




MEMORANDUM

May 22, 2020

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

FROM: Katharine E. Petrucione 
Acting Executive Director

SUBJECT: Request authorization to amend the Feasibility Cost Sharing Agreement (FCSA) with the USACE San Francisco District dated September 5, 2018 for the San Francisco Waterfront Flood Resiliency Study increasing the Project budget from \$3 million to \$6 million; and should it be approved by the San Francisco Board of Supervisors and the Assistant Secretary of the Army, further amend the FCSA by increasing the Project budget from \$6 million to \$20.1 million, extending the schedule from three to five years, and allowing the Port to advance cash contributions to the project as the Non-Federal Sponsor.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

EXECUTIVE SUMMARY

At the May 12, 2020 Port Commission meeting, Port staff presented an overview of the San Francisco Waterfront Flood Resiliency Study (Flood Resiliency Study, or Project)¹ and described the need to amend the September 5, 2018 Feasibility Cost Sharing Agreement (FCSA) between USACE and the Port of San Francisco that governs the Project.

This Print Covers Calendar Item No. ZA

¹https://sfport.com/sites/default/files/Commission/Documents/Item%2010A%20Info%20USACE%20Flood%20Study%20Update%20and%20Amendment%20to%20Feasibility%20Cost%20Sharing%20Agreement%20%28S%29_0.pdf

Port staff now requests that the Port Commission authorize the Executive Director to amend the FCSA to increase the Project budget from \$3 million to \$6 million.

Additionally, if approved by the San Francisco Board of Supervisors (Board of Supervisors) and the Assistant Secretary of the Army, Port staff requests that the Port Commission authorize the Executive Director to further amend the FCSA to increase the Project budget from \$6 million to \$20.1 million², extend the schedule from three to five years, and increase the Port's flexibility to make cash contributions to the Project as the Non-Federal Sponsor.

The Port is responsible for 50% of the total study cost which can be a cash contribution or a work-in-kind contribution.

STRATEGIC OBJECTIVES

The Port's Waterfront Resilience Program supports the goals of the Port's Strategic Plan as follows:

Engagement

By leading an inclusive stakeholder process to develop a shared vision, goals, and principles for the Embarcadero Seawall Program and Flood Study.

Livability

By increasing the proportion of funds spent by the Port on contract services performed by LBE firms.

Resiliency

By leading the City's efforts to address threats from earthquakes and flood risk through research and infrastructure improvements to the Embarcadero Seawall and adjoining buildings and other infrastructure.

Sustainability

By enhancing the quality of the Bay water and habitat with the improvements, by limiting construction impacts and waste, and by sustainable design and construction best management practices.

Financial Stability

By supporting the Flood Study which has the potential to generate significant federal funding.

² While the USACE effort associated with the Study includes \$200,000 in federal funding that is not cost shared, which would bring the total combined effort to \$20.3 million, the FCSA amendment language provided by USACE addresses the 50/50 cost-shared partnership with the Port, and so reflects the \$20.1 million cost-shared amount.

FEASIBILITY COST SHARING AGREEMENT BACKGROUND

As described in the May 12, 2020 staff report, USACE prepares a Feasibility Report describing the ultimate endorsement and approval of the Flood Resiliency Study, and any recommended project for construction, through a “Chief’s Report” to Congress. The Chief’s Report is transmitted to Congress for authorization in a future Water Resources Development Act.

On August 14, 2018, the Port Commission authorized the Executive Director to enter into a Feasibility Cost Sharing Agreement (FCSA) with the USACE for study of coastal flood resilience on the San Francisco waterfront under the USACE General Investigation program³. That agreement, executed on September 5, 2018 contains the following key elements:

- It requires the Port as Non-Federal sponsor to share in the cost of the Flood Resiliency Study with USACE at a ratio of 50/50, subject to the appropriation of funds by either entity;
- The Port is 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 USACE General Investigation program; and
- The FCSA recites the standard allowable time of 36 months for completion of the Flood Resilience Study.

INCREASE IN FEDERAL FUNDING

The FCSA contemplated a total Project cost of \$3 million, obligating the Port as Non-Federal Sponsor to contribute 50% of this amount, or \$1.5 million over three years. However, in the time since that agreement was executed, Port and USACE staff members together have determined that the Project cannot be completed under the traditional schedule and budget for a General Investigation.

