

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST

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March 13, 2020


TO: Budget and Finance Committee
FROM: Budget and Legislative Analyst 
SUBJECT: March 18, 2020 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item	File		Page
2	20-0217	Ground Lease - California Barrel Company LLC - Potrero Power Station Mixed-Use Project - \$1 Annual Base Rent	1
3	20-0166	Agreement - GEI Consultants, Inc. - Planning, Design, and Engineering Services - Not to Exceed \$11,000,000	8

<p>Item 2 File 20-0217</p>	<p>Department: Port Commission (Port)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution approves a Ground Lease between the Port and the California Barrel Company, LLC for 1.6 acres of Port property adjacent to the Potrero Power Station site. The proposed Ground Lease is for a term of 66 years at an annual base rent of \$1 and percentage rent of 50 percent of adjusted gross revenues. The proposed resolution would also (1) have the Board of Supervisors adopt the Port Commission’s finding that the below market rate Lease (\$1 per year) serves public purpose and furthers the public trust, and (2) adopt findings under the California Environmental Quality Act <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Under the Burton Act, a State law, the Port is responsible managing portions of the City’s waterfront and certain surrounding lands and ensuring those lands further the “public trust,” including among other things allowing access for public open space. • The Lease site would site is intended to be used for a public park, including serving as an extension of the Bay Trail and Blue Greenway, and incorporation into a Waterfront Park. In addition, the Lease grants the Port an option to put a public trust easement over 1.97 acres of land owned by the California Barrel Company, ensuring that it to be used for public open space. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under Section 8.1 of the proposed Lease, California Barrel Company will be solely responsible for all development costs and ongoing maintenance costs. The total development cost of the public open space on the land that is subject of the proposed Lease is \$39.7 million with estimated annual maintenance totaling \$32.3 million over the 66-year period. The net present value of the development and maintenance, including replacement of all improvements every 30 years, is estimated to be \$69.6 million. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The proposed Ground Lease provides for nominal rent to the Port in consideration of the public park to be constructed and maintained by the Developer over the 66-year Lease term, with an estimated net present value of \$69.6 million. In addition, the proposed Lease allows the Port the option to put a public trust easement over 1.97 acres of property owned by the California Barrel Company, ensuring that it remains publicly accessible open space. Because of the benefits to the public resulting from the proposed Lease, the Budget and Legislative Analyst recommends approval of the proposed Lease. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any lease, modification, amendment or termination of a Lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

City Administrative Code Section 23.30 states that Port leases requiring Board of Supervisors' approval can be for less than market rent if the lease is for a proper public purpose with Board of Supervisors' approval.

