

## **MEMORANDUM**

March 23, 2017

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. Leslie Katz  
Hon. Eleni Kounalakis  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request authorization to enter into a Federal Cost Share Agreement with the United States Army Corps of Engineers for an Embarcadero Flood Study

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

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### **EXECUTIVE SUMMARY**

Port staff requests that the Port Commission authorize the Executive Director to enter into and execute the Federal Cost Share Agreement (FCSA), required by the United States Army Corps of Engineers (USACE) as a condition of USACE proceeding with its feasibility study (Feasibility Study) of the seawall areas between the Ferry Building and Pier 14 and also near Pier 5 (Study Area). This Feasibility Study will lead to the issuance of a Detailed Project Report, which in turn will become the guiding document that lays out options, constraints, environmental impacts, and implications for national economic development and serve as the basis for establishing the viability (or lack thereof) for USACE-sponsored construction improvements.

### **BACKGROUND**

On December 12, 2012, the Port made a request of USACE for assistance under its Continuing Authorities Program, Section 103 (CAP103), which authorizes USACE to construct small flood protection projects to assist waterfront communities. With an initial federal allocation of \$100,000, USACE completed an initial study and assessment of federal interest in constructing improvements to portions of the San Francisco Seawall.

**THIS PRINT COVERS CALENDAR ITEM NO. 11A**

On November 21, 2016, USACE issued the Federal Interest Determination Report for the project. The report analyzed risks to the Port and City assets in the vicinity of the Study Area and led to USACE issuing a positive Federal Interest Determination (FID), assessing that it appears cost-beneficial for the federal government to undertake the project.

The Study Area is subject to regular flooding during King Tides and at risk of significant flooding during 100-year storm events. Lower lying sections of the waterfront are especially vulnerable, and several of these sections are in close proximity to City areas that are home to myriad vital City uses, including dense residential and commercial activity, and key transportation nodes. The Study Area includes one such location – the zone south of the Ferry Building to Pier 14, touching the Embarcadero, where frequent and visible flooding impacts pedestrian and vehicular traffic and which will begin to threaten the Embarcadero BART/MUNI complex as sea level rises in the future. A project to fortify this area would provide tremendous value to the Port and the City.

At the same time, the Feasibility Study could also increase the likelihood that the USACE would undertake a General Investigation study along the entire San Francisco waterfront, which could in turn lead to the USACE recommending to Congress that it undertake significant work to mitigate flood risk along the entire waterfront. Whether the Feasibility Study leads to a project only in the Study Area or supports the development of a broader USACE program of interventions, the Port's participation in the Feasibility Study will yield significant benefits for the City and the Port.

The proposed Feasibility Study, and any project in the Study Area that results from it, will be funded under a "Continuing Authorities Program" authorization of Section 103 of the River and Harbor Act of 1962. During the study phase of the project, the CAP103 project requires a 50/50 cost share for the Feasibility Study with the Port as local sponsor after the first \$100,000 expenditure. In the event the project moves to the design and implementation phase, the cost sharing arrangement changes to 65% federal and 35% for the local sponsor. Total federal spending, including for feasibility study and project implementation, is limited to \$10,000,000. The authority under CAP103 allows credit for some in-kind contributions from the local sponsor, including costs for property rights acquisition, design coordination, materials, and construction.

USACE has estimated the total cost for completing the study phase of the project to be \$800,000 over two years, requiring the Port to contribute \$400,000, less in-kind work credit, assessed at the end of the project. These in-kind credits would primarily be in the form of the Port's coastal and overland flow hydraulic analyses, stakeholder engagement, project management, and urban design. Beyond these in-kind Port contributions, Port staff recommends setting aside an additional \$100,000 as a contingency for unexpected costs of the project. Port staff recommends using Seawall Resiliency Project CPO-756 to cover the Port's anticipated cash contribution of not to exceed \$500,000.

## **FEDERAL COST SHARING AGREEMENT**

The Feasibility Cost Sharing Agreement (FCSA) form attached to this report as Exhibit 1 is the USACE national boilerplate contract for all CAP103 projects, with the exception of a few revisions negotiated by Port staff and the City Attorney which ACE considers as non-substantive. The proposed FCSA has the following key elements:

- It requires the Port as non-federal sponsor for study of the seawall to share in the cost of the Feasibility Study with USACE at a ratio of 50/50;
- The Port is allowed in-kind credit for certain services rendered in furtherance of the study, in coordination with USACE;
- Though the estimate for the Feasibility Study is \$800,000, the FCSA allows USACE to proceed with a Feasibility Study with a budget of up to \$1.5 million, the standard maximum allowable study cost under the CAP103 authority; and
- Although USACE estimates completion of the study at the end of calendar year 2018, or 21 months, the FCSA recites the standard maximum allowable time of 36 months for completion of the study.

The proposed FCSA is substantially similar to the FCSA the Port Commission Approved in 2013 for the Central Basin dredge project.

