

## MEMORANDUM

July 3, 2019

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Victor Makras  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Request for approval of the Port's Supplemental Appropriation of \$11.5 million to support Phase I of the Seawall Earthquake Safety and Disaster Prevention Program in the event of ongoing litigation

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

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### EXECUTIVE SUMMARY

On November 6, 2018, the citizens of San Francisco passed Proposition A with 82.7% voter approval, authorizing a \$425 million General Obligation Bond known as the Embarcadero Seawall Earthquake Safety Bond ("Seawall Bond") to support the Seawall Earthquake Safety and Disaster Prevention Program ("Seawall Program").

On March 12, 2019, the Port Commission approved Resolution 19-08, authorizing the first issuance of the Seawall Bond for up to \$50.0 million, including issuance costs, to support the planning and preliminary design phases of the Seawall Program. Work in these phases will include planning, site and geotechnical investigations, risk assessment, alternatives analysis, program development, identification of potential pilot projects, and the San Francisco Waterfront Storm Risk Management Study General Investigation ("Flood Study") with the United States Army Corps of Engineers ("USACE"), which will analyze flood risks to the Port's entire jurisdiction from Fisherman's Wharf to Heron's Head Park.

On April 5, 2019, two *pro se* plaintiffs, Michael Denny and Nicholas Smith, filed an action against John Arntz, Director of Elections, and Dennis Herrera, City Attorney, alleging that San Francisco officials violated various state and local election laws in connection with the voter approval in of the Seawall Bond. On June 19, 2019, the San Francisco Superior Court granted the City's demurrer to the complaint and dismissed all

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of Plaintiffs' claims and entered judgment for the City. Plaintiffs have until August 19, 2019 to file a notice of appeal. While the City Attorney advises that the lawsuit is without merit, the City has chosen to delay the bond issue until the appeal period has expired.

Port staff currently anticipates appropriated Seawall Program funding will be nearly exhausted by the end of September 2019. Rather than have the program stall in the event of an appeal, Port staff recommends authorizing the appropriation of \$11.5 million in available Fund Balance from the Port Harbor Fund to support the Seawall Program through Fiscal Year 2019-20. Eligible expenditures from these funds will be reimbursed through future Seawall Bond sales.

## **STRATEGIC OBJECTIVES**

The Seawall Bond issuance will support the following goals of the Port's Strategic Plan:

Resiliency – By leading the City's efforts to address threats from earthquakes and flood risk through infrastructure improvements to the Seawall and other Port property.

Stability – By securing external funding sources to address the Port's state of good repair needs. While the Seawall Bond is the primary local source for Phase I of the Seawall Program and may be used to leverage federal funding for both short and long-term infrastructure improvements, the proposed Port funding will allow Port staff to continue partnering with the U.S. Army Corps of Engineers (USACE) on a flood study that may generate over \$1.0 billion in the long-term.

## **BACKGROUND**

On March 12, 2019, the Port Commission approved Resolution 19-08, authorizing the first issuance of the Seawall Bond for up to \$50.0 million, including issuance costs, to support the planning and preliminary design phases of the Seawall Program. Work in these phases will include planning, site and geotechnical investigations, risk assessment, alternatives analysis, program development, identification of potential pilot projects, and the San Francisco Waterfront Storm Risk Management Study General Investigation ("Flood Study") with the United States Army Corps of Engineers ("USACE"), which will analyze flood risks to the Port's entire jurisdiction from Fisherman's Wharf to Heron's Head Park.

Upon Port Commission approval, Port staff and the Controller's Office of Public Finance received approval from the City's Capital Planning Committee and worked with the Mayor's Office to introduce legislation authorizing the sale and appropriation of proceeds to the Seawall Program.

On April 5, 2019, two *pro se* plaintiffs, Michael Denny and Nicholas Smith, filed an action against John Arntz, Director of Elections, and Dennis Herrera, City Attorney, alleging that San Francisco officials violated various state and local election laws in connection with the voter approval in of the Seawall Bond.

On June 19, 2019, the San Francisco Superior Court granted the City’s demurrer to the complaint and dismissed all of Plaintiffs’ claims and entered judgment for the City. Plaintiffs have until August 19, 2019 to file a notice of appeal. While the City Attorney advises that the lawsuit is without merit, the City nonetheless has chosen to delay the bond issue until the appeal period has expired.

