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Title: A) RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT

B) ORDINANCE AMENDING THE FISCAL YEAR (FY) 2019 BUDGET INCREASING THE FY 2019 CAPITAL IMPROVEMENT PROGRAM (CIP) APPROPRIATION BY \$650,000 TO BE FUNDED FROM CUMULATIVE UNRESTRICTED RESOURCES PURSUANT TO BPC POLICY NO. 90

C) RESOLUTION APPROVING AN AMENDMENT TO THE FY 2019-2023 5-YEAR CIP TO INCREASE THE SITE PREPARATION AT CHULA VISTA BAYFRONT PROJECT BUDGET BY \$650,000 PURSUANT TO BPC POLICY NO. 90 AND BPC POLICY NO. 120

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Attachments: 1. 2. 2019-0030 Attachment A, 2. 2. 2019-0030A Draft Resolution, 3. 2. 2019-0030B Draft Ordinance, 4. 2. 2019 0030C Draft Resolution

Date	Ver.	Action By	Action	Result
4/9/2019	1	Board of Port Commissioners	adopted	

DATE: April 9, 2019

SUBJECT: EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT

- A) RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT**
- B) ORDINANCE AMENDING THE FISCAL YEAR (FY) 2019 BUDGET INCREASING THE FY 2019 CAPITAL IMPROVEMENT PROGRAM (CIP) APPROPRIATION BY \$650,000 TO BE FUNDED FROM CUMULATIVE UNRESTRICTED RESOURCES PURSUANT TO BPC POLICY NO. 90**
- C) RESOLUTION APPROVING AN AMENDMENT TO THE FY 2019-2023 5-YEAR CIP TO INCREASE THE SITE PREPARATION AT CHULA VISTA BAYFRONT PROJECT BUDGET BY \$650,000 PURSUANT TO BPC POLICY NO. 90 AND BPC POLICY NO. 120**

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District) imported approximately 220,000 cubic yards of soil to two development sites at the Chula Vista Bayfront.

Between November 29th and December 7th, 2018, two storms occurred that damaged the sites creating the need for cleanup and repairs. To meet this need and avoid further damage to District

property, the Executive Director declared an emergency and authorized the immediate execution of contracts to design a plan, repair the damage, and deploy additional erosion control and sediment runoff prevention measures termed Best Management Practices (BMP's) to protect the Districts property. The declaration of the emergency waived the necessity of formal bidding procedures as required by the State of California Public Contract Code. The contract was implemented, and the contractor began site repairs and BMP Installation and maintenance.

At its regularly scheduled meeting the San Diego Unified Port Board of Port Commissioners (Board), by a four-fifths (4/5) vote, ratified the declaration of emergency by the Executive Director on January 16, 2019. Pursuant to Board Resolution 2000-03, the Board shall review the need for continued emergency action at every regularly scheduled meeting to determine, by a four-fifths (4/5) vote, that there is a need to continue the emergency action. The Board authorized continued action at the February 12, 2019 and March 12, 2019 meetings. Staff recommends the Board continue the action at today's meeting.

These actions will amend the FY 2019 Budget Capital Improvement Program appropriation as well as amend the FY 2019-2023 Capital Improvement Program (CIP) and approve a project budget increase of \$650,000 for Site Preparation at Chula Vista Bayfront. The additional funds will be used to provide payment for the Emergency Stormwater Management at the Chula Vista Bayfront Project.

RECOMMENDATION:

- A) ADOPT A RESOLUTION BY A FOUR-FIFTHS (4/5) VOTE AUTHORIZING CONTINUED ACTION FOR THE EMERGENCY STORM WATER MANAGEMENT AT THE CHULA VISTA BAYFRONT
- B) ADOPT AN ORDINANCE AMENDING THE FISCAL YEAR (FY) 2019 BUDGET INCREASING THE FY 2019 CAPITAL IMPROVEMENT PROGRAM (CIP) APPROPRIATION BY \$650,000 TO BE FUNDED FROM CUMULATIVE UNRESTRICTED RESOURCES PURSUANT TO BPC POLICY NO. 90
- C) ADOPT A RESOLUTION APPROVING AN AMENDMENT TO THE FY 2019-2023 5-YEAR CIP TO INCREASE THE SITE PREPARATION AT CHULA VISTA BAYFRONT PROJECT BUDGET BY \$650,000 PURSUANT TO BPC POLICY NO. 90 AND BPC POLICY NO. 120

FISCAL IMPACT:

This project was initially funded by the current approved CIP project, Site Preparation at Chula Vista Bayfront. Cost projections have been increased to approximately \$650,000. This amount exceeds the approved project budget.