BACKGROUND

Potrero Power Station Project and Development Agreement

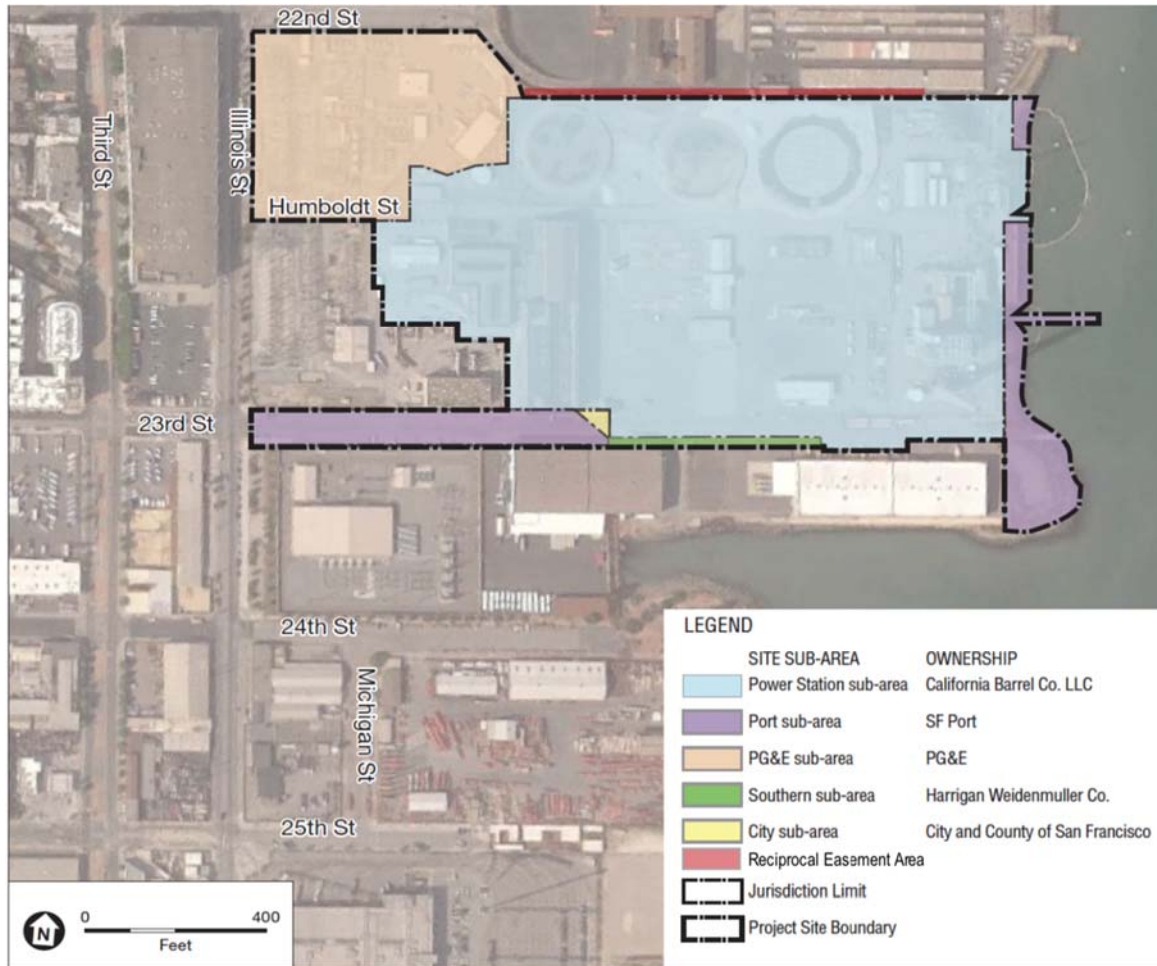
The California Barrel Company owns land in the Potrero Hill neighborhood that was used to operate a power station until 2011. Pending Board of Supervisors approval, the City is preparing to change the zoning of the area and amend the Planning Code (Files 20-0174 and 20-0039) and enter into a Development Agreement with California Barrel Company (File 20-0040) to develop the area into a mixed-use development. According to a January 30, 2020 memorandum from the Planning Department to the Planning Commission, the development will produce:

- 2,601 residential units
- 1.8 million square feet of commercial uses, including 100,000 square feet of retail use, 800,000 square feet of office use, 650,000 square feet of life science/laboratory use, 250 hotel rooms, and 35,000 square feet of production, distribution, and repair uses
- 25,000 square feet of entertainment/assembly uses
- 50,000 square feet of community facilities (e.g. daycare for children)
- up to 2,686 off-street parking spaces
- 6.9 acres of publicly accessible open space

Port Property

Under the Burton Act, a State law, the Port is responsible for managing portions of the City's waterfront and certain surrounding lands and ensuring those lands further the "public trust," including among other things allowing access for public open space and for maritime use. Exhibit 1 below shows the land ownership of the project area.

Exhibit 1: Current Land Ownership of Potrero Power Station Project Area



Source: February 20, 2020 Memo from the Port Director to the Port Commission

As shown above, the Port owns three non-contiguous areas (in purple) around land owned by the California Barrel Company (in blue).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a Ground Lease between the Port and the California Barrel Company, LLC for 1.6 acres of Port property adjacent to the Potrero Power Station site. The proposed Ground Lease is for a term of 66 years at an annual base rent of \$1. The proposed Ground Lease provides for percentage rent of 50 percent of adjusted gross revenues, as discussed further below.

