



# Attachment B to Agenda File No. 2016-0517

## San Diego Unified Port District

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3165 Pacific Hwy.  
San Diego, CA 92101

**File #:**2016-0382

**DATE:** July 27, 2016

**SUBJECT:**

**TENTH AVENUE MARINE TERMINAL (TAMT) TRANSIT SHED DEMOLITION AND INITIAL RAIL COMPONENT PROJECT AND TRANSPORTATION INVESTMENT GENERATING ECONOMIC RECOVERY (TIGER) GRANT:**

- A) RESOLUTION AUTHORIZING STAFF TO ENTER INTO A CONDITIONAL AGREEMENT WITH THE DEPARTMENT OF TRANSPORTATION FOR A \$10,000,000 TIGER GRANT (GRANT NO. DTMA91G1600003), AND TO GRANT INDEMNITY TO THE DEPARTMENT OF TRANSPORTATION;**
- B) RESOLUTION APPROVING AN AMENDMENT TO THE FISCAL YEAR (FY) 2014-2018 5-YEAR CAPITAL IMPROVEMENT PROGRAM TO INCREASE THE TAMT PHASE II DEMOLITION - TRANSIT SHED #1, BAY A, B, C DESIGN PROJECT COST BY \$1 MILLION TO CONDUCT APPROXIMATE 70 PERCENT DESIGN FOR THE DEMOLITION OF TRANSIT SHED #1 AND OTHER IMPROVEMENTS**

### **EXECUTIVE SUMMARY:**

On June 2, 2015, the District submitted an application for the seventh round of Transportation Infrastructure Generating Economic Recovery (TIGER) Grant funding for the "Tenth Avenue Marine Terminal Transit Shed Demolition and Initial Rail Component Project" (Project). District staff was notified on October 30, 2015 that the District's application had been selected for a \$10M award for the Project. The total estimated cost of the Project is \$24M, with \$10M to be funded by the US Department of Transportation in the form of the TIGER Grant, and the remainder to be funded by the District. The Project consists of the following components:

- Demolition of two obsolete and underutilized transit sheds (Transit Sheds #1 and #2), located adjacent to the terminal's primary vessel berths
- Relocation of staff and replacement of restrooms
- Grading and paving of the newly-created open area
- New and reconfigured site utilities and lighting at the newly-created open area
- Installation of infrastructure to support future electrification on the terminal
- Installation of rail airbrake testing and maintenance equipment

This Project is contemplated as an initial phase of Proposed TAMT Redevelopment Plan (Redevelopment Plan), which was presented to the Board at the April 2014 Board of Port Commissioners (Board) meeting. At that time, the Board directed staff to commence environmental review on the proposed Redevelopment Plan, including the elements of the Project described above. That Draft Environmental Impact Report (EIR) for the Redevelopment Plan and Project is currently

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available for public review, which is scheduled to end on August 18, 2016. Staff anticipates bringing the Draft EIR and the Redevelopment Plan to the Board for consideration and potential certification/adoption in November 2016. At that time, Staff will also request the Board's approval of a Coastal Development Permit, additional funding for design and other necessary entitlements to implement the Project.

The Project removes existing operational impediments that render large portions of the terminal functionally obsolete. It is supported by a business case based on key target customers, market indicators and a robust business development program. Using conservative estimates, staff estimates a return on district investment will be realized between years 11 and 12 of the Project. Staff anticipates an internal rate of return (IRR) of 11.2 percent, and revenues generated from the Project to be approximately \$66.5M over 30 years.

As proposed, the schedule for the Project is as follows:

- July 27, 2016: Approval of a conditional grant agreement (Conditional Agreement) and CIP program amendment to conduct design of demolition of Transit Shed #1 July 28, 2016: Begin partial design (70 percent) for demolition of Transit Shed #1
- November 8, 2016: Board consideration of the Draft EIR for certification and approval of entitlements
- February, 2017: Complete final design for demolition of Transit Shed #1
- June, 2017: Grant Deadline to obligate funds and commence demolition of Transit Shed #1
- September 2017: Begin design for demolition of Transit Shed #2 and rail improvements
- March 2018: Complete design for demolition of Transit Shed #2 and rail improvements
- September, 2018: Commence demolition of Transit Shed #2, followed by construction of rail improvements
- March, 2020: Anticipated project completion
- September 2022: Grant deadline for project completion and close-out

This recommended Board action will amend the FY 2014-2018 5-Year Capital Improvement Program (CIP), by an additional \$1 Million for the approximate 70 percent design of demolition of Transit Shed #1 at TAMT. An increase in the Project budget is requested to continue design in advance of obligating construction funds for the Project, and to meet the requirements and will provide for completion of the Project as proposed. The design costs are not an eligible component of the grant scope and therefore are not eligible for grant reimbursement.