³The staff report for this item can be found at:

<https://sfport.com/file/33969>

As described in the August 19, 2019 Port Commission staff report⁴, the USACE Project Delivery Team, including Port staff, has proposed a \$20.1 million Flood Resiliency Study cost with a five-year study length. The reasons for this increase are:

- The Port of San Francisco's San Francisco Bay shoreline is a complicated urban shoreline, with significant public and private investment in the near-shore area, including over water;
- Multiple City, regional and private agencies own and operate utility and transportation infrastructure along the shoreline, including key assets that are exposed to potential flooding and sea level rise, such as the Embarcadero MUNI Tunnel;
- The Study area includes three historic districts: the Embarcadero Historic District, which includes the Ferry Building, the Agriculture Building and finger piers from Pier 45 in Fisherman's Wharf to Pier 48 in Mission Bay; the Union Iron Works Historic District in Pier 70; and San Francisco Maritime National Historical Park, including Aquatic Park under the jurisdiction of the National Park Service; and
- Developing flood risk management projects for such a dense, extended urban shoreline is a complicated and nuanced effort that requires significant public and stakeholder outreach, detailed analysis of flood damages under a range of sea level rise scenarios and an alternatives formulation process that respects existing public and private investments and historic resources.

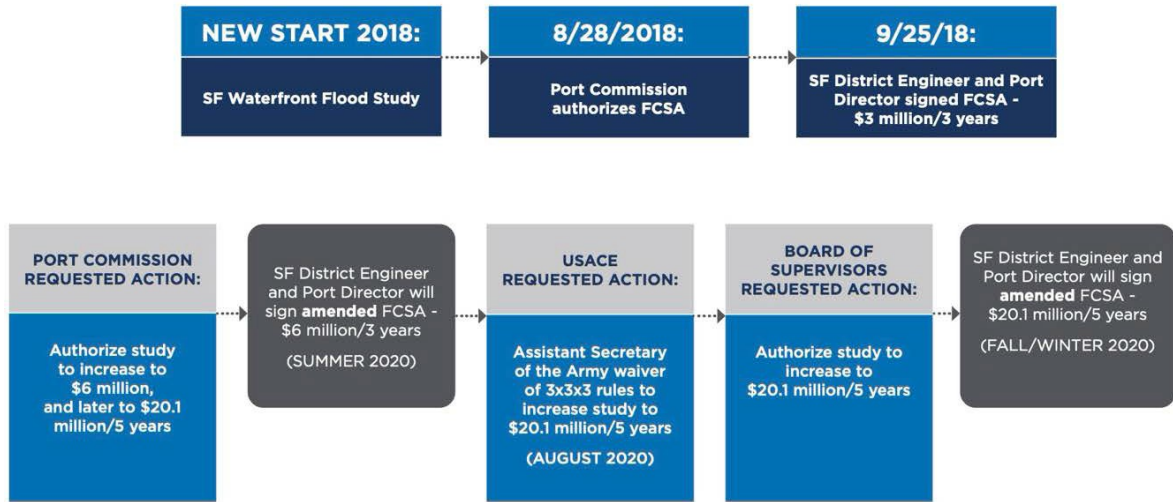
USACE staff has drafted a waiver request that would increase the FCSA study limit from \$3 million to \$20.1 million and extend the period of the study from three years to five years. These proposed revisions to the FCSA have yet to undergo final review by USACE, so are subject to change. In August 2020, USACE intends to start the process for seeking approval from the U.S. Assistant Secretary of the Army for Public Works for this waiver. USACE staff anticipates formal approval of the proposed revisions by the end of December 2020.

It is important to note that any increase in the Project budget will occur in two steps: first, from \$3 million to \$6 million pursuant to a first amendment to the FCSA as described below, and second, if the Board of Supervisors approves the increased Project budget and a waiver is subsequently approved by the U.S. Assistant Secretary of the Army for Public Works, the Project budget will increase from \$6 million to \$20.1 million pursuant to a second amendment to the FCSA as described below. Figure 1 below shows the approvals required and the resulting amendments to the FCSA.

