

**DATE: APRIL 24, 2024**

**FROM: COMMUNITY RELATIONS**

**SUBJECT: RESOLUTION NO. \_\_\_\_\_ - APPROVAL OF HARBOR  
COMMUNITY BENEFIT FOUNDATION SUBMISSION OF THE ANNUAL  
AIR QUALITY MITIGATION FUND REVIEW FOR CALENDAR YEAR  
2023 AND BUDGET FOR CALENDAR YEAR 2024**

**SUMMARY:**

Staff requests approval of the Harbor Community Benefit Foundation (HCBF) reports: the Air Quality Mitigation Fund (AQMF) Calendar Year (CY) 2023 Review and CY 2024 Operations Budget.

In accordance with the China Shipping Memorandum of Agreement (MOA) No. 21-9842, the HCBF is required to submit a yearly budget report on the AQMF to the Harbor Department Executive Director and obtain approval.

The CY 2024 HCBF Operations Budget is the first year that the budget is structured to cover operations of HCBF's two separate sources of funding for operations and programs, namely the TraPac Port Community Mitigation Trust Fund (PCMTF) and the China Shipping AQMF. In addition, the CY 2024 HCBF Operations Budget will be fully funded from on-hand reserves with no requirement for a funds transfer from the AQMF. The HCBF is a non-profit organization that receives funding from the AQMF established by the City of Los Angeles Harbor Department (Harbor Department) and provides grant administration for the AQMF, subject to Board approval of budget, grants and AQMF fund transfers.

HCBF's proposed CY 2024 Operating Budget of \$265,000 will be funded from HCBF reserves, with no requirement for a transfer from the AQMF. Furthermore, no portion of the separate TraPac PCMTF administrative cost budget is funded by China Shipping AQMF reserves.

The HCBF will be financially responsible for funding the AQMF Operations Budget.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

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. Receive and approve the Reports of the Harbor Community Benefit Foundation's Air Quality Mitigation Fund Annual Review for 2023;
3. 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; and
4. Adopt Resolution No. \_\_\_\_\_.

**DISCUSSION:**

Background/Context - On June 14, 2004, the City and Petitioners became bound by the Amended Stipulated Judgment (ASJ) to settle the case of Natural Resources Defense Council, Inc., et al. v. City of Los Angeles, et al., Los Angeles County Superior Court Case No. BS 070017, a case brought by Petitioners challenging the environmental impact report and related findings for the China Shipping Container Terminal Project at Berths 99-109 (the China Shipping Project).

The ASJ required the City to adopt mitigation measures for the China Shipping Project and other Port of Los Angeles (Port) projects, including the provision of \$50 million for the mitigation of air quality and aesthetic environmental impacts of Port operations on the communities surrounding the Port, including both the communities of Wilmington and San Pedro, California (Mitigation Payment).

HCBF, the administrator of these funds, is an independent legal entity that serves as the neutral, third-party to administer the AQMF and solicit, develop, and select projects for grant funding. HCBF must request the Board to approve the selected projects and approve a transfer of funds from the AQMF to fund grant awards.

Funds from the Mitigation Payment were expended on projects that mitigated the environmental impacts of the China Shipping Project (China Shipping Mitigation Projects) and were administered by the Harbor Department. The ASJ also provided that the Mitigation Payment be committed for use within five years, but that if at the conclusion of the five years any funds remained that had not been allocated, such funds would be applied to "an independent air quality mitigation program available to administer the funds and mutually agreeable to the Parties, with restrictions sufficient to ensure that such funds are used to reduce Port-related emissions."

That five-year term lapsed on June 14, 2009, with approximately \$9,226,944 remaining unallocated. By way of a separate agreement, \$4,000,000 of such remaining funds were provided to the South Coast Air Quality Management District to fund a zero- emissions catenary system demonstration project which was deemed an acceptable allocation by the City and the China Shipping Petitioners and reasonably calculated to reduce Port-related air emissions.

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On October 24, 2016, the ASJ Parties agreed, and the Board approved, a disbursement of the remaining unallocated \$5,226,944 to an independent air quality mitigation program, to be administered by the HCBF for the reduction of Port-related air emissions (the “Air Quality Mitigation Fund” or “AQMF”).

The AQMF is administered and managed by the HCBF to solicit and select projects and programs to receive funding from the AQMF with Board approval. On November 30, 2016, the Board approved an advance of administrative costs of \$250,000 from the AQMF to HCBF to administer development and issuance of the initial Requests for Proposal for projects. The HCBF may annually request withdrawal of funds from the AQMF to pay for actual administrative costs, not to exceed ten percent of the annual dollar amount of the grants approved.

In February 2017, \$5,075,176 (inclusive of interest and dividends), was transferred from the City to the AQMF account at Bank of America (with oversight from HCBF’s independent fund manager, the California Community Foundation) and \$250,000 was advanced to HCBF for HCBF administrative costs to administer the AQMF.

