

San Francisco Bay Conservation and Development Commission

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TO: Commissioners and Alternates

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SUBJECT: Staff Report and Recommendation to Amend the Contract with the Port of San Francisco for BPA 3-17 to Fund Planning Activities.
(For Commission consideration on December 21, 2023)

Summary

The staff recommends that the Commission authorize the Executive Director to enter into a Memorandum of Understanding with the Port of San Francisco and authorize the Executive Director to amend the Commission's contract with the Port of San Francisco for BPA 3-17 to pay BCDC \$450,000 over a three-year term to fund a BCDC staff planning position. In addition, the staff recommends that the Commission authorize the Executive Director to make amendments to modify tasks covered by the contract over time as mutually agreed upon between the Port of San Francisco staff and BCDC staff, and to revise the amount or duration of the agreement.

Background

The *San Francisco Waterfront Special Area Plan* (SFWSAP) was initially adopted by the Commission in 1975. The most recent comprehensive update to the SFWSAP was adopted in 2000, with several minor amendments occurring thereafter. As stated in the Findings of the SFWSAP, the SFWSAP is the "result of the joint, detailed planning process for the Northeastern Waterfront is a physical and policy plan...that responds to the commercial realities of the Port by allowing the Port to redevelop those of its piers not designated for removal for uses consistent with the Public Trust Doctrine and the Port's legislative trust grant, in return for an integrated package of public benefits that could not be achieved through the BCDC's permit authority for individual projects." These public benefits included pier removal, the creation of new open water basins, and the construction of public plazas and open space areas by the Port in exchange for the ability to redevelop its piers not designated for removal. The SFWSAP is a more specific application of the San Francisco Bay Plan, and amendments to the SFWSAP are processed as an amendment to the San Francisco Bay Plan.

On August 11, 2017, the Port submitted a SFWSAP amendment application requesting that the Commission initiate an amendment to the SFWSAP; and at the time of submittal the Executive Director of the Commission could not accept the Port's proposed amendment to the SFWSAP for processing because the amendment submittal lacked one of the necessary elements of an



acceptable amendment application set forth in Appendix G of the Commission's regulations, namely, "the specific language change proposed to the text of the [SFWSAP]." (14 CCR § 11000 and App. G, "Specific Information," § 3).

As a result, the Commission and the Port agreed that it was not feasible at the time of the original application to develop an estimate of the full cost of the work required of the Commission to process and act upon an amendment to the SFWSAP until the respective staffs of the Commission and the Port worked through, among other issues, crafting of proposed amendment language.

Upon the initial execution of the 2018 Agreement the duration of time required for performing the work under the contract was anticipated to be July 1, 2018 to December 31, 2019; and the Port agreed to provide the Commission with up to \$150,000.00 (one hundred and fifty thousand dollars) to reimburse expenses for Commission staff assistance to work with the Port to determine the specific language for potential SAP amendments.

Port and BCDC staff work on the proposed amendment experienced delays related to the Pandemic and staff turnover, and the 2018 Agreement was amended a number of times to extend the duration of the agreement. BCDC staff and Port staff met frequently during the term of the original 2018 Agreement to discuss potential revisions for the SFWSAP. BCDC staff worked with the Port to provide comments for all phases of the environmental review process for the Port's Waterfront Plan to ensure consistency with BCDC laws and policies and to inform future SFWSAP policy revisions. BCDC staff submitted a working draft of the SFWSAP that included updated findings and policies to the Port for review on August 23, 2022. BCDC staff issued a letter requesting the Port provide detailed proposals to provide substance to the Port's requested amendment. Port transmitted a draft document for BCDC staff review and comment on proposed language to amend the SAP in December 2022.

In the Spring of 2023, BCDC staff and Port staff met Port and BCDC staff engaged discussions regarding the proposed development project at Piers 30-32 and Seawall Lot 330. These discussions evolved further to identify strategies to improve collaboration and mutual support between the agencies. As a result of these discussions, BCDC staff and Port staff are developing a Memorandum of Understanding ("MOU") that will describe a process for reviewing and revising the SFWSAP and will provide a framework for coordination between Port staff and Commission's planning and regulatory staff on several Port priorities, including the Port's Waterfront Resilience Program.

As a result of these discussions, as well as the previous analyses conducted through the scoping process outlined in the 2018 Agreement for BPA 3-17, BCDC and the Port will undertake the update to the SFWSAP in phases. In 2024, BCDC and the Port will collaborate on a more narrowly-focused amendment to the SFWSAP to address immediate issues that impact some of the Port's near-term development plans. The amendments may include proposed discontinuance of application of the Replacement Pier / Replacement Fill Policy (50% Rule) to the Fisherman's Wharf geographic vicinity, proposed update to provisions to satisfy the fill

requirement for the Exploratorium development project (BCDC Permit 2006.009), and other simple and feasible amendments to provide clarity and alignment with the Port's 2023 Waterfront Plan, as mutually agreed upon by both agencies. At a later date, BCDC and the Port will undertake a more comprehensive update of the SFWSAP, following in time and informed by a number of ongoing or forthcoming planning processes such as the BayAdapt initiative to develop the Regional Shoreline Adaptation Plan, the Port's Waterfront Resilience Program planning, and a potential study of the Public Trust as it is impacted by Sea Level Rise.

The Port would provide BCDC with \$450,000 over a three-year period (January 2024-December 2026) to fund a BCDC staff position to shepherd the narrowly-focused SFWSAP Bay Plan Amendment to consideration by the Commission in 2024 as provided in the proposed MOU. In addition, the BCDC staff funded by this contract would also support planning and regulatory coordination with the Port of San Francisco, particularly on critical climate change resilience and adaptation planning and project permitting. The BCDC staff funded by this contract would act as primary liaison from BCDC on the USACE SF Waterfront Flood Study and the Port of San Francisco's Waterfront Resilience Program. The BCDC staff hired through this contract would act as a point of contact and BCDC staff expert on Port issues to support preapplication consultation and discussions with Port and BCDC Permit staff, increasing coordination with the intent of reducing inconsistency in permitting, while helping to resolve conflicts by offering a Port-wide perspective.

The Port and BCDC executive staff would meet quarterly to review the work plan for the BCDC staff work funded by the contract with the Port, revising the work priorities by mutual agreement to ensure that the workplan priorities meets the needs of the Port and BCDC to facilitate coordination in planning and permitting. Based on these quarterly reviews, the Port and BCDC staff could identify additional projects and tasks not yet described in the contract that the BCDC staff funded by the contract could lead or support that could benefit both agencies, providing flexibility to the position. As a result, staff recommends the Commission authorize the Executive Director to make amendments to the contract over time to reflect future tasks identified through this collaborative approach and to authorize the Executive Director to revise the amount or duration of the agreement.

Staff Recommendation

The staff recommends that the Commission authorize the Executive Director to: (1) enter into a Memorandum of Understanding with the Port of San Francisco, (2) amend the contract with the Port of San Francisco for BPA 3-17 to receive \$450,000 to fund BCDC staff work on a narrowly-focused update to the SFWSAP and various other planning and regulatory activities from January 2024-December 2026; and (3) authorize the Executive Director to make amendments to modify tasks covered by the contract over time as mutually agreed upon between the Port of San Francisco staff and BCDC staff and to revise the amount or duration of the agreement.