Approval of this action will authorize the amendment of the FY 2019-2023 5-year CIP budget from \$72,090,482 to \$72,740,482 and will amend the FY 2019 Budget CIP appropriation from \$34,974,750 to \$35,624,750.

The Site Preparation at Chula Vista Bayfront Project (P0460) is included in the FY 2019-2023 CIP with a total budget amount of \$12,113,937 and approximately \$5,716,400 remaining, which includes a \$4,800,000 grant, and is budgeted in FY 2019. The proposed CIP amendment of \$650,000 will increase the total project budget to \$12,763,937. Funding for this project budget amendment is available from Cumulative Unrestricted Resources.

Approval of this action will authorize the amendment of the FY 2019-2023 5-year CIP budget and will

amend the FY 2019 Budget CIP appropriation.

COMPASS STRATEGIC GOALS:

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

- A Port with a healthy and sustainable bay and its environment.

DISCUSSION:

As a background, in November 2016, the Board authorized staff to prepare the Chula Vista Bayfront (CVB) site for the import of approximately 700,000 cubic yards of fill material to allow for future developments and raise the individual site elevations to improve drainage and create more resilient projects in the face of predicted sea level rise. At the time it was anticipated the import of soil would save up to an estimated \$21.42 per cubic yard, or approximately \$15 million in future development costs.

Approximately 220,000 Cubic Yards of soil has been imported to two development sites at the CVB temporarily raising the elevation of both sites roughly 7-feet to provide sufficient onsite soil to accommodate anticipated sea level rise and prepare for two planned developments; the Chula Vista Bayfront Resort Hotel & Convention Center development and the Sun Communities RV Park. Both sites were specified and constructed using standard grading configurations and storm water erosion control and sediment runoff prevention measures termed Best Management Practices (BMPs). Through extensive negotiations and favorable market conditions the initial contract amount to import this fill was \$44,500. This work was performed under a direct negotiated contract with minimal change order capacity to address unforeseen conditions.

Significant storm events occurred between November 29, 2018 and December 7, 2018 with unanticipated rainfall intensities and amounts. According to on-site rainfall gages, the two storm events produced a total of 4.5 inches of rainfall. The first storm, dropping 1.1 inches of rain, saturated the soil. The second storm dropped 3.4 inches of rain, with 2.6 inches occurring in a six-hour window, on the already saturated ground at the sites. The rainfall and rainfall intensities during these two events overwhelmed the stormwater BMPs at both sites resulting in significant erosion damage to District property.

The original soil import contractor, Sierra Pacific West Inc., was onsite during the December 7th storm event attempting to mitigate damage to the sites but ceased operations due to lightning and safety concerns. The contractor returned to the sites the day after the December 7th storm event and began cleaning up and making repairs to the site and to the stormwater BMPs. It was immediately determined that the scope under their current contract did not address the magnitude of repairs and additional BMPs necessary to restore the sites and to prevent further damage.

In order to perform required clean up and repair damages that were caused by the noted storm events, and to provide additional BMPs in anticipation of future storm events, an action plan was developed to provide immediate repairs to the graded areas, revisions to the grading design, and additional BMPs were installed to minimize risk of further erosion damage to District property unauthorized stormwater runoff, costly repairs, and possible regulatory citations and fines. Since the original contract with Sierra Pacific West, Inc. was a small, direct negotiated contract, there was insufficient change order capacity to address the required repairs and additional BMP preventative measures. Therefore, a new and immediate contract was deemed necessary. The normal

procurement process to award a new public works contract could not happen in the timeframe necessary to protect the District from future rain events, the first of which was anticipated to occur on December 25, 2018, therefore emergency action was authorized by the Executive Director on December 20, 2018. The Board was notified through a Board Memo and ratified the declaration of emergency in its January 16, 2019 meeting.

