

MEMORANDUM

August 8, 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: Informational report regarding an anticipated amendment to the Feasibility Cost Sharing Agreement with the United States Army Corps of Engineers San Francisco District for the San Francisco Waterfront Flood Resiliency Study (formerly the San Francisco Storm Risk Management Study)

DIRECTOR'S RECOMMENDATION: Informational Only; No Action Required

EXECUTIVE SUMMARY

Port staff is working with the United States Army Corps of Engineers (USACE) on an amendment to the September 5, 2018 Feasibility Cost Sharing Agreement (FCSA) between USACE and the Port for study of coastal flood resilience on the San Francisco waterfront (Study Area), and to increase the study budget and the period of the agreement. The amendment would add a clause to the FCSA that would increase the Port's flexibility to make cash contributions to the project as the local sponsor. The Port and USACE are in discussion about the size of the increase in budget and agreement duration.

BACKGROUND

On June 7, 2018, USACE awarded San Francisco a "new start" study appropriation to commence a General Investigation (GI) feasibility study, which would consider and recommend potential project alternatives that would reduce coastal flood risk along the San Francisco waterfront (the San Francisco Waterfront Flood Resiliency Study, or Flood Study). Following the completion of the GI feasibility report, if USACE recommends and Congress approves a project for implementation, the federal government would pay for approximately two-thirds of the cost of construction, and the

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Port would pay for approximately one-third of the cost. New start appropriations are exceedingly scarce, with only two flood risk management new starts awarded in 2018 across the entire nation. In 2017, Congress did not award any new starts.

On July 25, 2018, Lieutenant General (LTG) Todd Semonite, commanding officer of USACE, visited the Port and participated in a briefing and walking tour with Port project staff and a subsequent meeting with the Executive Director. USACE leadership and Port staff discussed the Embarcadero Seawall Program and the Flood Study, including potential engineering solutions. Both USACE and Port staff consider the visit to have been highly successful. The ultimate endorsement and approval of the Feasibility Report, and any recommended project for construction, would be a "Chief's Report," and transmitted to Congress for authorization in a future Water Resources Development Act. As the current Chief Engineer of USACE, LTG Semonite would execute that study. During that meeting, USACE leadership discussed the complexity of the Embarcadero Seawall Program and the possible need (which has now become apparent) for additional flexibility beyond the traditional three year study conducted at a cost of less than \$3 million in federal funds.

On August 14, 2018, the Port Commission authorized the Executive Director to enter into a Feasibility Cost Sharing Agreement (FCSA) with the United States Army Corps of Engineers for study of coastal flood resilience on the San Francisco waterfront under the USACE General Investigation program. That agreement, executed on September 5, 2018 contains the following key elements:

- It requires the Port as non-federal sponsor for the GI study of the waterfront to share in the cost of the Flood Study with USACE at a ratio of 50/50, subject to the appropriation of funds;
- The Port was required to provide an initial \$25,000 contribution to USACE within 15 days of executing the FCSA towards the Port's 50% Project funding contribution;
- The Port is allowed in-kind credit for certain services rendered in furtherance of the GI study, in coordination with USACE;
- The FCSA allows USACE to proceed with a Feasibility Study with a total budget of up to \$3 million, the standard maximum allowable study cost under the Corps General Investigation program; and
- The FCSA recites the standard allowable time of 36 months for completion of the GI study.

After Port Commission approval of the FCSA, the Port paid USACE \$500,000 in cash and the federal government appropriated \$700,000 to fund initial work on the Flood Study. The Port and USACE are currently finalizing a Project Management Plan for the

Flood Study. After the Project Management Plan is signed by both parties (which is expected to occur this Fall), the Port will provide \$200,000 in in-kind services to the Flood Study to maintain 50/50 funding balance.

When the FCSA was originally approved, Port staff did not see the need to include an optional *accelerated funds* clause in the agreement. This clause would authorize the Port to advance funding to USACE to keep the Flood Study going, in the event of a failure to obtain a federal appropriation in a given year. Port staff, with USACE, is now seeking to amend the executed FCSA to include this optional provision.

If the Port Commission approves the addition of the *accelerated funds* clause, any future proposal to advance funding to USACE would be subject to approval from the Port Commission and the Board of Supervisors. Utilizing this clause would also require a matching reduction in local spending to support the Flood Study.

CHANGES TO BUDGET AND SCHEDULE

The initial agreement with USACE contemplated a total study cost of \$3 million, obligating the Port as non-federal sponsor to contribute 50% of this amount, or \$1.5 million over three years. Port and USACE staff members alike have made the determination that the Flood Study cannot be completed under the traditional schedule and budget for a General Investigation.

As a result, USACE has drafted a waiver request to allow the federal study cost limit to increase from \$3 million to \$20.3 million (\$200,000 of this amount is federal-only, not cost-shared), where the Port's 50% share would be \$10.05 million. Additionally, the period of the study would be extended from three years to five years. These requested revisions to the FCSA have yet to undergo final review by USACE, so they are subject to change. The San Francisco District of USACE submitted this request to USACE's South Pacific Division for review on July 24, 2019. Budget and study length changes of this nature require the final approval of the Assistant Secretary of the Army for Civil Works.

As with the existing FCSA, these proposed revisions would allow the Port to meet a portion of its financial obligation through in-kind contributions which will include the Port's own analysis and information developed through the Embarcadero Seawall Program Planning, Engineering, and Environmental Services contract.

Because the Port Commission Resolution approving the existing FCSA limits the term of the agreement to three years and the Port's local matching contribution to no more than \$1.5 million, Port staff will return on September 10, 2019 to seek authorization to enter into the amended FCSA for a five-year term and allowing the Port to provide up to up to \$10.05 million in matching funds or in-kind services.

AUTHORIZATION FOR FUTURE AMENDMENTS

If USACE and the Port Commission approve this amendment, the *accelerated funds* clause would be added to the existing FCSA and allow the Port to advance funding to USACE rather than providing in-kind services in proportion to USACE expenditures each year. This proposed addition to the FCSA, would read:

In addition to providing the funds required by paragraph B. of this Article, the Non-Federal Sponsor may provide accelerated funds for immediate use of the Government. The Non-Federal Sponsor understands that use of accelerated funds shall not constitute any commitment by the Government to budget, or the Congress to appropriate, funds for this Study or to match any accelerated funds provided by the Non-Federal Sponsor; that any accelerated funds will be credited toward the Non-Federal Sponsor's cost share only to the extent matching Federal funds are provided; and that the Non-Federal Sponsor is not entitled to any repayment for any accelerated funds obligated by the Government even if the Study ultimately is not completed.

Including this language in the FCSA requires approval of USACE Headquarters staff in Washington, DC by the Director of Civil Works. USACE staff consider inclusion of *accelerated funds* clauses to be uncontroversial.

A copy of the proposed Feasibility Cost Sharing Agreement is on file with the Port Commission Secretary.

NEXT STEPS

Port staff will return to the Port Commission on September 10, 2019 to seek authorization from the Port Commission for the Executive Director to amend the September 9, 2018 FCSA with USACE for the San Francisco Waterfront Storm Risk Management Project upon the terms and conditions recited in this staff memorandum and in a form approved by the City Attorney.

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For: Brad Benson, Waterfront Resilience Director