

File No. 140595

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 3, 2014

Board of Supervisors Meeting

Date _____

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OTHER (Use back side if additional space is needed)

- Planning Commission Motion No. 17357
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Completed by: Linda Wong

Date August 29, 2014

Completed by: _____

Date _____

1 [Professional Services Agreement - Waiving Competitive Solicitation Requirement to Procure
2 Specialized Environmental Services - East Harbor Marina Sediment Remediation and Facility
3 Renovation Project - Leidos, Inc. - Not to Exceed \$2,000,000]

4 **Ordinance waiving the competitive solicitation requirement under Administrative Code,**
5 **Section 6.40, and authorizing the General Manager of the Recreation and Park**
6 **Department to enter into a professional services agreement with Leidos, Inc., in an**
7 **amount not to exceed \$2,000,000, for the purpose of performing specialized**
8 **environmental services for the San Francisco East Harbor Marina Sediment**
9 **Remediation and Facility Renovation Project, to commence following Board approval.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Background. The San Francisco Marina is composed of two harbors, the
19 East Harbor and the West Harbor. The East Harbor covers approximately 600,000 square
20 feet and is bounded by Fort Mason on the east, Marina Boulevard on the south, and the
21 Marina Green on the west. While the San Francisco Marina has been in use since the 1920s,
22 the current configuration of the East Harbor was constructed in 1963 when the facility was
23 transferred to the City from the State. The East Harbor consists of a concrete sheet-pile
24 breakwater, docks to accommodate 342 small water craft, and a fuel dock facility.

25 The East Harbor is located adjacent to the former site of a carbureted manufactured
gas plant known as the North Beach MGP ("MGP"). The MGP site operations included an

1 area of land and wharf extending along the northern portion of the facility into what was
2 historically known as Gashouse Cove (now the East Harbor).

3 In 1994, the Recreation and Parks Department ("RPD") initiated the approval process
4 to acquire the regulatory permits necessary to perform maintenance dredging of the East
5 Harbor. As part of this process, RPD commissioned a bathymetric survey and a sediment
6 analysis required to secure the permits from the regulatory agencies. The associated
7 sediment sampling identified elevated levels of polycyclic aromatic hydrocarbons (PAHs),
8 which impacted RPD's ability to secure the permits and to fund the work.

9 In 2001, the City filed a lawsuit against Pacific Gas & Electric ("PG&E"), the successor
10 entity to the North Beach MGP, to recover the cost of removing and disposing of the
11 sediments in the East Harbor. In 2004, the case was dismissed without prejudice on the
12 grounds that the nature and extent of damages were not defined. The City and PG&E
13 subsequently entered into a cost sharing agreement ("Agreement") whereby they agreed to
14 share equally, up to a total of \$500,000, the costs of determining the nature and extent of the
15 contamination, and the costs of planning and permitting for any necessary remedial action. In
16 2007, the City, with the consent of PG&E, and pursuant to a competitive solicitation,
17 contracted with Science Applications International Corporation ("SAIC") to provide
18 environmental consulting services under the terms of the Agreement. By March 2009, SAIC
19 had completed four studies. SAIC's results and recommendations were presented to the
20 Recreation and Parks Commission in July 2009.

21 At the same time as the above, RPD put forward the San Francisco Marina Renovation
22 Project. The proposed project encompassed a complete replacement of both waterside and
23 landside facilities at the San Francisco Marina. On January 11, 2007, the San Francisco
24 Planning Department certified the Final Environmental Impact Report for the San Francisco
25 Marina Renovation Project. RPD divided the project into two phases for implementation:

1 Phase 1 – West Harbor Renovation, and Phase 2 – East Harbor Renovation. The West
2 Harbor Renovation project was completed in early 2014. RPD is now ready to begin Phase 2
3 of the project. A critical component of Phase 2, however, is the performance of maintenance
4 dredging.

5 On September 16, 2013, the City and PG&E executed an extension of the Cost
6 Sharing Agreement. Under the terms of the Agreement, the City and PG&E will continue to
7 work cooperatively on and jointly cover the cost of sediment remediation work in the East
8 Harbor.

9
10 Section 2. Rationale for Waiver of Competitive Solicitation Requirement. In order to
11 begin the critical Phase 2 of the Marina Harbor Renovation Project as scheduled, RPD must
12 first complete the required regulatory agency permits by Fall 2015. The services of a qualified
13 environmental consulting firm are required to secure these permits. In order to complete the
14 remediation permitting process by Fall 2015, the environmental consultant must begin
15 sampling and analysis by August 2014.

