



DEPARTMENT OF PUBLIC WORKS

**ADOPTED BY THE BOARD  
PUBLIC WORKS OF THE CITY  
of Los Angeles California**


AS AMENDED\*\*

MAY 2, 2018

AND REFERRED TO THE CITY COUNCIL  
**MAY 02 2018**

AND REFERRED TO THE MAYOR

HONORABLE MEMBERS OF THE  
BOARD OF PUBLIC WORKS

  
**Executive Officer  
Board of Public Works**

NEXUS STUDY OF THE PUBLIC WORKS TRUST FUND ACCOUNT NO. 4873 AND  
ESTABLISHMENT OF PUBLIC WORKS TRUST FUND USE RULES AND GUIDELINES

**RECOMMENDATIONS:**

That the Board of Public Works, subject to approval by the Los Angeles City Council (City Council) and Mayor:

1. APPROVE AND FORWARD this report, with its attachments to the City Council and Mayor, with the recommendation that the City Council, subject to the concurrence of the Mayor, to (a) receive and file the Public Works Trust Fund Nexus Study, (b) adopt the establishment of the Public Works Trust Fund Use Rules and Guidelines, (c) concur with the finding and determination that a reasonable relationship (Nexus) exist for funds in the amount of \$5,895,871.43 when said funds is used for administration, original or like-kind purpose, within a reasonable boundary, and/or other specific factors and variables described in the Nexus Study, and (d) authorize a series of recommendations to manage said funds and implement Public Works projects and services;
2. RECEIVE AND FILE the 2018 Public Works Trust Fund Nexus Study;
3. ADOPT the establishment of the Public Works Trust Fund Use Rules and Guidelines;
4. FIND that (a) the proposed use of fund deposits in the amount of \$5,895,871.43 when originally collected and received were based on ordinances, policies, and/or codes pre-established by the City to have a "relationship" between the purpose and intended use, and (b) it is in the City's best interest to implement various Public Works projects and services based on this pre-established "relationship" to serve as a public good;
5. DETERMINE that a reasonable relationship (Nexus) exists and supported for deposits, listed in Appendices I through IV in the Public Works Trust Fund Nexus Study, between the deposit's original purpose/location and use of said funds inasmuch as \$4,638,565.84 represents available deposits/fees collected post-1989 to fund public works projects and services based on the original deposit/fee intent and nexus to the specified or non-specified project type and location (boundary), and \$1,257,305.59 represents available deposits/fees collected pre-1989 to fund Public Works projects and services, which the latter has greater fund use flexibility.

6. AUTHORIZE the fund use and transfer of Public Works Trust Funds in the amount of \$5,895,871.43 as follows:

- a) Administrative and Management (Salary) Expense – ~~To fund the management and administration of the Public Works Trust Fund as listed in Nexus Study Appendix I up to \$487,950.33 (Option A);~~ \*\*see page 15
- b) Use on Any Project – To fund Public Works Improvements/Projects in locations (either at specified project location or Council District of the project) to be determined by factors and variables listed in Nexus Study Appendix II, associated with the specific deposit up to \$1,533,531.73 (Option B);
- c) Use in Any Council District – To fund Public Works Improvements/Projects for use in any location (no specific Council District) for Public Works Improvements/Projects as determined and documented in Nexus Study Appendix III with the specific deposit up to \$20,000.00 (Option C); and
- d) Use on Specific Project Type and Nexus – To fund Public Works Improvements/Projects based on variables listed in Nexus Study Appendix IV, for the specified Nexus location (either at specified project location or Council District of the project) and project type documented with the specific deposit up to \$3,854,389.37 (Option D).

