

**DATE: OCTOBER 25, 2022**

**FROM: EXECUTIVE OFFICE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF HARBOR  
COMMUNITY BENEFIT FOUNDATION CALENDAR YEAR 2023  
OPERATING BUDGET AND PORT COMMUNITY MITIGATION TRUST  
FUND(PCMTF)TRANSFER**

**SUMMARY:**

The Harbor Community Benefit Foundation (HCBF) requests that the Board of Harbor Commissioners (Board) approve its proposed 2023 Operating Budget of \$199,980 for the calendar year (CY) 2023 and transfer funding in the amount of \$174,014 from the Port Community Mitigation Trust Fund (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). On September 23, 2022, HCBF's Board of Directors approved the proposed operating budget for the CY 2023 and is requesting Board approval and transfer of funds from the PCMTF.

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. Upon approval by the Board, the Harbor Department will authorize JP Morgan Private Bank (JPMPB) to transfer a lump sum amount of \$174,014 from the PCMTF to HCBF. The \$174,014 will be supplemented by savings of \$25,966 from the CY 2022 budget, resulting in the total requested CY 2023 Operating Budget of \$199,980. Upon transfer of funds from the PCMTF, 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 \$174,014 transfer will be made from funds which the Harbor Department previously deposited into the PCMTF.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners:

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;

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2. Approve Harbor Community Benefit Foundation CY2023 Operating Budget of a not-to-exceed amount of \$199,980, 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;
3. Authorize the Executive Director or designee to execute a joint letter with the Harbor Community Benefit Foundation to approve the distribution of funds in one lump sum payment of \$174,014 from the PCMTF at JP Morgan Private Bank to the Harbor Community Benefit Foundation subject to the same notice of reallocation condition set forth in Recommendation 2; and
4. 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 in effect as long as there is a balance in the PCMTF. As of August 31, 2022, the balance of the PCMTF was \$274,148.

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

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Grants. To date, HCBF has distributed \$6,778,006 in grants and other programs, with \$274,148 remaining in the PCMTF as of August 31, 2022.

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 (Transmittal 1). HCBF must also provide an update on the balance of the PCMTF as well as 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 purpose 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 for accounting for any non-Tidelands activities of HCBF. This accounting is needed to ensure that the Tidelands-restricted funds released to HCBF for its operating budget are not used 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 2023. 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 SLC 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.

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In accordance with the above methods of accounting non-Tidelands activities, HCBF is in the process of performing an internal audit of their CY 2022 administrative activities and project that there will be no non-Tidelands expenditures incurred. When complete, the information will be shared with the SLC and the Board at that time. HCBF has provided SLC its proposed 2023 Operating Budget with a forecast of no non-Tidelands related expenditures for CY 2022.

Annual reconciliation based on actual non-Tidelands administrative activities, was also delivered to the SLC following the conclusion of the most recent CY audit (2021 was completed in December 2021) confirming no non-Tidelands expenditures had been incurred in CY 2021 (Transmittal 2).

2022 Operating Expenses - The approved HCBF Operating Budget for CY 2022 was \$325,000. It is anticipated that actual expenses for CY 2022 will be \$299,034 for a savings of \$25,966.

Proposed 2023 Operating Budget - The proposed HCBF 2023 Operating Budget is \$199,980, a decrease of \$125,020, or 38% relative to the CY 2022 HCBF Operating Budget of \$325,000. The decrease reflects a significant reduction in payroll expenses combined with a modest decrease in travel and conference expenses.

Future 2023 Budget Adjustment - It should be noted that this action and the proposed Operating Budget was prepared prior to the City Council's approval of the December 2, 2021 Board action to approve Resolution No. 21-9939 and Agreement No. 21-9844. Among other actions, this resolution and agreement transferred to the PCMTF legacy interest held within a Harbor Department account that predated the transfer of PCMTF administration to JP Morgan. Once Agreement No. 21-9844 has been fully processed, approximately \$400,000 will be transferred to HCBF for administration consistent with other PCMTF funding under the Operating Agreement.

#### **ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of HCBF's 2023 Operating Budget. As an administrative activity, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article 11 Section 2(f) of the Los Angeles City CEQA Guidelines.

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**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 August 31, 2022, the balance of the PCMTF was \$274,148. The previously approved HCBF operating budget for CY 2022 was \$325,000.

The proposed HCBF CY 2023 Operating Budget is \$199,980, a 38% decrease relative to the HCBF CY 2022 Operating Budget, with funding sources as follows:

CY 2023 PCMTF Transfer	\$174,014
CY 2022 Savings	\$25,966
<b>Total CY 2023 Funding Sources</b>	<b>\$199,980</b>

Upon Board approval of the HCBF CY 2023 Operating Budget, the Executive Director will authorize JPMPB to transfer a lump sum of \$174,014 from the PCMTF to HCBF. Net of the proposed transfer of \$174,014, the PCMTF balance will decrease from \$274,148 to \$100,134. There will be no financial impact to the Harbor Department from this transfer as all PCMTF funds are held by HCBF's financial manager JPMPB.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed and approved the requested transfer of funds from the PCMTF as to form and legality including compliance with the TraPac MOU and Operating Agreement.

**TRANSMITTALS:**

1. HCBF Request for Approval of Operating Budget, Year Ending December 31, 2023 and PCMTF Transfer
2. HCBF Combined Financial Statements for Year Ended December 31, 2021

FIS Approval:   
CA Approval: 

APPROVED:

 For

EUGENE D. SEROKA  
Executive Director