The proposed resolution would (1) have the Board of Supervisors adopt the Port Commission’s finding that the below market rate Lease (\$1 per year) serves public purpose and furthers the public trust, and (2) adopt findings under the California Environmental Quality Act (CEQA) as stated in the Planning Commission Motion 20-635 on January 30, 2020.

Lease Purpose

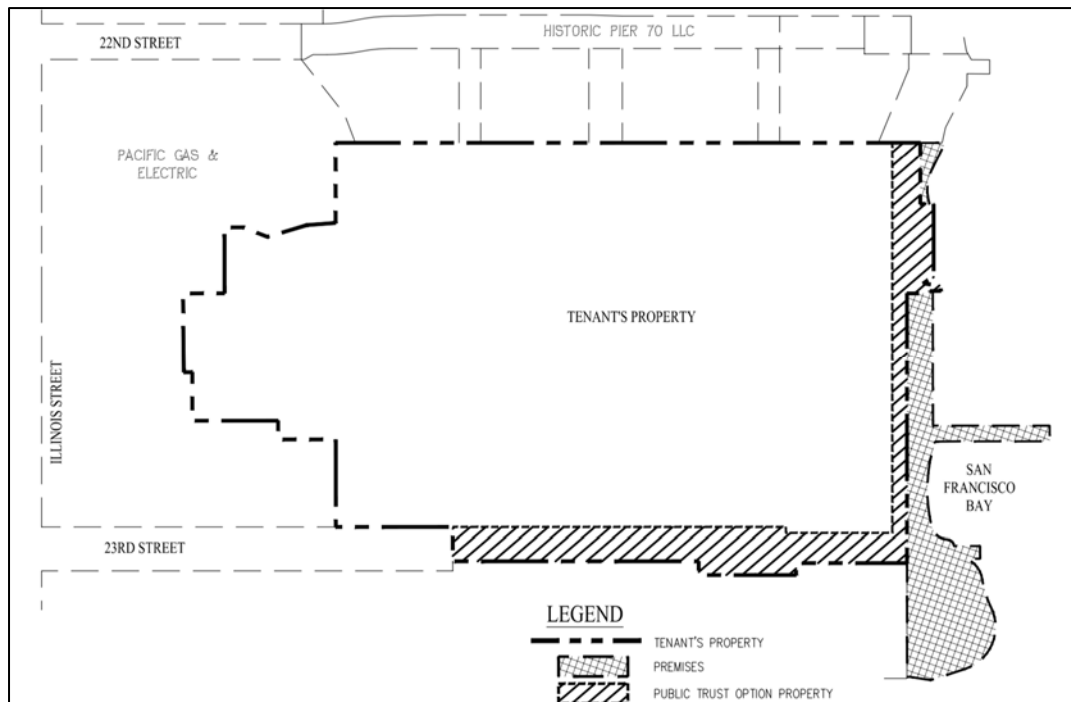
The Lease site is intended to be used for a public park, including serving as an extension of the Bay Trail and Blue Greenway, and incorporation into a Waterfront Park. The draft Development Agreement between the City and California Barrel Company pending before the Board of Supervisors (File 20-0040) provides for the Developer to construct and maintain a park at the Developer's cost on the Port Lease site.¹

Development of the public park is in two stages. The Ground Lease requires California Barrel Company to development of the first stage by July 31, 2027, and the second stage by July 31, 2036.

Easement

Section 2.9 of the proposed Lease grants the Port an option to put a public trust easement over 1.97 acres of land owned by the California Barrel Company, ensuring that it to be used as an integrated into the public open space and City street network being developed under the proposed Lease. The option may be exercised starting in year 3 of the proposed Lease through year 7 of the proposed Lease. Exhibit 2 below shows the area of the proposed Lease and the area of the optional easement. This land would be used as public open space and a public street to be developed and maintained by California Barrel Company. According to the Port, the benefit of the easement, rather than taking possession of the land, is that the Port will not be responsible for contamination remediation.