7. AUTHORIZE the Executive Officer of the Board of Public Works to:

- a) Approve the transfer of funds from the Public Works Trust Fund No. 834, Department 50, Account No. 4873, to the Board of Public Works Fund 100, Department 74, Salary Account 001010 for administrative and fund management (salary) expenses approved in recommendation 6a above; \*\*see page 15
- b) Approve the transfer of funds from the Public Works Trust Fund No. 834, Department 50, Account No. 4873, to the City's Capital Improvement Expenditure Plan (Fund No. 100/Dept. 54) for specific Public Works projects as deemed appropriate by the Board of Public Works based on (i) factors and variables or (ii) location and project type, and (iii) in accordance to the established Public Works Trust Fund Use Rules and Guidelines at an amount not-to-exceed the limits approved in recommendation 6b, 6c, and 6d above;
- c) Approve the refund of \$30,000.00 to the current owner, once determined, following City refund guidelines in compliance with City policy, Controller guidelines, and CA Mitigation Fee Act (see Appendix V or Option E of the Public Works Trust Fund Nexus Study).
- d) Further examine the remaining balance of \$6,054,886.06 in Account No. 4873 and report back on potential reasonable relationship(s) that may exist, if any, including review of all other accounts within the Public Works Trust Fund; and
- e) Make technical corrections as may be necessary to carry out the purpose and intent of this report and forward request to the Controller and/or City Administrative Officer as-needed.

8. AUTHORIZE the Board of Public Works, Director of the Office of Accounting to transfer and/or refund funds from the Public Works Trust Fund upon request from the Board of Public Works, Executive Officer;
9. AUTHORIZE resolution authority for one Senior Management Analyst I (Class Code 9171-1) position at the Board of Public Works to assist in the management of the Public Works Trust Funds, and approve the continuation of the resolution authority in Fiscal Year 2018/19 if not included in the adopted Fiscal Year 2018/19 budget; and
10. REQUEST the Office of the City Attorney to provide any advice and/or opinions to the Board of Public Works that may be necessary to implement the recommendations in this report.

\*\* See page 15 for amendments.

**ATTACHMENTS:**

1. Public Works Trust Fund Nexus Study Account No. 4873 by the Bronner Group, LLC.;
2. Map Pinpoint of Available Funds by Project Location Proximity;
3. Public Works Trust Fund Use Rules and Guidelines; and
4. Position Description – Senior Management Analyst I (Class Code 9171-1).

**DISCUSSION:**

***BACKGROUND***

In the early 1940's, the City of Los Angeles (City) created the Department of Public Works, Public Works Trust Fund (PTWF) with fiduciary governing oversight assigned to the Board of Public Works (Board). As of June 30, 2016 and 2017, the PWTF balance was approximately \$107.6 million and \$124.7 million, respectively. The PWTF holds a variety of deposits (approximately 12,000) from receipts, deposits, fees, etc. related to Public Works projects and operates like a bank or escrow account where funds are held and disbursed for a specific purpose or refunded. These funds are typically collected from developers, contractors, and property owners yet some deposits represent monies from defaulted bonds, cash-in-lieu of bond deposits, fines, and settlements.

The Fiscal Year 2017/18 budget funded a Nexus Study of the Public Works Trust Fund (PWTF) focused on the (1) examination of one specific account (Special Projects Account No. 4873) with 360 deposits valued at approximately \$12 million as of June 30, 2016, and (2) exploration of policy options that could be available to the Board of Public Works (Board), Mayor, and City Council to use these funds if a reasonable relationship could be established between the deposit's original purpose/location and potential uses of said funds, such as funding similar or like-kind public works projects and services.

The Nexus Study required four major deliverables (see Attachment 1):

1. Benchmarking Study - To understand how other California municipalities manage fee deposits collected and their experience, if any, regarding the State of California's Mitigation Fee Act (MFA) of 1989;
2. Special Projects Deposit Review – To provide actions needed to manage funds and assess what qualifies as a "reasonable relationship," or "nexus," for fund use according to the State of CA Mitigation Fee Act of 1989.
3. Fund Use Policy Options - To provide the Board options for consideration to establish rules and guidelines in the disposition of fund deposits.
4. Recommendations and Roadmap – To provide the Executive Officer and Board an action plan with observations, analysis, and recommendations for improving procedures and systems to manage fee deposits collected.

