



## Legislation Details (With Text)

**File #:** 2021-0205    **Version:** 1    **Name:**

**Type:** Action Item    **Status:** Passed

**File created:** 4/13/2021    **In control:** Board of Port Commissioners

**On agenda:** 10/12/2021    **Final action:** 10/12/2021

**Title:** A) ORDINANCE AMENDING THE FISCAL YEAR 2022 BUDGET INCREASING THE EQUIPMENT OUTLAY AND OTHER CAPITAL PROJECTS APPROPRIATION BY \$350,000 FOR AN INCREASE TO THE U.S. COAST GUARD PHASE II TENANT IMPROVEMENTS PROJECT TO BE FUNDED FROM THE U.S. COAST GUARD/GENERAL SERVICES ADMINISTRATION (GSA) REIMBURSEMENT OF \$350,000.

B) RESOLUTION APPROVING CHANGE ORDER NO. 4 FOR \$400,000 FOR CONTRACT NO. 2019-38, U.S. COAST GUARD PHASE II TENANT IMPROVEMENTS PROJECT, AND INCREASING THE APPROVED PROJECT BUDGET BY \$350,000, PURSUANT TO BPC POLICY NO. 110, FOR A NEW TOTAL PROJECT BUDGET OF \$3,800,000. A MAJORITY OF THIS INCREASE IS ATTRIBUTABLE TO U.S. COAST GUARD REQUESTED MODIFICATIONS AND IS ANTICIPATED TO BE REIMBURSED BY THE GENERAL SERVICES ADMINISTRATION PURSUANT TO THE LEASE.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 5. 2021-0205 Attachment A, 2. 5. 2021-0205 Draft Ordinance, 3. 5. 2021-0205 Draft Resolution

Date	Ver.	Action By	Action	Result
10/12/2021	1	Board of Port Commissioners	adopted	

**DATE:** October 12, 2021

**SUBJECT:**

**A) ORDINANCE AMENDING THE FISCAL YEAR 2022 BUDGET INCREASING THE EQUIPMENT OUTLAY AND OTHER CAPITAL PROJECTS APPROPRIATION BY \$350,000 FOR AN INCREASE TO THE U.S. COAST GUARD PHASE II TENANT IMPROVEMENTS PROJECT TO BE FUNDED FROM THE U.S. COAST GUARD/GENERAL SERVICES ADMINISTRATION (GSA) REIMBURSEMENT OF \$350,000.**

**B) RESOLUTION APPROVING CHANGE ORDER NO. 4 FOR \$400,000 FOR CONTRACT NO. 2019-38, U.S. COAST GUARD PHASE II TENANT IMPROVEMENTS PROJECT, AND INCREASING THE APPROVED PROJECT BUDGET BY \$350,000, PURSUANT TO BPC POLICY NO. 110, FOR A NEW TOTAL PROJECT BUDGET OF \$3,800,000. A MAJORITY OF THIS INCREASE IS ATTRIBUTABLE TO U.S. COAST GUARD REQUESTED MODIFICATIONS AND IS ANTICIPATED TO BE REIMBURSED BY THE GENERAL SERVICES ADMINISTRATION PURSUANT TO THE LEASE.**

## **EXECUTIVE SUMMARY:**

Pursuant to Board of Port Commissioners (BPC) Policy No. 110, Board authorization is required for contract change orders in excess of 10% of the original contract award for contracts awarded in excess of two million dollars, but not in excess of ten million dollars. To date, three contract change orders have been processed at the staff level up to the 10% limit. Staff is seeking Board approval of contract Change Order No. 4 in the amount of \$400,000 for a total construction contract value increase to \$3,577,999.37 to allow the project team to deliver additional U.S. Coast Guard (Tenant) requested project scope that is reimbursable by General Services Administration (GSA) upon project completion. Change Order No. 4 funding is comprised of \$50,000 from remaining project budget and an additional \$350,000 from Tenant reimbursement. Board authorization will increase the U.S. Coast Guard Tenant Improvement Phase II total project budget to \$3,800,000 from \$3,450,000. Additionally, a District FY 2022 Budget amendment is also required to appropriate the additional \$350,000 which is intended to be reimbursed by the Tenant.

On January 19, 2021, the Board authorized the award of public works contract 2019-38 to Solpac Construction, Inc dba Soltek Pacific (Contractor) in the amount of \$2,889,091 for the U.S Coast Guard Tenant Improvement Phase II project within the total project budget of \$3,450,000 approved by the Board in Equipment Outlay and Other Capital Projects (EO&OCP) from Unrestricted Resources. Pursuant to lease from District to GSA granted by the Board on July 14, 2020 (Lease) via Ordinance, the project includes the remodel of existing warehouse space and new construction of a concrete loading ramp to replace the existing loading dock at the National Distribution Center (NDC) in National City.