**RECOMMENDATION:**

Receive staff's informational presentation and:

- A) Adopt a resolution authorizing staff to enter into the Conditional Agreement with the United States Department of Transportation (DOT) for a \$10,000,000 TIGER grant (Grant No. number DTMA91G1600003) and grant DOT indemnity pursuant to the terms of that Conditional Agreement
- B) Adopt a resolution approving an amendment to the FY 2014-2018 5-Year Capital Improvement Program to increase the TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design project cost by \$1 Million to conduct approximate 70 percent design for the demolition of Transit Shed #1 and other improvements

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### **FISCAL IMPACT:**

- A. Entering into the Conditional Agreement with DOT will conditionally secure \$10 Million of TIGER Grant funds, awarded by the DOT, to fund a portion of the Project..
- B. The increase of \$ 1 Million for the TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design project will be funded from the FY 15/16 projected unrestricted resources.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A thriving and modern maritime seaport.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### **Background**

The DOT projects that freight volumes will grow by 40 percent over today's volumes by 2045. The American Association of Port Authorities (AAPA) estimates that the value of goods transported by water will increase by 120% in the next 30 years. This cargo will rely on an infrastructure network that consists of ports terminals, cargo handling equipment, open cargo storage area, regional road networks, highways and trains.

The TIGER Grant program is a federally-funded discretionary grant program managed through the DOT. The TIGER program was developed to assist in facilitating freight system infrastructure investments in order to support forecasted increase in freight volumes. TIGER Grants are highly competitive, and are focused on funding transportation infrastructure projects that are multi-modal, multi-jurisdictional, provide substantial benefit to the region and will result in a significant and measurable improvement over existing conditions. They are not restricted to a single mode; ports must compete against all transportation modes in order to secure funding. In 2016, the success rate for applicants was 6 percent.

The District submitted an application for the seventh round of TIGER Grant funding availability on June 2, 2015. The application demonstrated the District's ability to proceed and follow DOT's procedures by confirming the availability of matching funds, anticipating the schedule for the entitlement process, including the completion of the California Environmental Quality Act (CEQA) and National Environmental Policy Act analyses and showing support for the Project. As stated in the application, the Project consists of the following components:

- Demolition of two obsolete and underutilized transit sheds (Transit Sheds #1 and #2), located adjacent to the terminal's primary vessel berths

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- Relocation of staff and replacement of restrooms
- Grading and paving of the newly-created open area
- New and reconfigured site utilities and lighting at the newly-created open area
- Installation of infrastructure to support future electrification on the terminal
- Installation of rail airbrake testing and maintenance equipment

This was the District's sixth attempt at securing a TIGER Grant, and the fourth application to fund projects on TAMT. The District initially submitted a full-project cost of \$19,940,000, with a proposed matching fund accounting for 50 percent of the project cost. However, in order to maintain a competitive match, elements of the Project were removed from consideration in the application. The Project elements that were removed from the grant application included design, staff relocation facilities, restroom facilities, and shore power plugs (however, the underlying electrical infrastructure remains a part of the Project). With the exception of shore power plugs, the remaining elements will be accomplished with District funds. Additional shore power facilities may be installed in the future based on market requirements.

The District was fortunate to receive a high level of regional support for the application. Specifically, the San Diego regional congressional delegation and both California Senators supported the application. In addition, DOT received support letters TIGER Grant application from labor, academia, State and City representatives, industry and trade groups, partner agencies and our customers.