In brief, the PWTF Nexus Study determined that 132 deposits (see Attachment 2 for pinpoint Map of project general area locations) are available for use at an aggregate total of \$5,895,871.43, which represents approximately 49% of the total Special Project deposits out of \$11,980,757.49. In addition, one deposit in the amount of \$30,000 is determined as refundable. The remaining balance of \$6,054,886.06 (about 227 deposits) was not examined due to timing and resource limitations. However, it is anticipated that additional funds may be available for use upon continued examination of the remaining deposits, including other accounts within the PWTF. Therefore, a resolution authority for one Senior Management Analyst I (Class Code 9171-1) position is recommended to continue this effort. The position salary cost is fully reimbursable as an allowed administrative and management expense of the PWTF (see Attachment 1, Option A).

### ***NEXUS STUDY PROCESS***

On February 17, 2017, the Board authorized the Executive Officer to release a Request for Proposal (RFP) to review Pre- and Post-1989 PWTF deposits in account no. 4873, identify options to develop a potential "PWTF Nexus Fund Use" policy or guidelines, and establish a reasonable relationship or "Nexus" for the use of the said funds, if any. Proposals were received on or by April 21, 2017.

In May 2017, a three-member evaluation panel reviewed proposals based on six criteria: (1) Approach and Methodology; (2) Experience and Qualifications; (3) Cost and Budget Control; (4) Schedules and Deliverables; (5) Overall Proposal Evaluation and Content; and (6) Overall Proposal Responsiveness. The evaluation team recommended the Bronner Group (Bronner) based on service qualifications and prior experience working with the City's Harbor Department, Housing Authority, and Offices of the City Controller and Finance on similar auditing and accounting initiatives. Bronner's proposed approach and methodology appeared to be well planned, logical, organized, and within budget.

On June 16, 2017, the Board awarded a six-month contract with two, six-month extension options (C-129518) to Bronner in the amount of \$140,000, which was executed on June 21, 2017. On December 18, 2017, the Board approved the first of two, six-month renewal options extending contract term to June 30, 2018 (amount remained unchanged).

## **NEXUS STUDY SCOPE OF WORK**

The Nexus Study scope of work focused on four major deliverables - Benchmark Study, Deposit Review Report, Policy Options for Fund Use Guidelines Establishment, and Roadmap Report - and was completed through a five-phase approach.

Phase 1 - To kick-off, plan and monitor the project, collect PWTF data, review a series of electronic files (i.e. spreadsheets, reports, databases, system), prepare work-paper for documenting file conditions, materials, and file requests, and understand the level of information available and gaps. Phase 1 was completed by mid-July 2017.

Phase 2 – To develop a benchmarking survey to compare different fund management models, process flows, metrics, and policies used for deposit types, including legal/financial restrictions to manage funds in compliance with State of California MFA. On August 15, 2017, the benchmark survey was released to 38 California cities and counties. In addition to the survey, interviews were conducted with eight (8) municipalities. Phase 2 was completed in mid-September 2017.

Phase 3 – To develop Nexus recommendations and/or fund use options to the Board based on best practices, benchmark study findings, and/or case law(s). Also, to develop a PWTF Nexus Fund Use Policy or Guidelines focused on setting a "reasonable relationship" or "Nexus" between the (a) original purpose and proximity of the original location where funds were collected for, and (b) a "like purpose" Public Works project that has a physical "Nexus" to said funds. On October 23, 2017, the Bronner team, along with the Executive Officer of the Board, presented its preliminary findings to the Board Commission.

Phase 4 – To review deposits and create a Deposit Review Report, including review of pre- and post-1989 State Law requirements, validation and/or identification of data, and categorize data by the nature of deposit/disposition, "Like Categories" or "Like Purpose", Geographic location, and Council District. Phase 4 was completed in mid-December 2017.

Phase 5 - To develop a road map or action plan of steps and actions needed to manage unclaimed deposits based on proposed recommendations. Phase 5 was completed in mid-January 2018. Immediately after, Bronner began the preparation of the final report. The final report was completed on February 28, 2018.

## OVERVIEW OF NEXUS STUDY FINDINGS AND RECOMMENDATIONS

The Nexus Study provides an independent review and analysis of 132 deposits and suggests appropriate next steps for the Board, Mayor, and City Council to find and determine a nexus or reasonable relationship between the (a) deposit's original purpose for which it was collected and (b) the ultimate use of said funds for the same or like-kind purpose within specified factors and/or variables, where applicable (see Attachment 1, Appendices I-IV).