¹ According to the draft Development Agreement and the proposed Ground Lease, the Pier 70 Developer will construct additional park improvements on adjacent Port property, which will be part of a contiguous Waterfront Park extending from Pier 70 to the Potrero Power Station site.

Exhibit 2: Area of Proposed Lease

Source: Exhibit B of Proposed Lease

FISCAL IMPACT

Rent

As noted above, the annual rent for the Port's land is \$1 per year, with no escalations for the 66-year term. In addition, the Port would collect 50 percent of net income² generated on the Leased property. Under Section 14 of the proposed Lease, any sub Leases of California Barrel Company must be approved by the Port.

Term

As noted above, the term of the proposed Lease is 66 years through approximately 2086, with no options to extend.

Development and Maintenance of Public Open Spaces

Under Section 4.2 of the Draft Development Agreement (File 20-0040), California Barrel Company must deliver the community benefits identified in the Project's Design for Development (Exhibit E to the Draft Development Agreement).³ In the Draft Design for Development, the open space

² Net income is defined in the proposed Lease as gross revenues, less budgeted operating expenses, operating reserves, and capital reserve for a given a year. Although the Developer could potentially pay percentage rent to the Port if the revenues generated on the leased area exceed the operating and capital expenses of the park, Port staff consider this to be unlikely.

³ The most recent draft of the Design for Development is dated February 26, 2020. The document will become final once the Development Agreement is approved by the Board of Supervisors (File 20-0040).

improvements in the area of the proposed Lease include: a waterfront park with picnic areas and seating, a recreational dock, walking paths, a waterfront lawn, and a waterfront terrace.⁴ These deliverables remain conceptual and final design must be submitted to the Planning Department for approval.

Ensuring Development

The Potrero Power Station Project will be delivered in six Phases, with the open space improvements on the area of the proposed Lease occurring in both Phase 1 and Phase 3. Under Section 3.2.1 of the Draft Development Agreement, California Barrel company must obtain approval from the Planning Department prior to the start of each development Phase. If the California Barrel Company's ultimate proposal for the design of the open space improvement in the area of the proposed Lease are not consistent with the Design for Development, then City may withhold approval of the Phases 4 – 6 of the Potrero Power Station project, which includes residential and commercial development (see Attachment).

Under Section 1.3 of the proposed Lease, if California Barrel Company has not begun constructing improvements by July 31, 2027, the Port may terminate the Lease (though that deadline may be extended by mutual agreement).

Estimated Costs

Under Section 8.1 of the proposed Lease, California Barrel Company will be solely responsible for all development costs and ongoing maintenance costs; estimated costs are summarized in Exhibit 3 below.

Exhibit 3: Summary of Estimated Development and Maintenance Costs to Be Paid by Developer

	Total Estimated Costs	Estimated Net Present Value
Construction, Initial Improvements	\$29,997,126	\$29,997,126
Contingency (15%)	4,499,569	4,499,569
Subtotal, Initial Construction Costs	34,496,695	34,496,695
Soft Costs (15%)	5,174,504	5,174,504
Subtotal, Initial Improvement Costs	39,671,199	39,671,199
Replacement Improvements at Year 30	70,449,888	16,300,515
Replacement Improvements at Year 60	127,610,221	6,831,680
Maintenance Costs (66 years)	32,339,683	6,819,115
Total Development and Maintenance Costs	\$270,070,992	\$69,622,510

Source: Associate Capital – the financial consultant to the California Barrel Company

Note: Estimated net present value assumes a 5 percent discount rate.

As shown above, the total estimated development cost of the public open space on the land that is subject of the proposed Lease is \$39.7 million with estimated annual maintenance totaling \$32.3 million over the 66-year period. The estimates assume a thirty-year life of the open space

⁴ According to Sections 4.16, 4.17, 4.19 and 4.20 of the Draft Design for Development dated February 26, 2020.

improvements such that, at year 30, the improvements must be replaced at their original cost plus inflation of 2 percent annually for approximately \$70.4 million and then again at year 60 for \$127.6 million. Maintenance costs are based on a Mission Bay developer's average open space maintenance costs, which is \$150,000 per acre, multiplied by the 1.6 acre of the proposed Lease and escalated by inflation of 2 percent annually.