⁴ The staff report for this item can be found at:

<https://sfport.com/file/40823>

Figure 1: Port-USACE Feasibility Cost Sharing Agreement Approvals



The Federal government appropriated \$500,000 to the Project in FY 2018, which the Port matched with a \$500,000 payment in September 2018. Subsequently, the Federal government appropriated \$200,000 to the Project in FY 2019, which the Port matched with a \$200,000 payment in November 2019.

On February 10, 2020, USACE released its final budget for FY 2020, which included \$800,000 originally included in the President’s Budget and the FY 2020 appropriations bill, and an additional \$1.5 million in USACE Work Plan funding, totaling \$2.3 million in FY 2020 funding for the Project. Accordingly, counting the \$700,000 in federal funds previously appropriated, the Project has now received total federal appropriations of \$3 million. This is the maximum federal commitment to a Feasibility Study without an exemption approved by the Assistant Secretary of the Army for Public Works. Table 1 below shows current federal and current and proposed Port contributions to the Project.

Fiscal Year (1)	Federal Appropriations	Port of San Francisco Contributions
FY 2018	\$500,000	\$500,000 (cash – 9/18)
FY 2019	\$200,000	\$200,000 (cash – 11/19)
FY 2020	\$2,300,000	<i>Proposed</i> - \$2,300,000 (in-kind services and cash)

(1) The federal fiscal year begins on October 1 and ends on September 30.

In order to maintain a 50% cost share with the Federal government, the Port must now identify \$2.3 million in cash or in-kind credit and seek Port Commission authorization to amend the FCSA to increase the total Project costs from \$3 million to \$6 million. Based on Port Commission and Board of Supervisors approvals to date, the Port currently has

sufficient funding and contract capacity to provide in-kind services to meet the proposed \$2.3 million Non-Federal sponsor matching requirements.

The Port and the Controller's Office of Public Finance are coordinating to issue the first series of 2018 Embarcadero Seawall General Obligation Bonds in May 2020 to support the Embarcadero Seawall Program and the Flood Resiliency Study, in an aggregate principal amount not to exceed \$50,000,000, as authorized under Port Commission Resolution 19-08⁵ and Board of Supervisors Resolution 324-19. Proceeds from the bond sale will provide key funding for the items below.

On September 24, 2019, the Port Commission approved Resolution 19-41⁶ which authorized Port staff to execute an amendment to the existing contract with CH2M Engineers, Inc., for planning, engineering, and environmental services for the Port's Waterfront Resilience Program (PEC Contract), which includes within it the Embarcadero Seawall Program. On November 27, 2019, the San Francisco Board of Supervisors approved Resolution 504-19 authorizing the Port Executive Director to execute Amendment No. 1 to the PEC Contract. This contract amendment included additional funding and consultant support for the Embarcadero Seawall Program, the Flood Resiliency Study and related activities. Port staff proposes to use the PEC Contract (up to a total of \$9.35 million) to provide in-kind services to match federal funding for the Project, as authorized under the FCSA.

Subject to approval by the Board of Supervisors and a waiver approved by the Assistant Secretary of the Army authorizing an increase of the FCSA budget to \$20.1 million and a time extension to five years, Port staff requests that the Port Commission authorize the Executive Director to further amend the FCSA to again increase the Project budget, from \$6 million to \$20.1 million, extend the schedule from three to five years, and add a clause to the FCSA that would increase the Port's flexibility to make cash contributions to the Project as the Non-Federal Sponsor.

SUMMARY OF FCSA AMENDMENTS REQUESTED

First Amendment

If the Port Commission approves the attached resolution, and USACE approves the proposed amendment, the FCSA will be first amended as follows:

⁵ The staff report for this item can be found at:

<https://sfport.com/file/38658>

⁶ The staff report for this item can be found at:

<https://sfport.com/file/40914>

A. As of the effective date of this Agreement, shared study costs are projected to be \$6,000,000, with the Government's share of such costs projected to be \$3,000,000 and the Non-Federal Sponsor's share of such costs projected to be \$3,000,000. These amounts are estimates only that are subject to adjustment by the Government and the Non-Federal Sponsor and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

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

Second Amendment

If the Port Commission approves the attached resolution, the Board of Supervisors approves an increase in the Project cost to \$20.1 million, and the U.S. Assistant Secretary of the Army for Public Works approves the waiver described in this staff memorandum, and USACE approves the waiver, the FCSA would be further amended as follows:

A. As of the effective date of this Agreement, shared study costs are projected to be \$20,100,000, with the Government's share of such costs projected to be \$10,050,000 and the Non-Federal Sponsor's share of such costs projected to be \$10,050,000. These amounts are estimates only that are subject to adjustment by the Government and the Non-Federal Sponsor and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

This second amendment will also extend the schedule of the Project from three years to five years.