Construction commenced on March 1, 2021 and is approximately 90% completed. However, the Contractor has encountered various unforeseen conditions since the start of construction. Record drawings for the existing facility were found not to exist, therefore several design elements were discovered to conflict with the existing building and site conditions once subsurface and understructures were exposed by the Contractor. Furthermore, the Tenant has requested several modifications to the project scope throughout the course of construction and recently identified additional scope to be added to the current construction contract. Pursuant to the Lease, this additional scope will be reimbursed by GSA as a lump sum payment at the completion of construction.

## **RECOMMENDATION:**

Adopt an ordinance amending the Fiscal Year 2022 budget increasing the Equipment Outlay and Other Capital Projects Appropriation by \$350,000 for an increase to the U.S. Coast Guard Phase II Tenant Improvements Project to be primarily funded by GSA.

Adopt a resolution approving Change Order No. 4 for \$400,000 for Contract No. 2019-38, U.S. Coast Guard Phase II Tenant Improvements, and increasing the project budget by \$350,000, pursuant to BPC Policy No. 110, for a total project budget of \$3,800,000. A majority of this increase is anticipated to be reimbursed by GSA pursuant to the lease.

## **FISCAL IMPACT:**

Approval of this agenda item will increase the FY 2022 Equipment Outlay and Other Capital Projects appropriation by \$350,000 to fund the U.S. Coast Guard Phase II Tenant Improvements Project, this

will be funded by the U.S. Coast Guard/General Services Administration (GSA) reimbursement.

The Board has previously authorized \$3,450,000 for the total project budget from Unrestricted Resources. If approved, the total project budget will be adjusted to \$3,800,000 accordingly.

Table 1 - Project Budget Allocation To-Date Exclusive of Change Order No. 4

DESCRIPTION	AMOUNT
Design	\$165,970
Construction	\$3,177,999
Construction Support	\$22,249
<u>Remaining Budget</u>	<u>\$83,782</u>
<b>Current Budget</b>	<b>\$3,450,000</b>
<u>Additional Funding Requested</u>	<u>\$350,000</u>
<b>Revised Budget</b>	<b>\$3,800,000</b>

### **COMPASS STRATEGIC GOALS:**

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

- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

On July 14, 2020, the Board granted a new lease to GSA, acting on behalf of the U.S. Coast Guard (Tenant), with an initial ten-year term (September 12, 2019 - September 11, 2029) and one, three-year option (September 12, 2029 - September 11, 2032) for approximately 92,000 square feet of warehouse and office space at NDC. After completion of the leasehold improvements and acceptance of the space, the rent would be \$1,109,000 per year, which includes service costs for common area expense, maintenance, utilities and management fees but excludes the Tenant Improvement reimbursements to the District which are in addition to rent. Once construction is complete, the Lease would result in over \$615,000 of new incremental revenue to the District per year. Based on the District's capital outlay, the Lease has an internal rate of return of 29%. Additionally, the lease would provide a long-term, water-dependent tenant at NDC and support a strategic partner of Harbor Police.

The leasehold is home to the Maritime Security Response Team West of the Coast Guard (MSRT West) which is a highly capable maritime tactical unit able to conduct short-notice maritime response and advanced interdiction operations around the globe. The Tenant has identified NDC as their preferred location for MSRT West operations. The new lease requires the District to initially fund and construct the leasehold improvements in accordance with Tenant specifications, which is typical of General Services Administration (GSA) leases. The Lease also established reimbursement parameters for construction costs, including change orders, where the District is responsible for shell related costs consisting of modifications to the enveloping structure, the base building systems, and the finished common areas of the building that adjoin the occupant areas. The Tenant in this case is responsible for all Tenant Improvement costs consisting of finishes and fixtures that advance the space from the shell condition to a finished, usable condition to best serve the Maritime Security

## Response Team West.

On January 19, 2021, the Board authorized award of public works Contract No. 2019-38 to Contractor in the amount of \$2,889,091 for the U.S Coast Guard Tenant Improvement project with a total project budget of \$3,450,000.

Construction commenced on March 1, 2021 and is approximately 90% completed. However, the Contractor has encountered various unforeseen conditions since the start of construction, such as: collapsed existing sewer lateral lines, abandoned concrete footings, missing roof insulation, substandard building materials within the existing structure, and outdated fire protection infrastructure. These unforeseen conditions are largely attributable to the age of the facility and the absence of record drawings. Furthermore, during construction, the Tenant has issued several requests to change various aspects of the final design, such as removal of existing roof vents and skylights in the vicinity of high-security spaces and modifications to plan furniture layout triggering changes to the electrical distribution plan. Most recently, the District received a request from the Tenant to provide additional Information Technology infrastructure not currently included in the construction contract. This additional infrastructure consists primarily of CAT6 and fiber optic cabling, server racks, Uninterruptable Power Supply (UPS) units and all the associated cable termination blocks and patch panels necessary to meet needs. The District also received a request from the Tenant during active construction for modifications to the high security space design in order to meet its customized design criteria. The Architect of Record is currently completing his evaluation of these changes to the final design, however anticipated cost is up to \$400,000 including construction delay costs. Staff anticipates full reimbursement from GSA for any costs associated with the additional scope of work identified to date and to be paid through Change Order No. 4.