16 Section 6.40 of the Administrative Code requires Departments to procure outside
17 temporary professional design or consultant services for public work projects greater than
18 \$100,000 through a competitive process.

19 RPD desires to award a professional services contract to Leidos, Inc. for \$2,000,000
20 for two reasons. First, because a typical competitive procurement for architectural services
21 for public works projects can take many months, a competitive solicitation process under
22 Section 6.40 of the Administrative Code would likely impair the City's ability to secure all
23 required environmental permits and impair the construction schedule by more than a year.
24 Given the constraints on the work imposed by the marina environment, construction activities
25 must occur during certain times of the year in order to avoid impacting seasonal biological

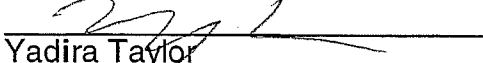
1 processes such as the herring breeding season. Second, Leidos Inc. is uniquely qualified to
2 complete the environmental services work given their long experience and knowledge with the
3 area.

4
5 Section 3. Waiver of Competitive Solicitation Requirement. The Board of Supervisors
6 hereby waives the competitive solicitation process requirement under Section 6.40 of the
7 Administrative Code and authorizes the General Manager of the Recreation and Park
8 Department to enter into a professional services agreement with Leidos, Inc. in an amount not
9 to exceed \$2,000,000 for the limited purpose of providing specialized environmental
10 consulting services for the San Francisco East Harbor Marina Sediment Remediation and
11 Facility Renovation project.

12
13 Section 4. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 Section 5. The Recreation and Park Department shall provide the final agreement to
19 the Clerk of the Board for inclusion into the official file within thirty (30) days of the agreement
20 being fully executed by all parties.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: 
4 Yadira Taylor
5 Deputy City Attorney

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FILE NO.

LEGISLATIVE DIGEST

[Agreement - Waiver of Competitive Solicitation Requirement to Procure Professional Services for East Harbor Marina Sediment Remediation and Facility Renovation Project - Leidos, Inc. - \$2,000,000]

Ordinance waiving the competitive solicitation requirement under Administrative Code, Section 6.40, and authorizing the General Manager of the Recreation and Park Department to enter into a professional services agreement with Leidos, Inc. in an amount not to exceed \$2,000,000, for the purpose of performing specialized environmental services for the San Francisco East Harbor Marina Sediment Remediation and Facility Renovation Project.

Existing Law

Section 6.40 of the Administrative Code requires Departments to procure outside temporary professional design or consultant services for public work projects greater than \$100,000 through a competitive process.

Amendments to Current Law

This ordinance will not amend or modify any provision of current law. Rather, the ordinance would waive the competitive solicitation requirement under Administrative Code, Section 6.40 for this specific contract and authorize the Recreation and Park Department to enter into a professional services agreement with Leidos, Inc. to perform specialized environmental services for the San Francisco East Harbor Marina Sediment Remediation and Facility Renovation Project.

Background Information

[insert paragraph from rationale section here]

According, RPD seeks to enter into an agreement with Leidos, Inc. in an amount of \$2,000,000 to perform specialized environmental services for the San Francisco East Harbor Marina Sediment Remediation and Facility Renovation Project.

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Item 5
File 14-0595

Department:
Recreation and Park Department

EXECUTIVE SUMMARY

Legislative Objectives

Under the proposed ordinance, the Board of Supervisors would waive the competitive solicitation requirement under San Francisco Administrative Code, Section 6.40 and authorize the Recreation and Park Department to enter into an contract with Leidos, Inc. in an amount not-to-exceed \$2,000,000 to perform environmental consulting services for the East Harbor Renovation Project.

Key Points

- The Marina Yacht Harbor's East Harbor Renovation Project (Project) began in January 2014 and is scheduled for completion in December 2017. The East Harbor is located adjacent to the former site of PG&E's carbureted manufactured gas plant, which contributed to contamination of the soil in the East Harbor. In 2004 PG&E and the City entered into a cost sharing agreement whereby the City and PG&E agreed to share the costs to determine the nature and the extent of the contamination and the costs for planning and permitting any remediation.
- In 2013, the City entered into a contract with SAIC (now Leidos, Inc.), selected through a competitive process, to perform as-needed environmental analysis, environmental permitting and review and project management services for the Project. The Recreation and Park Department seeks to enter into a new contract with Leidos to provide further environmental analysis and related services for the Project. The contract has an estimated cost of \$1,970,000 and would extend from approximately September 2014 through December 2017.
- The Recreation and Park Department requests waiver of the competitive solicitation provisions of the Administrative Code because of Leidos' previous successful performance of the initial environmental services for this Project. Additionally, the Department states that undergoing a competitive procurement process could impact the final timeline for the renovation.