Accelerated Funds Clause

As part of the Second Amendment, Port staff also seeks authority to amend the FCSA to permit the Port, subject to the appropriation authority of the Port Commission and the Board of Supervisors, to make cash contributions to the Project. This flexibility provides a mechanism to keep the Project going in the absence of federal appropriations. Given the appropriation history to the Project, staff believes that this scenario is unlikely, but given the uncertainty of the current fiscal climate, Port staff believes that it will be useful for the Port Commission to have this option at its disposal.

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. In order to maintain a 50% cost share, utilizing this clause would also require a matching reduction in local work-in-kind spending to support the Flood Resiliency Study. This will not change the scope of work

for the Flood Resiliency Study, but it would shift more work to USACE to complete and reduce in-kind work provided by the Port team.

The USACE San Francisco District must approve the inclusion of the language below in the FCSA, which would occur concurrent with execution of the amendment.

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.

REQUESTED AUTHORIZATION

For the reasons set forth above, Port staff seeks authorization from the Port Commission for the Executive Director to amend the September 9, 2018 FCSA with USACE for the San Francisco Waterfront Flood Resiliency Study upon the terms and conditions recited in this staff memorandum and in a form approved by the City Attorney.

NEXT STEPS

Port staff and the USACE team, which together comprise the Project Delivery Team, is making significant progress with the Flood Resiliency Study. Staff will work with the Executive Director to schedule an in-depth briefing to the Port Commission about Project progress this summer.

Prepared by: Daley Dunham, Finance and Legislative Affairs Manager,
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Kelley Capone, USACE Flood Study Project Manager

Brad Benson, Waterfront Resilience Director

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

RESOLUTION NO. 20-24

- 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 Port's Southern Waterfront includes Pier 48 and 50, areas surrounding Mission Creek, streets and parks in Mission Bay, the Union Iron Works Historic District at Pier 70, the Port's active maritime industrial piers, including Pier 80 and Piers 92-96, and land adjacent to Islais Creek, including 1399 Marin Street; and
- WHEREAS, Flood risk maps published by the Port, the City and the Federal Emergency Management Agency all indicate current and future flood risk along significant portions of Port property associated with King Tides, 100 Year and 500 Year Floods, and sea level rise; and
- WHEREAS, On June 7, 2018, the United States Army Corps of Engineers (USACE) awarded the City and County of San Francisco a "new start" study appropriation to commence a General Investigation (GI) feasibility study to examine the Federal interest of possible improvements to reduce flood risk along the San Francisco waterfront (the San Francisco Flood Resiliency Study, or Project), as elaborated in the staff memorandum accompanying resolution 18-46 passed by the Port Commission on August 14, 2018; and
- WHEREAS, On August 14, 2018, pursuant to Resolution 18-46, the Port Commission authorized the Executive Director to enter into a Feasibility Cost Sharing Agreement (FCSA) with USACE for the Project at a total cost of \$3,000,000 over three years, under which the Port as Non-Federal sponsor committed to match federal funding for the Project in equal proportion, resulting in a \$1,500,000 Federal funding commitment and a \$1,500,000 Non-Federal sponsor (Port) commitment; and
- WHEREAS, The Project is far more complex than typical USACE GI projects and, as a result, USACE has requested and on February 10, 2020 received \$2,300,000 in additional funding in the FY 2020 federal budget, raising the USACE total financial commitment to the Project to \$3,000,000; and