In brief, the Nexus Study findings are focused on:

- Benchmark Survey;
- Case Law Review – Applicability of the 1989 State of CA Mitigation Fee Act (MFA);
- Fund Use Options (see Attachment 3 for Fund Use Rules and Guidelines); and
- Recommendations and Next Steps.

### Benchmark Survey

In total, 23 municipalities provided responses to the Benchmarking Survey. The following study findings and relevancy are intended to guide and inform the City's decision making toward establishing a reasonable relationship of funds. It is important to note that the data collected represents a small sample set; therefore, difficult to generalize conclusions yet significant to suggest findings. Appendix VII of the Nexus Study provides the complete survey questions and responses.

### Survey Findings

- 100% of respondents link a permit deposit to the physical location of the project, and some also use other methods, such as property index numbers (26%), and boundary/districts/wards/zones (21%).
- 47% of respondents indicate that money is kept and used for the purpose it was collected when a contractor/developer fails to meet the terms and conditions of a permit.
- 60% of respondents use or reference the use of a nexus study or impact fee study as their preferred mechanisms to establish "reasonable relationships."
- Most respondents indicated that money (funds) is refunded to the permittee when a project is never started.
- Most respondents indicated that money (funds) is used to complete the original project for which the deposit is made when a bond is defaulted.

### Interview Findings

- Interviewees did not express concern about the threat of legal action related to the

MFA since their municipalities collected fees based on ordinances, policies and codes, which meant that the “reasonable relationship” between the deposit and the use of the funds was already pre-established when the deposit was received.

- Most were not aware of specific MFA reporting requirements.
- Most segregate deposits based on purpose of the fees.
- Establishment of fees and how they are collected is generally similar from municipality to municipality.
- Investment in a software solution that seamlessly tracks permits and deposits would provide better documentation and evidence of compliance.

It is important to note that although the Department of Public Works follows a similar process in establishing and collecting fees to that of the benchmarked municipalities, it is less consistent about segregating those fees, based on purpose, into separate deposit accounts. Bronner recommends that this challenge could be addressed through both process mapping and technology improvement.

### Case Law Review

The State of California Mitigation Fee Act (MFA) (Assembly Bill 1600, Gov. Code 6600 et seq.) was enacted in 1987 with an effective date of January 1, 1989. The MFA requires that fees collected must be used for the project’s intended purpose or returned to the depositor. The MFA requires annual reporting and a more detailed reporting of funds every fifth year, including compliance with various requirements, such as (a) identifying the purpose to which the fee is to be used and (b) demonstrating a reasonable relationship between the fee and the purpose for which it is charged. Further, the MFA regulates city and county practices regarding the structure, collection, and management of said fees.

For applicability of the MFA to the PWTF, various cases were reviewed yet two cases were most relevant as follows (see Nexus Study Appendix VIII for detailed case citing):

Case 1: Meeting MFA Reporting Requirements - In this 2005 case, Daniel Walker, as Trustee, etc., et al., v. City of San Clemente et al., the City of San Clemente was ordered to refund unexpended impact fees and accrued interest to the current owners of the properties on which the fee had been imposed because it (1) failed to make all required findings in its five year report, and (2) failed to identify a start date for the construction of those improvements yet had sufficient funds to complete its beach parking improvements. In short, the City of San Clemente created a “Beach Parking Impact Fee” because it anticipated that residential development would significantly increase the demand for public parking at its City’s beaches. Between 1989 and 2009, the City collected nearly \$10 million but only spent less than \$350,000.

Case 2: Establishing a “Reasonable Relationship” – In this 2010 case, NorCal Investment Partners, L.P. v. City of Redding, the courts ruled in favor of the City of Redding citing

that a valid governmental purpose for a public project (in this case traffic project) does not require evidentiary support and that *“the legislative body enjoys nearly unfettered discretion to determine what goals best serve the public good.”* NorCal contended that an ordinance establishing an impact fee violated the MFA for four reasons (making developers pay for own improvement, imposing a fee without evidence, subsidizing cost of others, and failure to establish a nexus between improvement and fee) and argued that the City of Redding was required to make an individualized determination of the fee for each property.