On October 30, 2015, the District was formally notified that our application was successful. During this TIGER Grant round, DOT received 38 applications for proposed projects that totaled \$10B. Three of those proposed projects are located in California. In addition to the conditional grant award for the Project, the District's primary cargo competitor in California, Port Hueneme, was awarded \$12.3M for an Intermodal Improvement Project with a total cost of \$24.5M. The Los Angeles County Metropolitan Transportation Authority was awarded \$15M to partially fund a \$34.3M Rail-to-Rail Active Transportation Corridor Connector Project. The District successfully competed for only \$500M of available funding.

### **The Proposed TAMT Redevelopment Plan**

The Project is included as an initial phase in the District's proposed TAMT Redevelopment Plan (Redevelopment Plan), which is designed to maximize the terminal's cargo potential. The draft Redevelopment Plan was developed by leading port consultant, Vickerman & Associates, in 2013. The demolition of the transit sheds and the rail improvements are the first of multiple proposed infrastructure improvements that are phased, based on market readiness, through the horizon year 2035. The Board was briefed on the draft Redevelopment Plan at the April, 2014 Board Meeting, at which time staff was directed to begin environmental review including preparation of an Environmental Impact Review (EIR).

The proposed Redevelopment Plan aims to position the Port to maximize the terminal's potential by successfully capturing specialty cargo, responding to market conditions and customer needs, employing innovative technology and sustainability efforts, creating good paying jobs, and increasing economic benefit for the San Diego region. These goals would be achieved through a suite of potential infrastructure investments, which could ultimately include:

- Additional open storage and cargo-handling space

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- Upgrades to existing rail facilities in order to ease rail-car movements on terminal
- Additional shore power capability
- Demolition of obsolete molasses storage tanks
- Additional consolidated dry bulk storage capacity
- Enhancements to the existing bulk cargo conveyor system for sustainability and operational efficiency
- Demolition of Warehouse C
- Expanded on-dock rail facilities to facilitate additional cargo movements by rail
- Up to five electric gantry cranes

The draft Redevelopment Plan contemplates that TAMT's existing footprint would be reconfigured to create operational cargo nodes focused on handling three primary cargo commodities: refrigerated containers, breakbulk (including dry containers and roll-on/roll-off cargo), and dry bulk. Grouping similar cargos together by node generates operational efficiencies, increases safety, and presents an opportunity to incentivize public-private investments and technology innovations. The Project would be the first phase to realization of the Redevelopment Plan.

The Draft EIR for the proposed Redevelopment Plan, along with the Project, was made available for public review on June 30, 2016. The comment period will remain open through August 18, 2016. Staff anticipates bringing the Final EIR to the Board for consideration and certification at the November 8, 2016 Board meeting.

The draft Conditional Agreement contemplates that the District will consider the EIR in the fall 2016. It is the District's interpretation of the draft Conditional Agreement that no grant funding can or will occur until after certification of the EIR, which is the intent of the parties. Additionally, pursuant to the draft Conditional Agreement, the District retains sole and absolute discretion to, among other things (i) prepare, adopt, or disapprove the CEQA analysis; (ii) adopt any and all feasible mitigation measures to lessen potentially significant environmental effects; (iii) modify the project, adopt any alternatives to the same, including the "no project" alternative, and adopt or refuse to adopt a Statement of Overriding Consideration, if applicable, in connection with the CEQA process. In the Conditional Agreement, DOT also agrees that the agreement does not commitment by the Board or any other entity to take or to not take any action in connection with CEQA or guarantee approval of the CEQA analysis or other entitlements/permits necessary to implement the Project. Therefore, the Board still has the ability to reject the Project and the grant money would not be distributed if that is the case.

### **Transit Shed Demolition and Initial Rail Component Project**

The Project includes:

- Demolishing Transit Sheds #1 and #2, thereby removing the primary operational impediment at the terminal;
- Grading and repaving the resulting open area;
- Adding subsurface conduit for future electrification of the terminal;
- Replacing existing lighting;
- Installing a rail lubricator and a compressed air system for air brake testing; and
- Installing a modular office with restroom facilities, as well as a building with an electrical gear room, Information Technology room and outdoor storage space.