## PROPOSED FUNDING

The first sale of the Seawall Bond was planned by Port staff to refund the City and Port for prior appropriations and provide funding for Seawall and resilience planning and preliminary design activities through 2020. As detailed in **Figure 1**, through FY 2018-19 the Port and City have appropriated \$20.0 million in funding to support the Seawall Program. Sources of these funds include the City’s Revolving Fund (\$9.0 million), Port Capital (\$4.0 million), contributions from the SFMTA and Planning Department (\$2.0 million), and a grant from the California Natural Resources Agency (\$5.0 million). The first GO Bond issuance is scheduled to reimburse \$6.0 million to the City’s Revolving Fund and \$3.0 million in Port/ Planning Department/ SFMTA Seawall Program expenditures to allow the Port to reallocate those funds to other non-bond eligible Seawall Program costs. The Port will reimburse the remaining \$3.0 million to the City’s Revolving Fund after the second GO Bond sale.

**Figure 1: Current Program Funding Plan (\$ millions)**

Fiscal Year	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23-27
<b>Funding Sources</b>								
Port Capital	\$2.9		\$1.1					\$10.0
City Revolving Fund	\$1.0	\$3.0	\$5.0	(\$6.0)		(\$3.0)		
SFMTA Contribution	\$0.5	\$0.5						
Planning Dept Contribution	\$0.5	\$0.3	\$0.3					
State Sources			\$5.0					
2018 General Obligation Bond			\$50.0			\$250.0		\$125.0
Other Funds*								\$54.0
<b>Total Planned Sources</b>	<b>\$4.9</b>	<b>\$3.8</b>	<b>\$61.4</b>	<b>(\$6.0)</b>	<b>\$0.0</b>	<b>\$247.0</b>	<b>\$0.0</b>	<b>\$189.0</b>
<b>Cumulative Sources</b>	<b>\$4.9</b>	<b>\$8.7</b>	<b>\$70.0</b>	<b>\$64.0</b>	<b>\$64.0</b>	<b>\$311.0</b>	<b>\$311.0</b>	<b>\$500.0</b>
Current Funding								
First Bond Sale								

\*Pending

However, in the event of an appeal to the existing lawsuit and a decision by the City to delay the first Seawall Bond sale, the Port and its consultants will need to halt work on the program unless Port staff can identify an alternative source of funding. Port staff currently anticipates appropriated Seawall Program funding will be nearly exhausted by the end of September 2019 and the program will face an \$11.5 million funding shortfall in Fiscal Year 2019-20, as detailed in **Figure 2**.

**Figure 2: Projected Program Cashflow for Fiscal Year 2019-20**

	FY 2019-20					
	Q1 - July	Q1 - Aug	Q1 - Sept	Q2	Q3	Q4
Port/City	\$3,160,000	\$1,226,000	\$ 784,000	\$ (730,000)	\$ (5,846,000)	\$ (8,758,000)
State Grant	\$3,500,000	\$2,570,000	\$1,795,000	\$ 1,295,000	\$ -	\$ -
<b>Sources</b>	<b>\$6,660,000</b>	<b>\$3,796,000</b>	<b>\$2,579,000</b>	<b>\$ 565,000</b>	<b>\$ (5,846,000)</b>	<b>\$ (8,758,000)</b>
Port Staff	\$ 60,000	\$ 60,000	\$ 60,000	\$ 180,000	\$ 180,000	\$ 180,000
Consultants	\$2,804,000	\$1,157,000	\$1,454,000	\$ 6,231,000	\$ 2,732,000	\$ 2,582,000
USACE	\$ -	\$ -	\$ 500,000	\$ -	\$ -	\$ -
<b>Uses</b>	<b>\$2,864,000</b>	<b>\$1,217,000</b>	<b>\$2,014,000</b>	<b>\$ 6,411,000</b>	<b>\$ 2,912,000</b>	<b>\$ 2,762,000</b>
<b>BALANCE</b>	<b>\$3,796,000</b>	<b>\$2,579,000</b>	<b>\$ 565,000</b>	<b>\$ (5,846,000)</b>	<b>\$ (8,758,000)</b>	<b>\$ (11,520,000)</b>

Rather than have the program stall in the event of an appeal, Port staff recommends authorizing the appropriation of \$11.5 million available Fund Balance from the Port Harbor Fund to allow Port staff, its consultants, and the U.S. Army Corps of Engineers to continue critical work in the program’s planning phase through FY 2019-20. These funds will be reimbursed through future Seawall Bond sales, when they occur.

