF requests approval of the annual operating budget and approval of a distribution from the Port Community Mitigation Trust Fund to HCBF for the nine-month operating expenses covering April 2012 through December 2012. HCBF requests a lump sum payment in the amount of \$379,200 for a total of \$516,700 distributed to HCBF for a period of thirteen months (December 2011-December 2012). Transmittal No. 2 is HCBF's request.

Staff recommends that HCBF's proposed budget and transfer be approved with the following two conditions:

- 1) In accordance with the Operating Agreement, all PCMTF funds approved for transfer under this action shall be used by HCBF for Tidelands Trust-compliant purposes only, including without limitation, any other funds raised using Tideland Trust funds shall be subject to Tidelands Trust restrictions, and the HCBF shall work with the Harbor Department staff prior to the next request for annual funding to propose a method of accounting for any non-Tidelands activities of the HCBF; and
- 2) The HCBF provide the Board of Harbor Commissioners prior notice of any reallocation within the HCBF budget that exceeds 10% of the total annual budget.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a nine-month operating budget for the HCBF. As an administrative activity, the Director of Environmental Management has determined that the proposed action is 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.

ECONOMIC BENEFITS:

Approval of the proposed budget will support approximately 3.5 full-time direct jobs in the five-county region.

FINANCIAL IMPACT:

The \$379,200 in funds requested by the HCBF will be transferred from the CCF to the HCBF upon approval by the Board. On January 27, 2012, the PCMTF balance, (approximately \$9.8 million), except for the \$116,298, the amount needed to complete the agreement with Mission Infrastructure, Inc. and final month of interest was transferred to the CCF by the Harbor Department. Any remaining PCMTF funds held by the Harbor Department will be transferred from Account 21958 Center 7000 Program 000 to the California Community Foundation upon completion of the Mission Infrastructure, Inc. agreement which concludes March 1, 2012.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the requested transfer that includes the two conditions as to form and legality including conformance with the TraPac MOU and Operating Agreement.

TRANSMITTALS:

1. Operating Agreement of the TraPac MOU
2. Request from the Harbor Community Benefit Foundation for a Nine-Month Budget

FIS Approval: ef (initials)

CA Approval: ↑ (initials)

APPROVED:



GERALDINE KNATZ, Ph.D.
Executive Director

GK/mrc