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The proposed draft Redevelopment Plan recommends that the District increase terminal capacity “to support larger and additional cargo capabilities by demolishing existing transit sheds to create more open space. At the earliest time frame, add additional open space and better unloading circulation on the (terminal) backlands.” This recommendation is in response to the recognition that the current configuration presents an operational conflict between vessel loading and discharge operations and cargo support facilities, such as TAMT’s on-dock cold storage facility and the refrigerated container plugs that are centrally located in the terminal footprint. This configuration reduces efficiency and increases on-terminal travel time between the vessel and cargo first point of rest. In addition, the transit sheds are configured to handle cargo that is no longer served at TAMT; their compact bays, vertical supports and low ceilings render the space largely unusable for customers in the District’s target cargo markets.

In recognition of the operational constraints resulting from the transit sheds, the Board approved a CIP project in the FY 2014-2018 CIP Budget, titled TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design, in the amount of \$500,000. The initial funding was used to design the demolition of a portion of Transit Shed #1 (Bay D). Additional funding of \$650,000 was authorized by the Board at the February 2014 Board meeting, to fund additional costs related to the Draft EIR and to increase the design scope to include preliminary design of the demolition of Transit Shed #2.

The project’s EIR and design costs have increased since February 2014 due to new regulatory and staffing requirements. The regulatory requirements include expanded greenhouse gas calculations and mitigation measures plus expanded storm water discharge permit compliance measures. District project staff costs for CIP projects as of Fiscal Year 16/17 must be funded from the project budget. The combined increased costs are estimated to be \$1,000,000.

The additional \$1,000,000 funds requested by staff in this action will be used to continue toward an approximately 70% design of the demolition of the remainder of Transit Shed #1. Full design must be complete before any grant funds can be obligated for the construction/demolition phase of the project. Funds for the final design for the demolition of transit shed 2, as well as project construction, will be requested by staff at a future Board meeting.

If additional funds are authorized, the current CIP project titled TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design will be amended as shown on the Project Information Sheet included as Attachment “B” of this document.

**Draft Conditional Agreement**

District staff and staff from the DOT Maritime Administration (MARAD), entered into a negotiation period wherein details of the Conditional Agreement were discussed. The draft Conditional Agreement (Attachment A) that the Board is being asked to approve is a result of this successful negotiation period.

Key elements included in the Conditional Agreement are:

- Summary of Project’s Statement of Work
- Project’s Estimated Schedule
- Project’s Estimated Budget
- Project’s State and Local Planning Requirements
- Project’s Environmental Approvals and Processes
- Project Performance Reporting Requirements

The Project Schedule, as outlined in the Conditional Agreement, contains some key milestones. Those key milestones (discussed further in the Project Timeline section below), relate to the District’s

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agreement to consider environmental review under CEQA and assist in the preparation of the NEPA analysis for MARAD's consideration by December 2016, and obligate funds conditioned on that environmental review by June 2017.

### **Business Case**

The business case for the Project rests on some key, underlying factors that are discussed in the proposed Redevelopment Plan; namely, that infrastructure investments be market-driven and include partners where possible, that the District maintain TAMT's principal role as an omni-terminal serving our three primary cargo commodities (refrigerated containers, break bulk and dry bulk), and that the District transition from inducement-based vessel calls to liner-service whenever possible. The Project will ultimately result in significant operational enhancements, and market opportunities for the refrigerated containers and break-bulk market segments. Therefore, staff has developed the business case and associated business development strategy based on these market segments, the implementation of which is subject to the Board's consider and certification of the EIR. Roll-on/Roll-off (ro/ro) cargos fit into the break bulk category, although this type of cargo is a sub-segment that is significant enough to warrant its own market evaluation. For that reason, staff has included a separate market analysis for ro/ro cargo. At all times, staff views success as providing the "lowest cost and best service," while positioning TAMT within the customer's overall logistics supply chain.

### Refrigerated Containers

The refrigerated container market segment is well-established at TAMT with the District's long-term partnership with Dole Fresh Fruit. This is the District's only liner service; Dole has three vessels deployed on a fixed rotation and making regular calls at established ports. This partnership has resulted in stable revenue to the District in the form of fixed rent and wharfage on any containers moved in excess of a negotiated volume.