The estimates in Exhibit 3 do not include the development and maintenance costs of the 1.97 acres in the optional easement described above.

POLICY CONSIDERATION

The Public Purpose of the Proposed Below Market Rate Lease

As noted above, this land may only be used as public open space or other similar uses consistent with the public trust and therefore has limited alternate uses to the land use plan in the proposed Lease and associated Development Agreement. The proposed Ground Lease provides for nominal rent to the Port in consideration of the public park to be constructed and maintained by the Developer over the 66-year Lease term, with an estimated net present value of \$69.6 million, as shown in Exhibit 3 above.

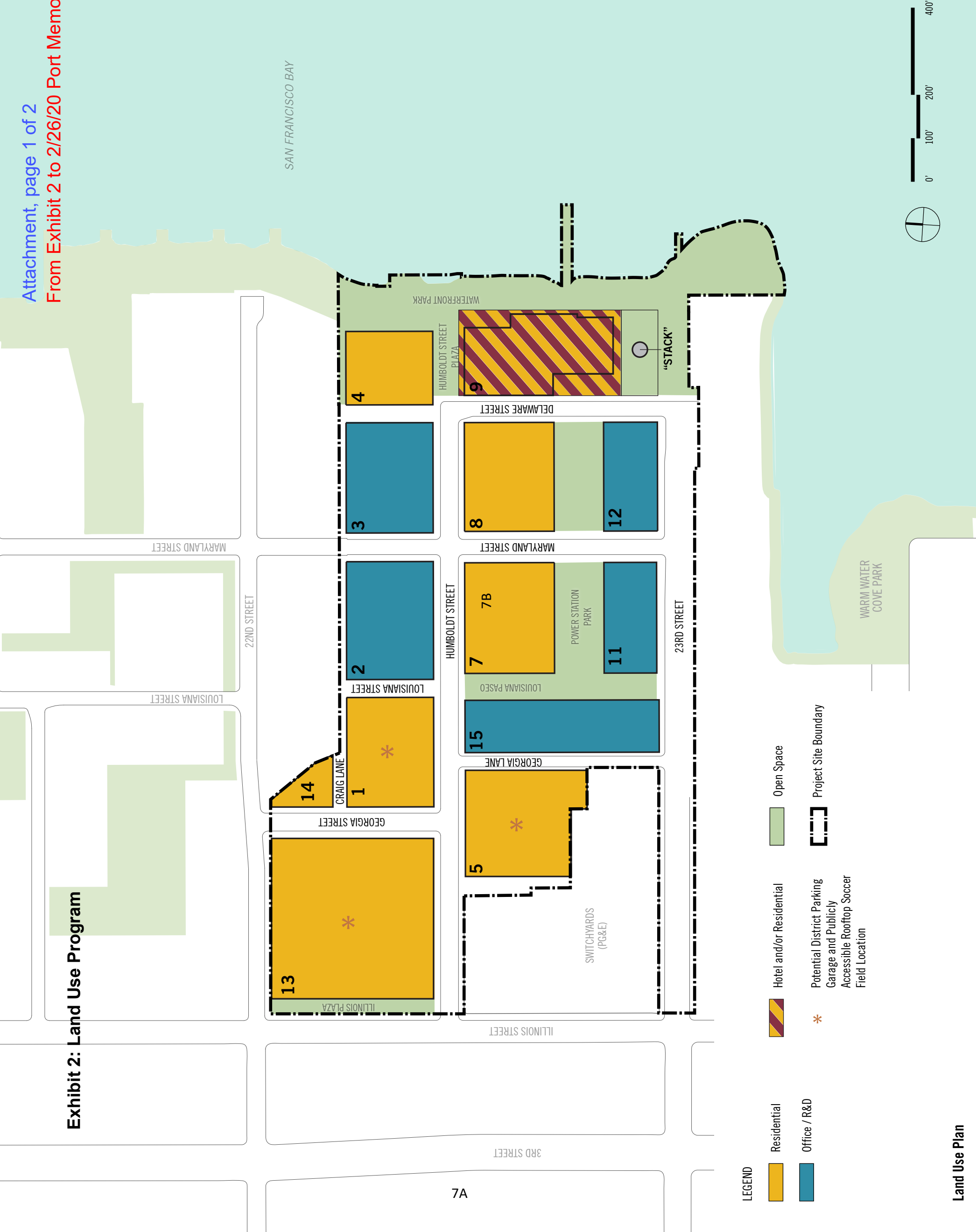
In addition, the proposed Lease allows the Port the option to put a public trust easement over 1.97 acres of property owned by the California Barrel Company, ensuring that it remains publicly accessible open space.