The courts ruled that the MFA does not require a city to establish a reasonable relationship between each parcel and the fee to be paid. An ordinance establishing a fee program is *“valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed.”* This decision supports the concept of allowing funds to be spent within the same City Council District.

It is important to note that Bronner did not find evidence of deposits specifically tied to development impact fees and that conclusions reached through the review of legal cases (case law) do not equate to legal opinions. Therefore, it is recommended that the Office of the City Attorney provide any advice and/or opinion(s) to the Board of Public Works that may be necessary to implement the recommendations in this report.

#### Fund Use Options

The main guiding principle, recommended by Bronner, is that any deposit (funds) should be applied to complete the project for which it was collected, at the original project location. If that is not possible, deposit(s) should be applied to fund projects that have a close geographical nexus with the original permit location, ***using the Council District as the default nexus*** and same or like-kind purpose type, if applicable. See Attachment 3 for proposed PWTF Fund Use Rules and Guidelines.

***For the purposes of this report and findings from the Nexus Study, the amount available for immediate fund use is \$5,895,871.43 representing 132 deposits.*** In addition, one deposit in the amount of \$30,000 is determined as refundable. The remaining balance of \$6,054,886.06 was not examined. However, it is anticipated that a significant amount may be available upon examination, including review of other PWTF accounts. The remaining, unexamined PWTF balances is not part of this report's recommendations yet the PWTF Fund Use Rules and Guidelines (see Attachment 3), if approved, would apply upon review and determination.

Available fund use amounts are a combination of deposits valued at (a) more than \$10,000 received pre- and post-1989 with adequate documentation to justify its use, and (b) less than \$10,000 received pre-1989. Due to the age and low dollar value, the risk

associated with using pre-1989 deposit(s) is very low. The following table delineates deposit balances between pre- and post-1989 based on four policy options (i.e., deposits to use: at-will, on any project, in any council district, on specified project type and nexus).

	<b>Policy Option Group</b>	<b>Pre-1989</b>	<b>Post-1989</b>	<b>Total</b>
A	Deposits to Use "At Will"	\$441,409.63	\$46,540.70	\$487,950.33
B	Deposits to Use on Any Project	\$524,273.96	\$1,009,257.77	\$1,533,531.73
C	Deposits to Use in Any Council District	\$0.00	\$20,000.00	\$20,000.00
D	Deposits to Use on Specified Project Type and Specified Nexus	\$291,622.00	\$3,562,767.37	\$3,854,389.37
	<b>Total</b>	<b>\$1,257,305.59</b>	<b>\$4,638,565.84</b>	<b>\$5,895,871.43</b>

Based on the Nexus Study and guiding principles stated above, authority is requested to use and transfer available funds as follows:

- **\$487,950.33 for Administrative (Salary) and Management Expense** – To fund the management and administration of the Public Works Trust Fund as listed in Nexus Study Appendix I (Option A);
- **\$1,533,531.73 for Use on Any Project** – To fund Public Works Improvements/Projects in locations (either at specified project location or Council District of the project) to be determined by factors and variables listed in Nexus Study Appendix II, associated with the specific deposit (Option B);
- **\$20,000.00 for Use in Any Council District** – To fund Public Works Improvements/Projects for use in any location (no specific Council District) as determined and documented in Nexus Study Appendix III with the specific deposit (Option C); and
- **\$3,854,389.37 for Use on Specific Project Type and Nexus** – To fund Public Works Improvements/Projects based on variables listed in Nexus Study Appendix IV, for the specified location Nexus (either at specified project location or Council District of the project) and project type documented (Option D).

The following table provides a different viewpoint of overall available funds by Purpose Type and Council District, which majority of funds are predominately in Council Districts 2, 4, 11, 12 and 15. See Attachment 2 for general map (geo-spatial) view of deposits.