The agriculture sector is showing strong market growth, outperforming other trade sectors. In response to this growth, Dole is in the process of deploying three new vessels in their San Diego service, resulting in an increase in terminal volumes of approximately 30 percent. Dole and District staff anticipated a ramp-up period to realize this volume growth following the first quarter 2016 deployment of the vessels. A conservative projection developed by Vickerman & Associates in the draft Redevelopment Plan, indicated that volumes would be fully realized in approximately 2033, however market demand has well outpaced forecasts, resulting in full vessels on their first rotation. This positive market growth has increased the urgency to modernize TAMT, not only to efficiently handle the Dole cargo, but also to capture additional refrigerated container cargo.

This market segment has the longest sales cycle of the three primary commodities handled at TAMT, in large part because it is handled on a liner basis, resulting in a significant investment of capital in the form of vessels and backland terminal support infrastructure required to handle regular volume and maintain cargo velocity. For that reason, staff anticipates a new liner service in this market to begin calling TAMT approximately ten years after the Project begins. Using a very conservative estimate of cargo volume growth based aligned with GDP growth, staff anticipates that a new customer in this market segment would result in approximately \$1.5M annually.

Business development efforts in this market segment will include:

- Outreach to the key carriers that are operating in this market space

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- Identifying opportunities for inducement calls that establish relationships and supply chain service providers, with the goal of transitioning to regularly scheduled calls
- Strategically staffing and recruiting talent to make marketplace connections and secure cargo

**Break Bulk**

The District has developed operational expertise and an industry reputation for excellence in handling this type of cargo. Break bulk cargo consists of items that do not fit into shipping containers; examples include military cargos, shipbuilding components, turbines, windmill blades and steel. Break bulk typically moves on an inducement basis; vessels make port calls based on the customer requirements and final cargo destination, but without a set schedule or rotation. TAMT has historically benefited from inducement calls. Despite the operational constraints presented by the transit sheds, the District has successfully handled break bulk cargo in the usable open space. Maintaining this business, and capturing additional cargo in this market as additional open space is created, will represent the foundation of targeted outreach efforts and new revenue sources during the Project construction period, provided the Project is approved by the Board.

The District currently handles approximately 100,000 metric tons of break bulk cargo at TAMT on an annual basis, resulting in base revenue to the District of \$589,000 in FY17. Based on the draft Redevelopment Plan, which was further validated by the District's business development staff and consultant, cargo volumes in this market outpace available capacity. District staff has established a goal of capturing 400,000 total tons of break bulk cargo, resulting in revenue of approximately \$400,000 annually between years 1-5 of the project (FY2018-2022). This goal is based on a conservative estimate of cargo volume growth in this sector, combined with initial positive market indication to the addition of new open space at TAMT, and balanced by the temporary capacity constraints presented by the project construction period.

Business development efforts targeted to this type of cargo will include:

- Sales efforts to targeted customers to identify cargo moves that can be handled in the newly created open space, and secure those arrangements prior to shed demolition
- Consider incentives for customers that are willing to commit to multiple vessel calls, or an increase in cargo velocity (reduced storage time) during the project construction period
- Careful management of existing lay berth agreements for non-cargo vessels that maintain berth utilization and supplement maritime revenues

**Roll-on/Roll-off (ro/ro)**

The District has an established record of excellence in this cargo market segment, and a long-standing partner, Pasha Automotive Services, operating at the National City Marine Terminal.

Ro/ro cargo at TAMT has typically been handled on an inducement basis, largely due to the operational constraints presented by the transit sheds. The space configuration internal to the sheds severely decreases cargo velocity and increases cargo handling. The operational impediments have rendered the space impractical for all but short-term use, resulting in the District's inability to secure long-term commitments in this market. The potential removal of the transit sheds to create open area will address this issue. Staff is targeting up to 100,000 units annually, with revenue of approximately \$1.5M annually.