Fiscal Impacts

- PG&E will pay up to \$950,000 of the contract under the cost sharing agreement, and the Marina Yacht Harbor Fund will pay up to \$1,000,000 of the contract (\$200,000 appropriated in FY 2013-14 and \$800,000 appropriated in FY 2014-15), totaling \$1,950,000. If additional funds are required during the contract term through December 2017, the Recreation and Park Department will include these funds in future Marina Yacht Harbor budgets.

Recommendations

- Amend the proposed ordinance to reduce the not-to-exceed amount by \$30,000, from \$2,000,000 to \$1,970,000.
- Approve the proposed ordinance.

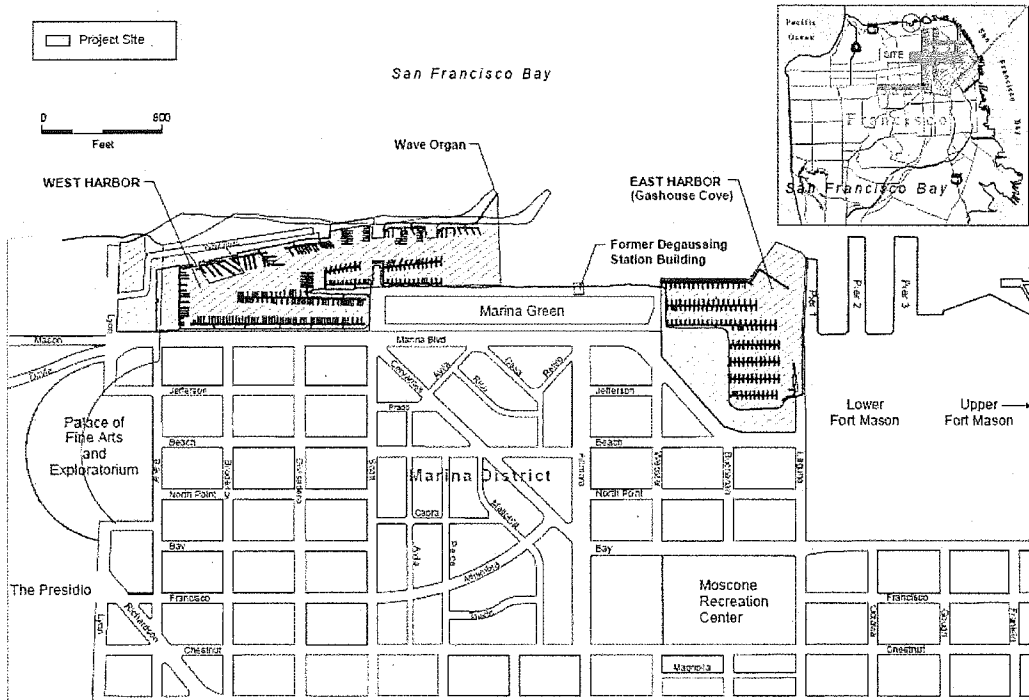
MANDATE STATEMENT

Administrative Code Section 6.40 requires City departments to procure outside professional design or consultant services for public work projects greater than \$100,000 through a competitive process. In order to waive the competitive process for a specific contract for design or consultant services, the Board of Supervisors must adopt an ordinance that waives the provisions of Administrative Code Section 6.40 for that contract.

BACKGROUND

The Marina Yacht Harbor consists of two separate harbors, the East Harbor and the West Harbor, as shown in Figure 1 below.

Figure 1: San Francisco Marina Area Map



The Recreation and Park Department completed renovation of the West Harbor in January 2014. The East Harbor Renovation Project (Project) began in January 2014 and is scheduled for completion in December 2017. The Project consists of infrastructure improvements, including: (1) reconfiguration and replacement of floating docks, (2) replacement of gangways and security gates, (3) upgraded utilities, including renovated electrical and water services to the new floating docks, (4) installation of dockside fire suppression system, and new dockside lights; (5) public access improvements, to be determined; (6) installation of barrier wall and cap, and (7) dredging of an estimated 133,000 cubic yards of sediments and associated remediation. The overall budget for the Project is \$35,400,680 and is detailed in Table 2 below.