## **BUDGET AND SCHEDULE**

USACE estimates the total study cost to be \$800,000, which obligates the Port as non-federal sponsor to contribute 50% of this amount, less in-kind credits accumulated throughout the study.

USACE has allocated \$150,000 in federal fiscal year 2017 funding to commence the proposed seawall Feasibility Study, premised upon the Port's contribution as the local sponsor. USACE further anticipates a budget of an additional \$200,000 in federal funding for federal fiscal year 2018, at which time the project team anticipates completing a draft of the final decision document, the Detailed Project Report. An additional \$50,000 is expected in Q1 of federal fiscal year 2019 (Q4 of calendar year 2018) for the completion of USACE's review and to finalize the study.

Port staff request Port Commission authorization to expend from CPO-756 \$400,000, which is required of the Port as local sponsor, for contribution to the costs of the feasibility study, and, further, a 25% contingency fund, or additional \$100,000, for additional unforeseen costs of the study, totaling \$500,000. In the event that the federal costs for the Feasibility Study exceed the \$800,000 estimate, and the Port is required to contribute funding in excess of the \$500,000 (\$400,000 local match, plus \$100,000 contingency) authorized by the attached resolution, Port staff will return to the Port Commission for direction.

## **REQUESTED AUTHORIZATION**

Port staff seeks authorization from the Port Commission for the Executive Director to enter into a FCSA with USACE for the seawall Feasibility Study upon the terms and conditions recited in this staff memorandum, and in a form approved by the City Attorney.

Prepared by: Daley Dunham, Special Projects Manager

For: Brad Benson, Director of Special Projects

Exhibit 1: Federal Cost Sharing Agreement

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 17-16**

- WHEREAS, The San Francisco Seawall was constructed more than a century ago and serves as the foundation for more than three miles of San Francisco waterfront, supporting historic piers, wharves, and buildings including the Ferry Building, and underpinning the Embarcadero Promenade which welcomes millions of people each year, serves as a critical emergency response and recovery area, and supports BART, Muni and ferry transportation and utility networks; and
- WHEREAS, The Seawall requires significant improvements to survive the next major earthquake and to address increasing flood risk from sea level rise and climate change; and
- WHEREAS, Pursuant to the Continuing Authorities Program, Section 103, of the River and Harbor Act of 1962, the United States Army Corps of Engineers (USACE) is authorized to construct small flood protection projects to assist waterfront communities; and
- WHEREAS, On December 12, 2012, the Port staff made a request of USACE for assistance under its Continuing Authorities Program, Section 103 (CAP103), to conduct a study for flood protection improvements for the San Francisco waterfront (the San Francisco Waterfront Seawall Project); and
- WHEREAS, On November 21, 2016, using a federal allocation of \$100,000, USACE completed an initial study and assessment of federal interest in possible construction of flood protection improvements to portions of the San Francisco Seawall, making a federal interest determination to continue the project; and
- WHEREAS, The next phase in the USACE process to implement the CAP103 San Francisco Waterfront Seawall Project will consist of completing a Detailed Project Report that will include conducting detailed financial analyses, making final determinations, and securing environmental permits and documentation (the Feasibility Study); and
- WHEREAS, USACE has budgeted up to \$150,000 for Fiscal Year 2016, and anticipates an additional \$200,000 in Fiscal Year 2017 to complete a draft Detailed Project Report, with completion of the report expected by the end of calendar year 2018; and
- WHEREAS, To proceed with the San Francisco Waterfront Seawall Project, USACE requires the Port as local sponsor to enter into a Federal Cost Sharing

Agreement (FCSA), substantially in the form of attached as Exhibit 1, which memorializes USACE's and the Port's respective cost share contributions, equally shared at 50% each, required for the Detailed Project Report phase of the project prior to any design and implementation; and

WHEREAS, USACE estimates the total cost of completing the Detailed Project Report to be \$800,000; and

WHEREAS, The Port's 50% cost share will therefore be approximately \$400,000 before credit for in-kind contributions; and

WHEREAS, Port staff recommends setting aside an additional \$100,000 (25%) as a contingency fund to account for any unforeseen additional costs that may require further Port contribution to the cost of the Detailed Project Report; and

WHEREAS, The Port already has sufficient funds allocated in its Seawall Resiliency Project, CPO-756, to provide the recommended \$500,000 for the Port's share of the Feasibility Study and completion of the Detailed Project Report: \$400,000 for the Port's matching funds to USACE, with \$100,000 for a reserve as contingency funds; now, therefore, be it

RESOLVED, That the Port Commission hereby authorizes the Executive Director to enter into an FCSA with USACE with a local match not exceeding \$500,000 in Port funds as the Port's cost share contribution, as described in and attached to the accompanying staff report and in a form approved by the City Attorney, that would allow USACE to complete the proposed Feasibility Study of the San Francisco Waterfront Seawall Project, pursuant to the Continuing Authorities Program Section 103; and be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director to execute any documents required for the implementation of the FCSA, including any letters of intent, amendments, augmentations or extensions thereof in such form as approved by the City Attorney.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of March 28, 2017.***

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Secretary