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The ideal customer in this market segment is a new liner service that serves both general cargo and automobile manufacturers. The sales cycle for these types of customers is typically around 5 years; therefore, staff anticipates that regular service in this segment would begin at the conclusion Project. Business development efforts targeted to this type of cargo include:

- Targeting carriers, stevedores, and cargo owners ideally suited to TAMT
- Strategically staffing and recruiting high-performing talent
- Developing win-win proposals and customer incentives to secure medium to long-term partnerships in advance of project completion

Cumulative gross revenue to the District as a result of capturing opportunities in all three market segments would result in \$66.5M over 30 years. This is based on a very conservative market forecast that staff believes is achievable, in addition to positive market indications already received. Using these assumptions, the District will achieve payback of the District-funded portion of the Project between years 11 and 12; 7 years after the final payout and project completion. Netting out operational costs of approximately 20 percent, staff calculates an internal rate of return of 11.2 percent.

**Regional Benefit**

Staff has received positive feedback on DOT support for removing obsolete infrastructure and modernizing TAMT. In addition, past performance is viewed as an indicator of future performance; the District has consistently demonstrated our ability to successfully execute federally grant-funded projects on time and on budget.

The District contracted HDR, a nationally recognized economics firm, to assist us in informational gathering related to the Project, including the economic and regional benefits generated by the Project. HDR's work was included as part of the District's TIGER Grant application; it was then re-evaluated and updated based on refinements to the project description, conservative cargo volume estimates, and project cost. For the District's TIGER Grant application, HDR projected the project will add:

- \$39.7M in value to the local economy during construction
- \$29.8M in value to the local economy after construction is complete

Based on the updated project description, the following direct jobs are estimated:

- Up to 50 daily direct construction jobs throughout the 33-month construction period
- Up to 92 direct terminal jobs after construction. These jobs have an average annual compensation of \$72,000, well above the regional average.

**Proposed Project Timeline and Cost Control Measures**

The Project schedule is aggressive in an attempt to meet the Conditional Agreement's contemplated schedule:

- July 27, 2016: Conditional Agreement Acceptance and CIP Program Amendment
- July 28, 2016: Begin design for demolition of Transit Shed #1
- November 8, 2016: Board consideration of the Draft EIR and potential approval of the Project and associated entitlements/permits

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- February, 2017: Complete final design for demolition of Transit Shed #1
- June, 2017: Grant Deadline to obligate funds and commence demolition of Transit Shed #1
- September 2017: Begin design for demolition of Transit Shed #2 and rail improvements
- March 2018: Complete design for demolition of Transit Shed #2 and rail improvements
- September, 2018: Commence demolition of Transit Shed #2, followed by construction of rail improvements
- March, 2020: Anticipated project completion
- September 2022: Grant deadline for project completion and close-out

Adhering to the schedule also assists in controlling project costs. Other cost control measures that will be implemented include the following:

- Strict adherence to Budget during Design Phase by cost estimating exercises
- Preventing “Scope-Creep” by continuous focus on minimum requirement
- Implement Value Engineering process continuously
- Sequence bid and award packages to allow for adjustments to later phases as dictated by bid results on early phases
- Prepare bid packages to identify minimum requirements as “Base Bid” and desired-but-not-essential items as “Additive Bid Alternates”. Award only the items that conform to budget.

**Capital Improvement Program Amendment**

Staff also proposes amending the FY 2014-2018 5-Year Capital Improvement Program (CIP) to increase the TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design by \$1 Million to achieve approximately 70 percent design resulting in an increase in the project budget from \$1,150,000 to \$2,150,000. The increase will be transferred from unrestricted funds to CIP Projects. If the Board does approve the Project at a future date, this design effort is necessary to meet the anticipated schedule in the Conditional Agreement.

If additional funds are authorized the current CIP project titled TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C Design will be amended as shown on the Project Information Sheet included as Attachment “B” of this document.

Upon certification and adoption of the EIR, staff will seek Board authorization to add a new CIP budget and project titled “Tenth Avenue Marine Terminal Transit Shed Demolition and Initial Rail Component”. That new project will complete the design and provide the construction phase work for the TIGER-funded Transit Shed Demolition and Initial Rail Component project improvements.

**General Counsel’s Comments:**

The General Counsel’s Office has reviewed the agenda sheet and attachments as presented to it and approves them as to form and legality.

**Environmental Review:**

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This Board item would authorize staff to enter into the Conditional Agreement and increase the TAMT Phase II Demolition - Transit Shed #1, Bay A, B, C, Design Project cost by \$1M in the 2016 - 2017 Capital Improvement Program, which would enable approximately 70 percent design for the demolition of Transit Shed #1.