Because of the benefits to the public resulting from the proposed Lease, the Budget and Legislative Analyst recommends approval of the proposed Lease.

RECOMMENDATION

Approve the proposed resolution.

Exhibit 2: Land Use Program



LEGEND



Residential



Office / R&D



Hotel and/or Residential



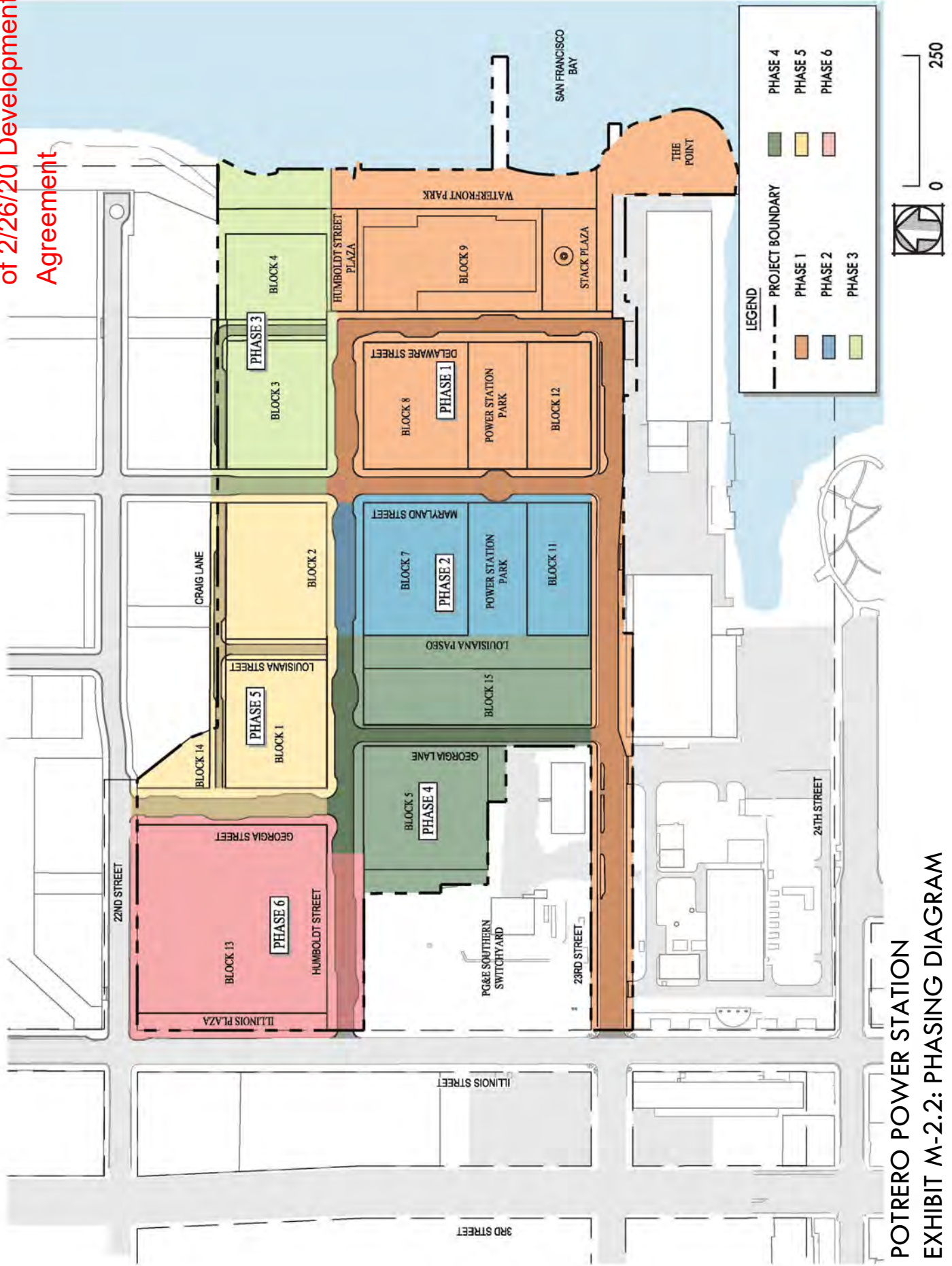
Open Space



Project Site Boundary



Potential District Parking Garage and Publicly Accessible Rooftop Soccer Field Location



POTRERO POWER STATION
 EXHIBIT M-2.2: PHASING DIAGRAM

Item 3 File 20-0166	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve a dam and reservoir planning, design, and engineering service contract between San Francisco Public Utilities Commission (SFPUC) and GEI Consultants, Inc., for an amount not to exceed \$11,000,000 and a term not to exceed 11 years, anticipated from May 2020 through April 2031. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • In 2017, then-Governor Jerry Brown ordered the California Division of Safety of Dams to identify high-hazard dam spillways that could pose significant risk to the public if a spillway incident were to occur, similar to the 2017 Oroville Dam spillway failure. The Division of Safety of Dams ordered SFPUC to conduct condition assessments of the spillways under Division of Safety of Dams jurisdiction. SFPUC has developed a 10-year capital plan to address the Division of Safety of Dams orders. • In September 2019, SFPUC issued a Request for Proposals (RFP) to select up to three consulting firms to provide specialized dam and reservoir design services. The RFP stipulated that contracts would each have a term not to exceed 11 years and an amount not to exceed \$11,000,000. Based on the proposal review, AECOM, GEI, and