On June 4, 2021, staff processed contract Change Order No. 1 in the amount of \$64,814.34, increasing the construction contract value to \$2,953,905.34. On July 2, 2021, staff processed contract Change Order No. 2 in the amount of \$175,987.03, increasing the construction contract value to \$3,129,892.37. And on September 28, 2021 contract Change Order No. 3 in the amount of \$48,107.00 was processed, increasing the construction contract to its current value of \$3,177,999.37. Change Order No. 4 will increase the construction contract value to \$3,577,999.37.

The table below summarizes the total Change Order totals and their anticipated reimbursements from GSA:

Contract Change Order Summary				
Change Orders	\$	Port Allocation	GSA Allocation	% Change Order Capacity
Changer Order No. 1	\$ 64,814.34	\$ 35,515.34	\$ 29,299.00	2.2%
Changer Order No. 2	\$175,987.03	\$ 122,501.49	\$ 53,485.54	6.1%
Changer Order No. 3	\$ 48,107.00	\$ -	\$ 48,107.00	1.7%
<b>Subtotal</b>	<b>\$288,908.37</b>	<b>\$ 158,016.83</b>	<b>\$ 130,891.54</b>	<b>10.0%</b>
Changer Order No. 4	\$400,000.00	\$ -	\$ 400,000.00	13.8%
<b>Total</b>	<b>\$688,908.37</b>	<b>\$ 158,016.83</b>	<b>\$ 530,891.54</b>	<b>23.8%</b>

Pursuant to Board of Port Commissioners (BPC) Policy No. 110, Board authorization is required for

change orders in excess of 10% of the original contract award for contracts awarded in excess of two million dollars, but not in excess of ten million dollars. Per BPC Policy No. 110, staff is currently able to process change orders for construction cost increases limited to 10% of the original contract value up to the cumulative contract amount of \$3,178,000 and with the execution of Change Order No. 3 Staff's 10% limit has been reached.

The Coast Guard has requested further changes be completed as a part of the build out. To deliver the additional project scope staff is seeking the ability to process Change Order No. 4 which will add \$400,000 to the Contract Bid Item, Allowance for Related Work by increasing the construction contract to \$3,577,999.37. This will allow the project team to deliver additional project scope requested by the U.S. Coast Guard expeditiously without interrupting the flow of construction and mitigating further cost increases associated with additional contract delays. Additionally, a District FY 2022 Budget amendment is also required to appropriate the additional \$350,000 which is intended to be reimbursed by the Tenant.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed and approved this agenda, ordinance and resolution, and Change Order, as presented, as to form and legality.

### **Environmental Review:**

The proposed Board actions, including without limitation, adopting an ordinance amending the fiscal year budget and a resolution approving a change order U.S. Coast Guard improvements space are Categorically Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15303 (New Construction or Conversion of Small Structures), and Sections 3.a., 3.b., and 3.c. of the District's Guidelines for Compliance with CEQA because the project would consist of storage and associated minor exterior and interior improvements for the purpose of Coast Guard related operations that would involve a negligible expansion of use beyond that previously existing; would not result in a change in the existing use; would not result in a significant cumulative impact due to continuation of the existing use; would be located on the same site as the existing lease area; and would have substantially the same purpose and capacity. A CEQA Exemption was previously issued for this project on July 16, 2020. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). Pursuant to Section 15378(c) of the State CEQA Guidelines, the term "project" refers to the activity being approved, which may be subject to several discretionary approvals of governmental agencies and does not mean each separate governmental approval. Accordingly, the proposed Board actions are a subsequent discretionary approval of a previously approved project. No further action under CEQA is required.

The proposed Board actions comply with Sections 21, 35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers, and which authorizes the use of tidelands for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. 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.

The proposed Board actions are considered “excluded development” pursuant to Sections 8.a. (Existing Facilities), 8.b. (Replacement or Reconstruction), and 8.c. (New Construction or Conversion of Small Structures) of the District’s Coastal Development Permit Regulations because the project would consist of storage and associated minor exterior and interior improvements for the purpose of Coast Guard related operations that would involve a negligible expansion of use beyond that previously existing and would involve no change of existing use of the property. A “Coastal Act Categorical Determination of Exclusion” was previously issued for this project on July 16, 2020; therefore, issuance of a Coastal Development Permit or subsequent Exclusion is not required for the proposed Board actions.

**Diversity, Equity, and Inclusion Program:**

No direct DEI impact.

**PREPARED BY:**

Eric Guerreiro  
Capital Project Manager, Engineering - Construction

**Attachment(s):**

Attachment A: Change Order No. 4 to contract 2019-38 with Solpac Construction, Inc dba Soltek Pacific