The draft Conditional Agreement contemplates that the District will consider the EIR in the fall 2016. It is the District's interpretation of the draft Conditional Agreement that no grant funding can or will occur until after certification of the EIR, which is the intent of the parties. Additionally, pursuant to the draft Conditional Agreement, the District retains sole and absolute discretion to, among other things (i) prepare, adopt, or disapprove the CEQA analysis; (ii) adopt any and all feasible mitigation measures to lessen potentially significant environmental effects; (iii) modify the project, adopt any alternatives to the same, including the "no project" alternative, and adopt or refuse to adopt a Statement of Overriding Consideration, if applicable, in connection with the CEQA process. In the Conditional Agreement, DOT also agrees that the agreement does not commitment by the Board or any other entity to take or to not take any action in connection with CEQA or guarantee approval of the CEQA analysis or other entitlements/permits necessary to implement the Project. Therefore, the Board still has the ability to reject the Project and the grant money would not be distributed if that is the case. Moreover, it is a standard practice of governmental agencies to fund through a CIP 60 to 70 percent design prior to CEQA being conducted.

In accordance with the CEQA, an EIR is being prepared for the Redevelopment Plan and the Project and is currently being circulated for public review. District staff anticipates bring the EIR to the Board for its consideration in November 2016. Nothing in the Conditional Agreement or amendment to the CIP project will affect the Board's ability to objectively consider the EIR, adopt feasible mitigation measures, alternatives, including the no project alternative or a Statement of Overriding Consideration, if applicable.

Accordingly, the requested actions by the Board do not constitute an "approval" of a "project" under the definitions set forth in CEQA Guidelines Sections 15352 and 15378 because it would not result in any direct or indirect physical changes to the environment or bind the District to a definite course of action. While the Board may give direction to staff related to the Project, Conditional Agreement or CIP amendment, such direction to staff will not bind the District to a definite course of action prior to CEQA review. Full CEQA analysis will be completed prior to the District's commitment to the Project, or components thereof, including approval of any entitlements such as concept approval and/or any agreements necessary for implementation of the Project, in whole or in part. Moreover, the Board reserves its discretion to adopt any and all feasible mitigation measures, alternatives to the project (including a no project alternative), a statement of overriding considerations, if applicable, and it may approve or disapprove the project and any permits or entitlements necessary for the same. These decisions will be exercised in the sole and absolute discretion of the Board. Therefore, based on the totality of the circumstances and the entire record, the Board's direction and proposed actions do not commit the District to a definite course of action prior to CEQA review being conducted.

In addition, the proposed Board direction and actions allow for the District to implement its obligations under the Port Act and/or other laws, such as to further commerce, navigation and fisheries. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

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Finally, the proposed Board actions do not allow for “development” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations. Therefore, issuance of a CDP or exclusion is not required at this time. However, prior to authorizing the construction, reconstruction, demolition, or alteration of any structure or improvement associated with the Project, issuance of a CDP will be required. The Board, in its sole and absolute discretion, has the authority to issue or deny a CDP for the Project, following its review and approval the EIR. No further action is required at this time.

**Equal Opportunity Program:**

The Conditional Agreement includes the requirement to implement a Disadvantaged Business Enterprise (DBE) program. Elements of a DBE program include a Policy statement, DBE goal setting methodology on projects paid for in whole or in part with these TIGER Grant funds, identification of a DBE certification process, and a reporting requirement on DBE achievement. A DBE program will be a separate agenda item at a future Board meeting prior to expenditure of any TIGER Grant funds.

**PREPARED BY:**

Aimee Heim  
Maritime Policy Manager  
Government and Civic Relations

**Attachment(s):**

Attachment A: Conditional Transportation Infrastructure Generating Economic Recovery  
(TIGER) Grant Agreement DTMA91G1600003  
Attachment B: Project Information Sheet

<sup>1</sup> The proposed approach taken by the District is similar to the County of San Diego and the Port of Los Angeles where approximately 60-70 percent design is accomplished prior to project approvals, including CEQA review and use permits.