- WHEREAS, To maintain the Port's 50% cost share balance under the current FCSA, Port staff is now seeking a first amendment to the FCSA to raise the total expenditure ceiling; and
- WHEREAS, By Resolution 19-41, the Port Commission authorized, subject to Board of Supervisors approval, Port staff to execute an amendment to the existing contract with CH2M Engineers, Inc., for planning, engineering, and environmental services for the Waterfront Resilience Program, which includes the Embarcadero Seawall Program, the U.S. Army Corps of Engineers Flood Resiliency Study and related activities to increase the contract amount by \$19,334,390, resulting in an amended contract amount of \$55,684,130, with no change in the contract term or duration (PEC Contract); and
- WHEREAS, By Resolution 504-19, the Board of Supervisors approved and authorized the Executive Director of the Port of San Francisco to execute Amendment No. 1 to the PEC Contract; and
- WHEREAS, The Port has funds allocated in its Seawall Resiliency Project, 12672 - Seawall & Marginal Wharf Repair (to pay for services under the PEC contract and other Program expense), to provide the required cost matching contribution, where the Port will determine the mix of cash and credit for in-kind services required of the Port under the FCSA through the PEC Contract; and
- WHEREAS, The Port will make this determination based on maximizing the Port and PEC Contract activities eligible for credit as in-kind, and supplying the balance of matching requirement with cash contribution; and
- WHEREAS, The Port and the Controller's Office of Public Finance are coordinating to issue the first series of Embarcadero Seawall General Obligation Bonds in May 2020 to support the Embarcadero Seawall Program and the USACE Flood Resiliency Study, in an aggregate principal amount not to exceed \$50,000,000, as authorized under Port Commission Resolution 19-08 and Board of Supervisors Resolution 324-19; and
- WHEREAS, Further study by the Port and USACE suggests the Project warrants a second amendment to the FCSA, that (1) increases the budget to \$20,100,000, (2) increases the schedule for completion from three years to five years, and (3) gives the Port the option to provide its cost match contribution earlier than federal appropriations to the Project, which may be a useful option to advance the Project in the event that Federal funding is not available in a given budget year, all as further described in the staff report accompanying this resolution; and

WHEREAS, Around August 2020, USACE staff will seek approval from the Assistant Secretary of the Army for Civil Works to approve a waiver authorizing an increase in the budget for the Project to \$20,100,000, which if approved, would increase the Port's 50% match obligation for the Project from \$1,500,000 to \$10,050,000; and

WHEREAS, Assuming successful issuance of the first Embarcadero Seawall General Obligation Bond sale authorized by the Port Commission under Resolution 19-08 and the Board of Supervisors under Resolution 324-19, such funds may be used for the Port's matching contribution under the FCSA, combined with the in-kind services provided through the PEC Contract; now, therefore, be it

RESOLVED, That the Port Commission hereby authorizes the Executive Director to enter into a first amendment to the FCSA with USACE, that increases the Project cost from \$3 million to \$6 million and increases the Port's match to \$3,000,000 in cash or in-kind contributions, as described in the staff report accompanying this resolution and in such form as approved by the City Attorney, that would allow USACE to further the San Francisco Waterfront Flood Resiliency Study; and be it further

RESOLVED, That, subject to approval by the Board of Supervisors and the approval of a waiver by the Assistant Secretary of the Army, the Port Commission hereby authorizes the Executive Director to enter a second amendment to the FCSA that (1) allows the Port to elect to provide its cost match contribution earlier than federal appropriations to the Project, (2) increases the upper limit of the Flood Resilience study to \$20.1 million, increasing the Port's 50% local match to \$10,050,000 in Port funds or in-kind contributions to the Project, and (3) increases the term to five years, as described in the staff report accompanying this resolution and in such form as approved by the City Attorney; and be it further

RESOLVED, Future advance cash funding to USACE under the accelerated funding clause of the FCSA is subject to approval from the Port Commission and the Board of Supervisors; and

RESOLVED, That the Port Commission hereby authorizes the Executive Director to execute any documents required for the implementation of these FCSA amendments, including any letters of intent, amendments, augmentations or extensions thereof necessary to implement the transaction contemplated by the FCSA and this resolution which, when taken as a whole, the Executive Director determines in consultation with the City Attorney, are in the best interests of the Port, and do not materially decrease the benefits or materially increase the obligations or liabilities of the Port, and are necessary or advisable to complete the transaction that the FCSA and this resolution contemplates.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of May 26, 2020.

Secretary