HDR were awarded contracts. However, a protest was filed against GEI that delayed its contract. SFPUC determined that the protest was without merit, and in February 2020, the SFPUC Commission approved a contract with GEI. • Under the proposed contract, GEI would provide dam and reservoir planning and engineering services for the Cherry Valley Dam Spillway, Early Intake Dam Rehabilitation, Eleanor Dam Rehabilitation, Eleanor Dam Bridge Rehabilitation, and Priest Condition Assessment and Monitoring projects. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed contract would have an amount not to exceed \$11,000,000 over the 11-year term. Sufficient funding is available in the SFPUC Hetch Hetchy and Water Enterprise 10-year Capital Improvement Programs budgets. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

In 2017, then-Governor Jerry Brown ordered the California Division of Safety of Dams to identify high-hazard dam spillways that could pose significant risk to the public if a spillway incident were to occur, similar to the 2017 Oroville Dam spillway failure. The Division of Safety of Dams ordered the San Francisco Public Utilities Commission (SFPUC) to conduct condition assessments of the spillways under the Division's jurisdiction. SFPUC has developed a 10-year capital plan to address the Division's orders.

In September 2019, SFPUC issued a Request for Proposals (RFP) to select up to three consulting firms to provide specialized dam and reservoir design services. The RFP stipulated that contracts would each have a term not to exceed 11 years and an amount not to exceed \$11,000,000. SFPUC received four proposals, and an evaluation panel¹ reviewed the proposals and scored them, as shown in Table 1 below.

