



**DATE: JANUARY 8, 2020**

**FROM: EXECUTIVE OFFICE**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF HARBOR  
COMMUNITY BENEFIT FOUNDATION 2020 OPERATING BUDGET**

**SUMMARY:**

The Harbor Community Benefit Foundation (HCBF) requests that the Board of Harbor Commissioners (Board) approve its proposed 2020 Operating Budget of \$313,795 for the 2020 calendar year and transfer funding in the amount of \$222,966 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 November 8, 2019, HCBF's Board of Directors approved the proposed operating budget for the 2020 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 \$222,966 from the PCMTF to HCBF. The \$222,966 will be supplemented by HCBF's projected 2019 surplus of \$90,829 from previously disbursed funds, for a total requested 2020 Operating Budget of \$313,795. 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 \$222,966 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 calendar year 2020 Operating Budget of a not-to-exceed amount of \$313,795, 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. Approve the Harbor Community Benefit Foundation's retention of the \$90,829 surplus from the 2019 Operating Budget for the purpose of funding the current request for application in its 2020 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 \$222,966 from JP Morgan Private Bank to the Harbor Community Benefit Foundation subject to the same notice of reallocation condition set forth in Recommendation 2; and
5. 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 November 30, 2019, the balance of the PCMTF was \$1,886,357.

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

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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 \$6,327,206 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 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 calendar year 2020.

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

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- 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 is in the process of performing an internal audit of their calendar year 2019 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 2020 Operating Budget with a forecast of no non-Tidelands related expenditures for calendar year 2019.

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 (2018 was completed in December 2018) confirming no non-Tidelands expenditures had been incurred in calendar year 2018 (Transmittal 2).

2019 Operating Expenses – The approved HCBF Operating Budget for calendar year 2019 was \$298,240. During 2019, HCBF temporarily scaled back its staff support, reflected in an estimated savings of \$42,795 in payroll expenses by year-end.

Proposed 2020 Operating Budget – The proposed HCBF 2020 Operating Budget is \$313,795, an increase of \$15,555 or 5.2% relative to the 2019 Operating Budget. This increase reflects additional payroll expenses to support increased program delivery with an expected addition of two part-time staff members/interns. Staff recommends approval of the HCBF 2020 Operating Budget in the amount of \$313,795, 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 2019 Operating Budget; however to date, no such request from HCBF has needed to come before the Board.

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of HCBF's 2020 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 II 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 November 30, 2019, the balance of the PCMTF was \$1,886,357. The previously approved HCBF operating budget for 2019 was \$298,240. The proposed HCBF 2020 Operating Budget is \$313,795. This total budget amount consists of a transfer from the PCMTF in the amount of \$222,966 combined with the HCBF's retention and application of the projected \$90,829 surplus from the HCBF 2019 Operating Budget.

Upon Board approval of the HCBF 2020 Operating Budget, the Executive Director will authorize JPMPB to transfer a lump sum of \$222,966 from the PCMTF to HCBF, resulting in the new PCMTF balance of \$1,663,391. 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, 2020 and PCMTF Transfer
2. HCBF Combined Financial Statements for Year Ended December 31, 2018

FIS Approval: MB

CA Approval: Jme

APPROVED:



EUGENE D. SEROKA  
Executive Director