Council District	General Improvement	Street Improvement	Sidewalk <sup>1</sup> , St. Lights <sup>2</sup> , Trees <sup>3</sup> , Route Study <sup>4</sup>	Unknown Purpose	Total
1	\$ 13,000.00	\$ 291,924.00	\$ 2,100.00 <sup>1</sup>		\$ 307,024.00
2		\$ 144,698.00	\$292,000.00 <sup>2</sup>		\$ 436,698.00
3		\$ 133,050.90			\$ 133,050.90
4		\$ 603,856.09	\$ 8,535.00 <sup>1,2,3</sup>	\$ 41,000.00	\$ 653,391.09
5	\$ 45,370.30	\$ 136,676.47		\$ 17,884.90	\$ 199,931.67
6		\$ 197,868.07	\$ 4,400.00 <sup>1</sup>	\$ 87,603.77	\$ 289,871.84
7		\$ 103,915.95		\$ 1,750.00	\$ 105,665.95
8			\$ 1,100.00 <sup>1</sup>		\$ 1,100.00
9			\$ 7,542.00 <sup>1</sup>		\$ 7,542.00
10		\$ 100,000.00			\$ 100,000.00
11		\$ 678,850.57		\$ 20,000.00	\$ 698,850.57
12	\$ 500.00	\$ 952,280.20	\$ 56,250.00 <sup>4</sup>	\$ 30,000.00	\$1,039,030.20
13		\$ 105,160.00	\$ 6,500.00 <sup>1</sup>	\$ 1,000.00	\$ 112,660.00
14	\$15,475.83	\$ 209,187.98	\$ 1,800.00 <sup>1</sup>		\$ 226,463.81
15		\$ 343,612.89	\$ 7,100.00 <sup>1</sup>	\$ 708,328.18	\$1,059,041.07
Unknown		\$ 17,600.00	\$ 20,000.00 <sup>3</sup>	\$ 487,950.33	\$ 525,550.33
<b>Total *</b>	<b>\$ 74,346.13</b>	<b>\$4,018,681.12</b>	<b>\$407,327.00</b>	<b>\$1,395,517.18</b>	<b>\$5,895,871.43</b>

\*Total Aggregate Balance of \$5,895,871.43 includes portion proposed for administrative and fund management reimbursement, therefore, actual net available balance to Council Districts is \$5,407,921.10.

### Recommendations and Next Steps

The Nexus Study makes recommendations on three areas of concern for future improvement. These areas are (1) weakness in the process of tracking fee deposits, (2) lack of adherence to the MFA requirements, and (3) additional research needed on the remaining balance of Special Project Deposit Account No. 4873. The Board is committed to create an action plan that corrects these areas of concern and implement any necessary internal controls to improve the management of the PWTF.

1. *Process Tracking Weakness* – The Department of Public Works’ process for coding, segregating, tracking, refunding, and using fees deposited creates opportunities for errors. Multiple points of contacts (i.e., cashier, coder, tracker, accountant, etc.) are evident throughout the process and many steps are completed manually. This allows errors and increases risk for unintentional, non-compliant actions and increases miscommunication or lack of communication between the Bureaus and the Office of Accounting (OOA). This is problematic because the Bureaus takes on the role of collector and OOA as the accountant, which leaves the administrator role vulnerable or absent.

Therefore, the proposed position would fill in the administrator gap, provide a dedicated full-time resource to manage funds, and ensure adequate internal controls of the PWTF.

Bronner recommends that the Board assess and improve the process for recording information through the use of technology. An integrated solution would simplify correlating fees collected with specific permits/projects, increase transparency, provide supporting evidence in cases of litigation, and safeguard against potential problems arising from the current manual tracking and monitoring of loans made from the PWTF to other City departments.

2. *Lack of Adherence to MFA Requirements* - The MFA stipulates how deposits should be managed and used, and how reports should be kept on such deposits, yet there was little evidence that some of the key elements of the MFA are being followed. Specifically, there is a distinct set of criteria outlined in the MFA for the cash payments. The MFA states that commingling of funds is authorized for temporary investments; therefore, deposits from development impact fees and cash payments taken in-lieu of constructing the improvements should not be comingled in the same fund. Moreover, the MFA requires record-keeping, annual review of deposits, and a five-year plan for deposit expenditure. The first two requirements are now occurring yet the five-year report has not been completed since the act was enacted. Lastly, interest earned and accumulated from the Special Projects Deposit Accounts is transferred to the City's general fund. Per the MFA, upon receipt of a fee, the City is required to deposit, invest, account for, and expend the fees. For circumstances in which the fee is not expended on an improvement project and a refund is required, the MFA states that the fee, or any unexpended portion of the fee and any interest accrued, shall be refunded to the current owner(s) of the property.