Table 1: Proposals and Scores from RFP

Proposer	Written Proposal Score (out of 875)	Oral Interview Score (out of 500)	Overhead and Profit Schedule Score (out of 125)	Total Score (out of 1500)
AECOM Technical Services, Inc.	765.11	410.05	125.00	1,300.16
GEI Consultants, Inc.	736.58	424.80	75.00	1,236.38
HDR Engineering, Inc.	751.05	418.78	62.50	1,232.33
Stantec Consulting Services, Inc.	702.82	395.68	125.00	1,223.50

Source: SFPUC

AECOM Technical Services, GEI Consultants, and HDR Engineering were deemed the three highest scoring responsive and responsible proposers. However, Stantec Consulting Services filed a protest against GEI, and SFPUC delayed the GEI contract award as it reviewed the merits of the protest. On February 25, 2020, the Board of Supervisors approved contracts with AECOM and HDR.

After reviewing the protest, SFPUC staff, along with the City Attorney and Contract Monitoring Division, determined that it was without merit.² On February 11, 2020, the SFPUC Commission approved a contract with GEI.

¹ The evaluation panel consisted of an SFPUC Infrastructure Division Project Manager IV, an SFPUC City Distribution Division Principal Engineer, an East Bay Municipal Utility District Manager, and a San Francisco International Airport Project Manager III.

² Stantec's protest centered on a former SFPUC employee, who had been involved in drafting the RFP, and left to accept a position with GEI shortly before the contract was awarded. According to Ms. Kyndra Cox, SFPUC Professional

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve an SFPUC dam and reservoir planning, design, and engineering service contract with GEI Consultants, Inc., for a term not to exceed 11 years and an amount not to exceed \$11,000,000. The contract would have an anticipated term of approximately May 1, 2020 through April 30, 2031.

Under the proposed contract, GEI would provide dam and reservoir planning and engineering services for projects identified in the SFPUC Hetch Hetchy and Water Enterprise Capital Improvement Programs. The scope of services includes civil engineering, electrical engineering, mechanical engineering, structural engineering, pipeline engineering, geotechnical and geologic engineering, tunnel engineering, cost estimating, utilities mapping and coordination, photogrammetry and surveys, materials testing and inspections, quality assurance review, peer review and independent technical review, potential failure modes analysis and risk assessments, possible engineering support during bid and award if the projects are approved, possible engineering support during construction, start-up, and closeout if the projects are approved, and training and technology transfer.

GEI would be assigned to the Cherry Valley Dam Spillway, Early Intake Dam Rehabilitation, Eleanor Dam Rehabilitation, Eleanor Dam Bridge Rehabilitation, and Priest Condition Assessment and Monitoring.³

FISCAL IMPACT

The proposed contract would have a not-to-exceed amount of \$11,000,000. According to Mr. Calvin Huey, SFPUC Civil Design Section Manager, the contract budget by project is shown in Table 2 below.

Table 2: GEI Contract Budget

Project	Amount
Cherry Valley Dam Spillway	\$2,000,000
Early Intake Dam Rehabilitation	800,000
Eleanor Dam Rehabilitation	5,200,000
Eleanor Dam Bridge Rehabilitation	1,800,000
Priest Condition Assessment & Monitoring Project	1,200,000
Total	\$11,000,000

Services Contract Manager, SFPUC determined that the employee had no involvement with the panel's scoring of bids, could not have provided a competitive advantage to any proposer, and did not violate any conflict of interest or ethics laws.

³ Appendix A of the proposed contract states the GEI is responsible for the following projects: Moccasin Dam and Reservoir, O'Shaughnessy Dam Outlet Works Phases 1 and 2, O'Shaughnessy Dam Access and Drainage Improvements projects. However, according to SFPUC, the information in the proposed contract is incorrect and GEI will actually work on the following projects: Cherry Valley Dam Spillway, Early Intake Dam Rehabilitation, Eleanor Dam Rehabilitation, Eleanor Dam Bridge Rehabilitation, and Priest Condition Assessment and Monitoring.

Sufficient funding for the contract is available in the Hetch Hetchy and Water Enterprise 10-Year Capital Improvement Programs budgets.

RECOMMENDATION

Approve the proposed resolution.