Table 2: East Harbor Renovation Project Budget

Environmental Analysis, Monitoring and Reporting	\$1,970,000
Renovation Project Engineering, Design and Construction Management	3,348,000
Construction	27,347,890
Construction Contingency (10% of construction costs)	2,734,790
Total Project Cost	\$35,400,680

The City is seeking a Boating Infrastructure grant and a loan from the California Department of Boating and Waterways to support the Project, which will be repaid by berthing fees and other Marina Yacht Harbor fund revenues.

Contracts for design and construction management have not yet been awarded, but will be subject to a competitive Request for Proposals (RFP) process. According to Ms. Mary Hobson, Project Manager at the Recreation and Park Department, these contracts will not be subject to Board of Supervisors' approval once they have been awarded because they will not meet the threshold for Board of Supervisors' approval of \$10 million or 10 years. Bids for the construction portion of the Project will be sought after the design is complete and permits have been secured. The Recreation and Park Department estimates that this will occur at the end of 2015 with the award of the contract taking place in March 2016.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would waive the City's competitive solicitation requirement under Administrative Code Section 6.40, and authorize the Recreation and Park Department to enter into a sole-source contract with Leidos, Inc. in an amount not-to-exceed \$2,000,000 over a three year and three month period to perform environmental consulting services for the Marina Yacht Harbor East Harbor Renovation Project. The Department is requesting waiver of the competitive solicitation requirement because Leidos has previously performed similar environmental consulting services for the East Harbor, as described below, based on a prior competitive process.

Maintenance Dredging for East Harbor Renovation

The East Harbor is located adjacent to the former site of a carbureted manufactured gas plant, known as the North Beach MGP, which is currently owned by PG&E. In 2001, the City a filed lawsuit against PG&E to recover costs from removing and disposing of sediments in East Harbor associated with the North Beach MGP. In 2004, the case was dismissed¹ and PG&E and the City subsequently entered into a cost sharing agreement whereby the City and PG&E agreed to

¹ The case was dismissed without prejudice on the grounds that the nature and extent of damages was not defined.

share the costs to determine the nature and the extent of the contamination and the costs for planning and permitting any remediation.

In January 2013, the Department of Public Works (DPW) awarded an as-needed contract through a competitive RFP process, to SAIC (which changed its name to Leidos, Inc.) to perform sediment characterization and coastal engineering consultation services. The term of the contract was from January 13, 2013 until January 16, 2018 for an amount not to exceed \$900,000. In November 2013 Leidos was given approval by DPW to perform work on the Project which included bathymetric and leadline survey analysis², California Environmental Quality Act (CEQA) and permitting review, and project management services. This work was completed in April 2014 at a cost of \$150,166.

Proposed Contract

The Recreation and Park Department now seeks to execute a new contract with Leidos to provide project permitting, design and construction related environmental services for the East Harbor renovation. The scope of work for the proposed contract includes:

- Sediment sampling and analysis;
- Creation of sediment disposal requirements;
- Design of dredging and capping plans;
- Air, odor, and water quality control planning;
- Permit planning and agency consultation;
- Environmental monitoring during the construction phase.

The proposed contract would be from approximately September 2014 through December 2017, a term of approximately three years and three months for an amount not to exceed \$2,000,000.

DPW and the Recreation and Park Department request waiver of the City's required competitive solicitation provisions of Section 6.40 of the Administrative Code to award a sole-source contract to Leidos to provide further environmental consulting services for the East Harbor Project because Leidos has successfully performed the initial environmental consulting services for this Project. According to Ms. Hobson, Leidos is uniquely qualified to complete the environmental services work given their familiarity with the project due to their years of previous work on the project. Ms. Hobson further states that a undergoing a competitive procurement process for these services could impact the final renovation timeline by approximately one year because construction activities must occur during certain times of the year in order to avoid impacting seasonal biological processes.

² Bathymetric and leadline surveys are techniques used to measure the physical features of a water body.

FISCAL IMPACT

The proposed contract amount is for not-to-exceed \$2,000,000 and the proposed contract budget totals \$1,970,000, or \$30,000 less than the not-to-exceed contract amount of \$2,000,000, as shown in Table 3 below.