Bronner recommends establishment of procedures and controls, such that MFA requirements and timelines become an integral part of the process of fee collection and account/fund management. This should include separating different types of deposits into distinct accounts, and establishing a process to document deposits in a five year plan.

3. *Additional Research to Special Projects Deposit Account No. 4873* – Further research is required for the remaining balance, including collection, review, and analysis of deposit supporting documentation.

Bronner recommends that the City allocates a portion of the deposits available for use in the funding of staff needed to conduct this research, including on- and off-site project review of documentation.

### ***FUND USE RULES AND GUIDELINES (POLICY OPTIONS)***

Attachment 3 provides detailed information on the proposed PWTF Fund Use Rules and Guidelines. In general, Bronner categorizes the rules and guidelines by five policy options A through E (or as listed in Appendices I – V in the Nexus Study) and follows in general five guidelines:

- If a deposit is neither used for the specific purpose and project it was intended for, nor refunded to the depositor, then those deposited funds shall require determination of “reasonable relationship” or “nexus” prior to its disposition of funds.
- If the project for which the fee collected was intended is ongoing, then the deposit should be applied to the work underway for that project, or project(s) with like purpose at the original location if available, or within the Council District as the geographical nexus/boundary.
- If the project for which the fee was intended, or a like purpose project within the geographical nexus/boundary has been completed, then the deposit should be applied to reimburse the City’s cost of completing that project.
- If neither option applies (project type or location are unknown), then the deposit should be used to fund projects that have a close geographical nexus to the original intent in the permit, using the Council District as the geographical boundary.
- Pre-1989 deposits have greater flexibility and ability to establish a reasonable relationship as determined by a governing body with minimal (i.e., broad nexus to the administration and management of funds, geographical location, and general purpose type) to no restrictions.

### ***PROPOSED POSITION AUTHORITY***

This report seeks approval for one Senior Management Analyst I (Class Code 9171-1) resolution authority position to startup critical research and analytical work anticipated for the remaining fund deposit within the PWTF Account No. 4873 and remaining 28 appropriation accounts. No additional salary funds are needed for the remaining fiscal year. Most importantly, the proposed position is recommended to be continued in the Fiscal Year 2018/19 budget due to the long-term, non-temporary nature of the work. See Attachment 4 for proposed Position Description.

The Board believes that dedicating one full-time Senior Management Analyst I position is critical and will lead to identify additional funds that could be used for future public works

infrastructure projects. Authorization of this position will allow for the active administration and management of the PWTF to examine, research, and analyze various remaining deposits. Moreover, this position will monitor, design, and create fund management practices that could leverage existing funds for critical Public Works projects. The position will also provide reports for executive management and collaborate with many of the department's bureaus and offices, including the Offices of the City Controller and City Administrative Officer. The initial effort to examine the remaining fund portion is anticipated to take one year and then the same process will be replicated for the 28 remaining PWTF accounts, which could also identify other available funds. Therefore, the need for this position is long term. Approval will also restore services of this management position that was eliminated during the Great Recession.

Based on the Nexus Study findings, funding in the PWTF is available to pay for administrative cost. For the current fiscal year 2017/18, the Board will absorb the additional cost needed to fund this position. For future years, if the proposed position is not included in the adopted Fiscal Year 2018/19 budget, the Board will submit budget requests to continue the resolution position authority with reimbursement from the PWTF to the general fund resulting in a no-net funding impact. The following describes the benefit and cost anticipated, if this position is approved.

Benefit:

- Continue Efforts to Identify Other Potential Funds to Be Used (i.e., \$6 million remaining from the original \$12 million special project account).
- Increase Responsiveness to Depositors and Improved Constituency Services.
- Increase Fund Management, Transparency, and Accountability.
- Ensure Compliance with the CA Mitigation Fee Act.
- Implement Cash Flow Modeling and Forecasting of Fund.
- Improve Financial Reporting.
- Continue Review Deposits with Primary Focus to Identify Funds for Public Works Projects (i.e., CIP, Trees, Work Orders, Permits, etc.).
- Institutionalize Fund Use Policy and Actively Manage Fund Guidelines.
- Improve Transfer Fund Frequency to GF from Permits and most importantly, de-bottle neck A, E, and U permit and work order expenses charged but not transferred to the GF or SF (approx. \$17.1 million to be analyzed).
- Review Tree Deposits (approx. \$3.6M to be analyzed)
- Review of Damage Claims/Settlement and Misc. Account (\$1.5M to be analyzed).