**BOND SALE & LEGAL SCHEDULE**

The tentative schedule for the first GO Bond issuance is:

- April 2, 2019           Port staff introduced ordinance and resolution to the Board of Supervisors requesting authorization for the first Seawall Bond issuance.
- April 5, 2019           Lawsuit Filed with the Superior Court of the City and County of San Francisco; City staff delayed Board hearings to await court ruling.
- June 19, 2019          Superior Court ruling dismissing lawsuit and 60-day appeal window began.
- July 30, 2019          Board of Supervisors approval of 1<sup>st</sup> Bond Sale  
Introduce “Litigation Contingency” Supplemental Appropriation
- August 19, 2019        Superior Court 60-day appeal window closes.
- September 2019        *NO APPEAL* First Seawall Bond Issuance  
*APPEAL* Board of Supervisors approves supplemental appropriation

## **CONCLUSION**

The Seawall Program is a critical effort to improve the infrastructure that supports the City's northern waterfront. The proposed litigation contingency supplemental appropriation will support the planning phase and the USACE General Investigation in the event of ongoing legal dispute.

## **RECOMMENDATION**

Port staff recommends that the Port Commission approve the proposed resolution, which authorizes a supplemental appropriation of \$11.5 million to support the Resilience Program, which includes the Seawall Program for Fiscal Year 2019-20 in the event the Seawall Bond sale is delayed due to ongoing litigation.

Upon Port Commission approval, Port staff will seek Capital Planning Committee approval and introduce legislation by July 30, 2019, before the Board of Supervisors goes on recess for the summer. In the event plaintiffs file an appeal of the Superior Court's ruling by August 19, 2019, Port staff will seek approval by the Board of Supervisors by the end of September 2019.

Prepared by: Meghan Wallace, Finance Director, Finance and Administration

For: Katharine Petrucione, Deputy Director  
Finance and Administration

Brad Benson,  
Waterfront Resilience Director

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

**RESOLUTION NO. 19-29**

- WHEREAS, On November 6, 2018 San Francisco's voters approved a \$425 million Embarcadero Seawall Earthquake Safety General Obligation Bond measure (2018 Seawall Bond) for the Seawall Earthquake Safety and Disaster Prevention Program (Seawall Program); and
- WHEREAS, On March 12, 2019, the Port Commission approved Resolution 19-08, authorizing the first issuance of the Seawall Bond for up to \$50.0 million, including issuance costs, to support the planning and preliminary design phases of the Seawall Program; and
- WHEREAS, The City and County of San Francisco is planning the initial issuance of the 2018 Seawall Bond in or around September 2019; and
- WHEREAS, On April 5, 2019 a private party filed a lawsuit against the City and County of San Francisco on a matter related to the ballot measure language for Proposition A; and
- WHEREAS, On June 19, 2019 the San Francisco Superior Court dismissed the claim at the request of the City, triggering a 60-day appeal window that closes on August 19, 2019; and
- WHEREAS If an appeal is filed, the City may choose not to proceed with the first sale of the Seawall Bond, as scheduled; and
- WHEREAS, Port staff projects Seawall Program funding will be exhausted by the end of September 2019; and
- WHEREAS, Port staff reviewed balances within the Port Harbor Fund and identified \$11.5 million of previously unappropriated Fund Balance; and
- WHEREAS, Eligible expenses from the Port's \$11.5 million contribution will be reimbursed from one or more Seawall Bond sales, to the extent legally permitted; and
- WHEREAS, Staff recommends that the Port Commission authorize a supplemental appropriation of \$11.5 million to support the Seawall Program in the event the Seawall Bond sale is delayed due to ongoing litigation; and
- WHEREAS, The Board of Supervisors requires the Port Commission to approve appropriations of funds; and now therefore be it,

- RESOLVED, The Seawall Program is a critical effort that should continue in the event of ongoing litigation; and be it further
- RESOLVED, In the event of ongoing litigation against the 2018 Seawall Bond, the Port Commission hereby approves an appropriation of \$11,500,000 of Fund Balance from the Port Harbor Fund; and, be it further
- RESOLVED, The Port Commission hereby recommends that the Board of Supervisors consider and approve the appropriation of \$11,500,000 Port Fund Balance to support the Seawall Program in the event of ongoing litigation.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 9, 2019.***

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Secretary