



**THE PORT
OF LOS ANGELES**
Executive Director's
Report to the
Board of Harbor Commissioners

DATE: NOVEMBER 9, 2016

FROM: EXECUTIVE OFFICE

**SUBJECT: RESOLUTION NO. _____ - APPROVAL OF HARBOR
COMMUNITY BENEFIT FOUNDATION 2017 OPERATING BUDGET**

SUMMARY:

The Harbor Community Benefit Foundation (HCBF) requests that the Board of Harbor Commissioners approve its proposed 2017 Operating Budget of \$353,427 for the 2017 calendar year and transfer funding in the amount of \$308,274 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 October 21, 2016, HCBF's Board of Directors approved the proposed operating budget for the 2017 calendar year 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 \$308,274 from the PCMTF to HCBF. The \$308,274 will be supplemented by HCBF's projected 2016 surplus of \$45,153 for a total requested 2017 Operating Budget of \$353,427. 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 funded the original PCMTF, but no additional payments from the Harbor Department will be required to fund this request.

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 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 calendar year 2017 Operating Budget of a not-to-exceed amount of \$353,427, with the condition that the Harbor Community Benefit Foundation provides the Board of Harbor Commissioners prior notice to any reallocation with the Harbor Community Benefit Foundation budget that exceeds 10% of the total annual budget;
3. Approve the Harbor Community Benefit Foundation to retain the \$45,153 surplus from the 2016 Operating Budget for the purpose of funding the current request for its 2017 Operating Budget;
4. 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 \$308,274 from JP Morgan Private Bank to the Harbor Community Benefit Foundation subject to the same condition set forth in Recommendation 2; and
5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context - On April 3, 2008, the Board approved a 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 the PCMTF and the role and responsibilities of the nonprofit entity and the bylaws which govern it. The terms of the Operating Agreement will remain in effect as long as there is a balance in the PCMTF. As of September 30, 2016, the balance of the PCMTF was \$4,291,215. After the initial funding established by the TraPac Project, funds are added to the PCMTF primarily by contributions from the Harbor Department for projects designated in the TraPac MOU Exhibit B that have EIRs certified by May 31, 2016 and have notices to proceed with construction or actual construction commences.

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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 successfully implemented an Off-Port Impact Land Use Study, a Noise Assessment in Wilmington (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 \$5,220,000 in grants to fund projects designed to address Port impacts on aesthetics, air quality, biological resources, cultural resources, health risks and land use for San Pedro and Wilmington through community benefits in beautification, training, safety, employment opportunities and/or community initiatives.

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. 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 calendar year 2017.

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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 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 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 non-Tidelands activities, HCBF performed an internal audit of their calendar year 2016 (9-months plus 3-month forecast) administrative activities and determined that there were no non-Tidelands expenditures incurred. This information was shared with the SLC and 2016 internal financial reports were submitted to SLC in October 2016. HCBF has also provided SLC its proposed 2017 Operating Budget with a forecast of no non-Tidelands related expenditures for calendar year 2017.

Annual reconciliation based on actual non-Tidelands administrative activities, was also delivered to the SLC following the conclusion of the most recent calendar year audit (2015 was completed in April 2016) confirming no non-Tidelands expenditures had been incurred in calendar year 2015 (Transmittal 2).

2016 Operating Expenses – The approved HCBF Operating Budget for calendar year 2016 was \$437,706, of which approximately \$392,553 is projected to be spent by the end of the year, detailed in Transmittal 1. Projected budget savings of \$45,153 in 2016 can be attributed to reduction in staff, eliminating marketing expenditures and reduced use of legal services.

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Proposed 2017 Operating Budget – The proposed HCBF 2017 Operating Budget is \$353,427, a reduction of \$107,320 or 19.3% from the 2016 Operating Budget. Staff recommends approval of the HCBF 2017 Operating Budget in the amount of \$353,427, with the condition that HCBF provides the Board prior notice of any reallocation within the HCBF operating budget that exceeds 10% of the total annual operating budget. The same condition was imposed by the Board's approval of the HCBF 2016 Operating Budget on November 23, 2015; however to date, no such request from HCBF has needed to come before the Board.

Upon Board approval, the Harbor Department will authorize JPMPB to transfer \$308,274 from the PCMTF to HCBF. The PCMTF transfer of \$308,274 combined with HCBF's 2016 projected surplus of \$45,153 will constitute the total funding of \$353,427 requested for the HCBF 2017 Operating Budget. The transfer of \$308,274 will result in a new PCMTF balance of \$3,182,941, inclusive of fees and market value change and a recently Board-approved Community Benefits Grant Round 4 disbursement of \$800,000.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of HCBF's 2017 Operating Budget. 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.

FINANCIAL IMPACT:

The Harbor Department originally funded the PCMTF. As of September 30, 2016, the balance of the PCMTF was \$4,291,215. The previously approved HCBF operating budget for 2016 was \$437,706. The proposed HCBF 2017 Operating Budget is \$353,427, a reduction of \$107,320 or 19.3% from the 2016 Operating Budget. This total budget amount consists of a transfer from the PCMTF in the amount of \$308,274 combined with the projected \$45,153 surplus from the HCBF 2016 Operating Budget.

Upon Board approval of the HCBF 2017 Operating Budget, a lump sum of \$308,274 will be transferred from the PCMTF to HCBF, and the new PCMTF balance will be \$3,182,941 (including a transfer of \$800,000 requested for the Community Benefit Grants Program, Round 4, which recently received Board approval). 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, and JPMPB will be responsible for disbursing such funds upon Board approval of this action.

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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.

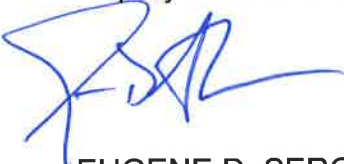
TRANSMITTALS:

1. HCBF Request for Approval of Operating Budget, Year Ending December 31, 2017 and PCMTF Transfer
2. HCBF Combining Financial Statements for Year Ended December 31, 2015

FIS Approval: MB (initials)
CA Approval: AS (initials)

APPROVED:


DOANE LIU
Deputy Executive Director


EUGENE D. SEROKA
Executive Director

Author: T. Adams Lopez