Cost and Anticipated Fund Use At-A-Glance:

- Years 1 to 6: \$440,00 to \$635,000 anticipated with actual cost closer to lower range due to potential cost savings. Annual salary range is \$69,000 to \$98,000.
- Years 7 Forward: Use portions of Permit Surcharge Trust Fund to pay for cost.

- Fund use potential is estimated at \$8 million within the next six years or about \$1.33 million on average/per year.

The following table illustrates anticipated work load and potential fund use resulting from the proposed administrative and management efforts.

Year	FY	Potential Fund Use in Millions	Work Load Focus (Note: Fund Use Realized the Following Year)
1	2019		Special Projects (\$6M) and Portions of St. Trees (\$3.6M)
2	2020	\$2.34	Portions of St. Trees (\$3.6M) and A,E, and U Permits (\$3.8M)
3	2021	1.31	Excavation, Vacation, and Land Work Orders (\$17.1M)
4	2022	1.71	Excavation, Vacation, and Land Orders (\$17.1M)
5	2023	1.71	Damage Claims, Settlements for CD 8 (\$1M) and Misc. (500K)
6+	2024	1.25	Other Deposit Review (\$ TBD)
<b>TOTAL</b>		<b>\$8.32</b>	<b>(NOTE: DOES NOT INCLUDE \$5.9M FROM THIS REPORT)</b>

NOTE: Assumes 33% return for Special Projects, 20% for Street Trees, 25% for Permits, 20% for Work Orders, and 100% for Damage Claims to CD 8 and 50% for Misc.

### FISCAL IMPACT STATEMENT

Funding in the amount of \$5,895,871.43 is proposed to be available for immediate use upon finding and determining that a reasonable relationship (nexus) exist for deposits, listed in Appendices I through IV in the Public Works Trust Fund Nexus Study, between the deposit's original purpose/location and use of said funds. If approved and adopted, \$4,638,565.84 represents post-1989 deposits and \$1,257,305.59 represents pre-1989 deposits, which majority of funds will be transferred to the City's CIEP, or other fund location as appropriate, and a small portion to reimburse the Board's salary account. One deposit will be refunded at \$30,000.

Respectfully submitted,



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 Executive Officer, Board of Public Works

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Miguel Sangalang, Deputy Mayor  
 Sharon Tso, Chief Legislative Analyst  
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## BOARD REPORT NEXUS STUDY AMENDMENTS (BPW-2018-0361)

- Amend Recommendation 6(a) to fund the first annual administrative expense of \$75,000 out of the \$487,950.33 as listed in Nexus Study Appendix 1 (Option A) and then request the Executive Officer to seek Board approval(s) for additional amounts from this category.
- Amend Recommendation 7(a) to indicate transfer of funds is subject to approval by the Board.
- Add New Recommendation 11 to Instruct the Executive Officer to:
  - a) Establish a pre-qualified, on-call contractor list for use of these funds and types of projects with the intent of expanding diversity by creating a more “sheltered marketplace” with specific areas of work where emerging and small businesses can compete as primes and incentivize inclusion by allowing proposers to choose to meet a local-small requirement rather than meeting a higher non-specific Mandatory Subcontracting Minimum;
  - b) Require all projects that are approved for this funding utilize the pre-qualified on-call contractor list to be approved; and,
  - c) Report back on any resources necessary to implement the above requests.
- Add New Recommendation 12 as “Request City Council to consider distributing and prioritizing allocation of remaining funds of \$412,950.33 in the “unknown Council District” amount category, after an initial \$75,000 is dedicated for initial administrative cost, to the bottom four Council Districts (i.e. 7, 8, 9, and 10) with lowest allocation amounts.