The District's insurance carrier, Factory Mutual Insurance Company, was contacted to determine if the costs of repairs was reimbursable. The response was "... the land (soil) is excluded property under the Policy. The Policy, therefore, cannot respond to costs to replace and regrade the land (soil) ...".

Additional storm events occurred in January and February resulting in additional unanticipated minor damage to the site and slowing the repair and additional BMP implementation efforts already underway. However, the newly installed additional stormwater BMP's have helped to protect the sites and, with continued maintenance will continue helping to protect the sites. See Attachment A for photos of the repairs, BMP's, and resulting stormwater runoff improvements.

The cost of the emergency action is approximately \$650,000. Combined, the cost of the original import contract and the emergency action equal approximately \$694,500, which equate to a cost of \$3.16 per cubic yard for the 220,000 cubic yards imported to the Chula Vista Bayfront. This net cost is still significantly less than the \$15 million estimated in November 2016.

Currently, repairs are ongoing and continued implementation and maintenance of the BMP's are necessary to assure that District property is fully protected. It is anticipated that the emergency measures will be completed in April 2019. Public Contracting Code Sections 22035 and 22050, Section 58 of the Port Act, and Board Resolution 2000-03 requires that the Board review actions exercised by the Executive Director pursuant to a declaration of emergency at every regularly scheduled meeting, to determine, by a four-fifths (4/5) vote, that there is a need to continue the emergency until the action is terminated. Staff recommends the Board authorize continuing the emergency until emergency repairs and emergency stormwater preventative BMPs are fully implemented.

The current CIP budget for Site Preparation at Chula Vista Bayfront is being used to fund the emergency action. Estimated costs of \$650,000 for these repairs exhausts the remaining available funds in the CIP budget. Current funds in the CIP project budget were planned for future needs and obligations including the ongoing efforts for the RIDA and RV Park projects, 30% design of Sweetwater and Harbor Parks, and the Urban Greening grant funded Path and Promenade project. Therefore, staff recommends the Board authorize adding the \$650,000 repair action cost to the CIP budget for the Site Preparation at Chula Vista Bayfront project.

These actions will transfer \$650,000 from Cumulative Unrestricted Resources, amend the FY 2019 Budget Capital Improvement Program appropriation as well as amend the FY 2019-2023 CIP and approve a project budget increase of \$650,000 for Site Preparation at Chula Vista Bayfront, pursuant to BPC Policies 90 and 120. The additional funds will be used to provide payment for the Emergency Stormwater Management at the Chula Vista Bayfront Project.

Staff recommends the Board approve the following three actions:

A) Adopt a resolution by a four-fifths (4/5) vote authorizing continued action for the emergency storm

water management at the Chula Vista Bayfront

- B) Adopt an ordinance amending the fiscal year (FY) 2019 budget increasing the FY 2019 Capital Improvement Program (CIP) appropriation by \$650,000 to be funded from Cumulative Unrestricted Resources pursuant to BPC Policy No. 90
- C) Adopt a resolution approving an amendment to the FY 2019-2023 5-Year CIP to increase the site preparation at Chula Vista Bayfront project budget by \$650,000 pursuant to BPC Policy No. 90 and BPC Policy No. 120.

General Counsel's Comments:

The Office of the General Counsel has reviewed the issues set forth in this agenda and found no legal concerns as presented.

Environmental Review:

The proposed Board action, including without limitation, a resolution ratifying the emergency action taken for the storm water management at Chula Vista Bayfront was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). The proposed Board action is not a separate "project" for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the resolution ratifying emergency action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendum, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162 (b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step-in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

Additionally, the proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

Finally, the project was covered in the CDP for Site Preparation at Chula Vista Bayfront (CDP-2017-01; Clerk Document No. 66187) approved by the District on January 25, 2017 and the amendment to

the CDP issued by the District on November 1, 2018. The proposed Board actions are consistent with the project in that CDP and amendment. No additional action under the California Coastal Act is required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):

Attachment A: Site Photos