Table 3: Environmental Consulting Services Budget

Project Planning, Bathymetric Survey, Sediment Analysis, CEQA Analysis	\$600,000
Dredge Prism and Disposal Criteria, Capping Study and Final Design	200,000
Air, Odor, Water Quality Monitoring & Construction Control Studies	100,000
Upland Source Investigation, Containment Design & Permitting	450,000
Dredge/CAP in Water Permit Application & Fees, Agency Consultation	191,000
Construction Phase Environmental Monitoring and Reporting	100,000
Subtotal	\$1,641,000
Project Contingency (20%)	329,000
Total	\$1,970,000

According to Ms. Hobson, the contingency is necessary for environmental consulting services in order to ensure that the Department has sufficient contracting authority to deliver the full scope of environmental services needed for the project, and is intended to cover any increases in environmental consulting costs that may arise due to factors that cannot be predicted. These factors may include additional studies, reporting or special monitoring requirements placed on the project by the regulatory agencies as a result of contamination or other conditions uncovered as the project develops, additional sediment sampling and laboratory analysis which may be required to determine the extent and composition of sediment contaminants, or special construction phase oversight that may be needed to insure that the public and aquatic environment is sufficiently protected during the implementation of the project.

According to Ms. Hobson, PG&E will pay up to \$950,000 of the contract under the previously-described cost sharing agreement between PG&E and the Recreation and Park Department, and the Marina Yacht Harbor Fund will pay up to \$1,000,000 of the contract (\$200,000 appropriated in FY 2013-14 and \$800,000 appropriated in FY 2014-15), totaling \$1,950,000. Ms. Hobson states that if additional funds of \$20,000 (resulting in \$1,970,000 in total funds) are required during the contract term through December 2017, the Recreation and Park Department will include these funds in future Marina Yacht Harbor budgets.

RECOMMENDATIONS

1. Amend the proposed ordinance to reduce the not-to-exceed amount by \$30,000, from \$2,000,000 to \$1,970,000.
2. Approve the proposed ordinance as amended.

January 11, 2007
File No. 2002.1129E
Assessor's Block 0900, Lot 003

SAN FRANCISCO
CITY PLANNING COMMISSION

MOTION NO. 17357

ADOPTING FINDINGS RELATED TO THE CERTIFICATION OF A FINAL ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED SAN FRANCISCO MARINA RENOVATION PROJECT, LOCATED AT 3950 SCOTT STREET AT MARINA BOULEVARD, ASSESSOR'S BLOCK 0900, LOT 003.

MOVED, That the San Francisco Planning Commission (hereinafter "Commission") hereby CERTIFIES the Final Environmental Impact Report identified as case file No. 2002.1192E, San Francisco Marina Renovation Project (hereinafter "Project") based upon the following findings:

- 1) The City and County of San Francisco, acting through the Planning Department (hereinafter "Department") fulfilled all procedural requirements of the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 *et seq.*, hereinafter "CEQA"), the State CEQA Guidelines (Cal. Admin. Code Title 14, Section 15000 *et seq.*, hereinafter "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code (hereinafter "Chapter 31").
 - a. The Department determined that an Environmental Impact Report (hereinafter "EIR") was required and provided public notice of that determination by publication in a newspaper of general circulation on October 9, 2004.
 - b. On September 6, 2005, the Department published the Draft Environmental Impact Report (hereinafter "DEIR") and provided public notice in a newspaper of general circulation of the availability of the DEIR for public review and comment and of the date and time of the Planning Commission public hearing on the DEIR; this notice was mailed to the Department's list of persons requesting such notice.
 - c. Notices of availability of the DEIR and of the date and time of the public hearing were posted near the project site by Department staff on September 6, 2005.
 - d. On September 6, 2005 copies of the DEIR were mailed or otherwise delivered to a list of persons requesting it, to those noted on the distribution list in the DEIR, to adjacent property owners, and to government agencies, the latter both directly and through the State Clearinghouse.
 - e. Notice of Completion was filed with the State Secretary of Resources via the State Clearinghouse on September 6, 2005.

2) The Commission held a duly advertised public hearing on said Draft Environmental Impact Report on October 6, 2005 and January 12, 2006 at which opportunity for public comment was given, and public comment was received on the DEIR. The period for acceptance of written comments ended on January 20, 2006.