HCBF Operating Budget Requirements – In accordance with Section 5g and Section 5h of the China Shipping MOA (see below), after this initial \$250,000 advance of administrative costs, HCBF annually submits its annual budget request to the Harbor Department for withdrawal of AQMF funds to cover the next year’s annual budget for administrative costs. When a request for approval exceeds \$150,000, the request is presented to the Board for approval. The Harbor Department is required to approve adequate funding to HCBF to meet the administrative needs of program administration. The Board cannot arbitrarily or unreasonably decline or reduce an annual budget request. Should the Harbor Department decline or reduce a budget request from HCBF, it shall provide written findings relating to the reasons for the rejection.

*“g. Administrative Costs. HCBF shall annually withdraw funds from the AQMF special program account to pay for actual administrative costs. HCBF shall work with Harbor Department staff and SCAQMD when and where possible to reduce administrative costs by obtaining subject matter expertise and cost containment. Withdrawals to cover actual administrative costs generally shall not exceed 10% (ten percent) of the dollar amount of the grants approved annually by the BOHC after the first year from the Effective Date.*

*Administrative costs may include, but are not limited to, costs for staff time managing and overseeing the implementation of this Agreement, insurance, legal costs including without limitation those related to mediation and arbitration under this Agreement, program management to ensure timely progress and oral/written reporting, contract administration time for contracts and invoices, and technical staff time for review of contractor work and expertise on project work. Technical and legal support for the purpose of determining whether a proposed project is consistent with this Agreement shall be treated as part of the administrative costs*

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*of HCBF. In the event HCBF determines that the amount of administrative costs will exceed the 10% (ten percent) limit, HCBF may request an increase in this amount in any given year by submitting a request to the Harbor Department.”*

*“h. Annual Budget. Not later than the one year anniversary of the receipt of the advance provided for in Paragraph 5(g)(i) above, and annually thereafter, HCBF shall provide to the Executive Director of the Harbor Department an accounting of the annual administrative costs (no less than 6 months accrued and no more than 6 months projected), coupled with an annual budget and funding request for the anticipated administrative costs for the subsequent year. Subject to the terms, conditions and limitations of this Agreement and other provisions of the law, the Harbor Department shall approve adequate funding to HCBF to meet the administrative needs of program administration.*

*The Harbor Department shall not arbitrarily or unreasonably decline or reduce an annual budget request from HCBF. Should the Harbor Department decline or reduce a budget request from HCBF, it shall provide written findings relating to the reasons for the rejection.”*

AQMF CY2023 Review - On November 21, 2019, the Board approved the first round of AQMF grants in the amount of \$823,050 to fund the rapid deployment of the electric active STOP-START technology system. On November 17, 2022, following grantee/technology provider’s bankruptcy and suspension of the project, the Board approved Resolution No. 22-10094, for the return of the demonstration project’s remaining funds of \$191,050 back to the AQMF to be used for other future grant funding opportunities.

On March 16, 2023, the Board approved Resolution No. 23-10141, for the approval of WattEV to receive a grant of \$2,000,000 from the second round of AQMF grants for Public Electric Vehicle (EV) Charging Stations for Trucks. As of December 31, 2023, the balance of the AQMF was \$2,402,456 (Transmittal 1).

CY 2024 Budget - During CY 2024, it is forecast that the China Shipping AQMF could award approximately \$2,000,000 in Round Three grants. The HCBF Board has approved Round Three of AQMF grants pending in the amount of \$2,000,000. This funding item will come before the Board for approval shortly in a separate agenda item. Should the Board approve the Round Three grants, the AQMF balance will be \$402,456.

All funding awards must be Tidelands Trust-compliant and a majority of AQMF funds shall be spent towards the demonstration or implementation of zero or near-zero emission freight movement technologies, and should be “given to technologies that, if they were widely deployed, would significantly reduce air emissions and/or air quality related health risks from the largest source of air pollution from Port operations.”

Grant applicants are required to prove that the project would benefit the communities of San Pedro and/or Wilmington or an area within a 25-mile radius from the Port.

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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 the release of funds from the AQMF 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.
- 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 AQMF to HCBF for the following year. An 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.

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).

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**ENVIRONMENTAL ASSESSMENT:**

The proposed action is to receive and approve the AQMF CY 2023 Annual Review and CY 2024 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 CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

The proposed action of receiving and approving the HCBF AQMF CY 2023 Review and CY 2024 Operations Budget is an administrative action. This Board action neither authorizes any expenditures nor commits the Harbor Department to any additional funding of the AQMF.

**CITY ATTORNEY:**

The Office of the City Attorney has reviewed this board report and it raises no legal issues at this time.

**TRANSMITTALS:**

1. HCBF AQMF CY 2023 Annual Review/CY 2024 Annual Budget Report
2. HCBF Combined Financial Statements for Year Ended December 31, 2022



CECILIA MORENO  
Community Relations Director



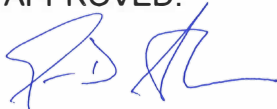
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FIS Approval: 95  
CA Approval: 50



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