3) The Department prepared responses to comments on environmental issues received at the public hearing and in writing during the 136-day public review period for the DEIR, prepared revisions to the text of the DEIR in response to comments received or based on additional information that became available during the public review period, and corrected errors in the DEIR. This material was presented in a "Draft Comments and Responses" document, published on September 28, 2006, was distributed to the Commission and to all parties who commented on the DEIR, and was available to others upon request at Department offices.

4) A Final Environmental Impact Report has been prepared by the Department, consisting of the Draft Environmental Impact Report, any consultations and comments received during the review process, any additional information that became available, and the Summary of Comments and Responses all as required by law.

5) Project Environmental Impact Report files have been made available for review by the Commission and the public. These files are available for public review at the Department offices at 1660 Mission Street, and are part of the record before the Commission.

6) On January 11, 2007, the Commission reviewed and considered the Final Environmental Impact Report and hereby does find that the contents of said report and the procedures through which the Final Environmental Impact Report was prepared, publicized and reviewed comply with the provisions of CEQA, the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code.

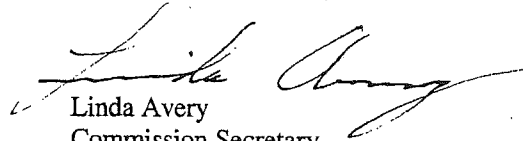
7) The Planning Commission hereby does find that the Final Environmental Impact Report concerning File No. 2002.1192E, San Francisco Marina Renovation Project, reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the DEIR, and hereby does CERTIFY THE COMPLETION of said Final Environmental Impact Report in compliance with CEQA and the CEQA Guidelines.

8) The Commission, in certifying the completion of said Final Environmental Impact Report, hereby does find that the project described in the Environmental Impact Report will have no significant unavoidable impacts at either the project-specific or the cumulative level.

CITY PLANNING COMMISSION

File No. 2002.1129E
Assessor's Block 0900, Lot 003
Motion No. 17357
Page Three

I hereby certify that the foregoing Motion was ADOPTED by the Planning Commission at its regular meeting of January 11, 2007.


Linda Avery
Commission Secretary

SIXTH AGREEMENT TO EXTEND COST SHARING AGREEMENT

INADMISSIBLE UNDER FED. R. EVID. 408

1. Effective as of October 10, 2004, the parties to this Extension entered into a Cost Sharing Agreement, a true and correct copy of which is attached as Exhibit A.

2. To allow for the continuation of the process of investigation of the relevant site, planning, and other activities contemplated by the Cost Sharing Agreement, the parties hereto agree to extend the Cost Sharing Agreement until terminated by either party upon 30 days written notice. Each term of the Cost Sharing Agreement shall remain in effect, except for the termination date and as otherwise modified in sections 3 and 4 herein.

3. The first paragraph of Section 3 of the Cost Sharing Agreement shall be modified to read as follows: "Shared Costs incurred or expended from and after the Effective Date of this Sixth Amendment, up to a total amount of \$950,000, shall either be allocated on a 50-50 basis or paid entirely by either Party, until all Shared Costs Activities are complete. The Shared Costs shall not include any amount in excess of said \$950,000, unless and to the extent that each Party agrees otherwise in writing at its option to increase said amount. The Parties will arrange with each Shared Costs contractor for all bills to be sent to both Parties. For costs allocated on a 50-50 basis, each invoice will show the actual total as well as the 50-50 breakdown of Shared Costs to be paid by the City and by PG&E. For costs either Party has agreed in writing to the other Party to pay in its entirety subject to later allocation under Section 8 hereto, each invoice will show the actual total amount. Payments will be remitted directly to the Shared Costs contractors on a timely basis, and each of the Parties will provide the other with copies of such remittances."

4. The first sentence of section 11 of the Cost Sharing Agreement shall be modified to read as follows: "Unless and until (a) this Agreement is terminated as provided in Section 5 hereof or (b) Shared Costs reach \$950,000 or a greater amount agreed to by the Parties pursuant to Section 3 or (c) this Agreement is terminated as agreed to by the Parties pursuant to 30 days written notice (herein said item (a), (b) and (c) are collectively referred to as "the Claim Events"), the City shall not seek to prosecute the CERCLA Action, and neither of the Parties shall commence any other action or proceeding against the other Party to recover past or future

damages or for any other relief on account of any existing contamination of the Site, except an action or proceeding for breach of this Agreement.”

5. The parties affirm that their representatives have read and fully understand this Agreement, and that the below-signed individuals have and hereby exercise the power to bind their respective principals.

6. This Agreement shall become effective upon its execution by PG&E and the City and approval as to its form and legality by the City Attorney and by the designated PG&E attorney.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year below written.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

By: Kathleen E. Patrucco

Dated: 9/16/13

Approved as to Form:

By: David P. Meid
Deputy City Attorney

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation

By: Thomas Cull

Dated: 9/23/2013

Approved as to Form:

By: Meg Sullivan
Attorney

COST SHARING AGREEMENT

INADMISSIBLE UNDER FED. R. EVID. 408

The effective date of this Cost Sharing Agreement ("Agreement") is dated as of August 10, 2004 ("Effective Date"), and is entered into between the City and County of San Francisco, a municipal corporation ("the City"), and PACIFIC GAS AND ELECTRIC COMPANY, a California corporation ("PGandE") (the City and PGandE are sometimes individually referred to herein as a "Party" and sometimes collectively referred to herein as "the Parties"), with respect to property, including Bay sediments, in the Marina East Harbor or Gashouse Cove Area of the City and County of San Francisco, more accurately identified on the map attached hereto as Exhibit "A" as incorporated by reference herein ("the Site").

WHEREAS, the Site currently is owned by the City and is under the control and jurisdiction of the City, and is used as a park and marina;

WHEREAS, PGandE and others previously owned and operated a coal gasification plant in the vicinity of the Site;

WHEREAS, as the result of subsurface investigations the presence of chemical compounds, including polycyclic aromatic hydrocarbons ("PAHs"), has been discovered in subsurface soils and sediments underlying the Site;

WHEREAS, on January 18, 2001, the City commenced an action against PGandE for recovery of response costs and declaratory relief under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA") and other laws, arising out of the presence of the chemical compounds at the Site, entitled *City and County of San Francisco v. Pacific Gas & Electric Company*, No. C 01-0316 SBA, in the United States District Court for the Northern District of California ("the CERCLA Action");

WHEREAS on June 2, 2004, the court entered an Order Dismissing Action without prejudice, in order to allow the parties to attempt to carry out the terms and purposes of this

Agreement without having to expend their resources on litigation, while giving either party the right to move to reopen the case and have the matter rescheduled within 365 days of the Order Dismissing Action, or within an additional period as the court may allow upon request;

WHEREAS, pursuant to PGandE's notice to the Court and the City on April 11, 2001 that PGandE had filed a voluntary petition under Chapter 11 of Title 11 of the United States Code, in the United States Bankruptcy Court, the Court stayed proceedings in the CERCLA Action;

WHEREAS, PGandE emerged from bankruptcy and the stay on any legal proceedings against PGandE was lifted on April 21, 2004; under the plan of reorganization, the above claim passed through bankruptcy unimpaired which means that for all practical purposes the claim and lawsuit can proceed as if there had not been a bankruptcy;

WHEREAS, the Parties do not agree with one another about who is responsible for the chemical compounds on the Site, including responsibility for investigation and remediation of the Site;

WHEREAS, without admitting any fact, responsibility, fault, liability, or any other matter or issue in connection with the site, the Parties recognize that there are substantial efficiencies in addressing responsibility for the chemical compounds on the Site on a cooperative basis;

WHEREAS, the Parties wish to continue Site investigation, planning and other activities in a timely and cost-effective manner while reserving their rights to assert their respective positions concerning the CERCLA Action;

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants contained herein, the Parties hereby agree as follows:

1. Subject to the provisions of this Agreement, "Shared Costs" are those costs incurred or expended for the services of contractors or consultants hired by the City or PGandE and approved in advance by both the City and PGandE in writing in performing the following

with respect to the Site: sampling and analyses of environmental media; planning of dredge design and dredged material disposal; applications for and participation in permit processes related to dredge activity; discussion and negotiation with regulatory agency/personnel (including, without limitation, the Bay Area Regional Water Quality Control Board, the Department of Toxic Substance Control, and the Dredged Materials Management Office); and exchange of technical information and expertise concerning dredge planning and disposal, as defined below ("Shared Costs Activities").

2. "Shared Costs" shall not include any cost incurred or expended by either the City or PGandE prior to the Effective Date of this Agreement. Shared Costs shall include costs for regulatory oversight administrative fees, and costs for Shared Cost Activities, but shall not include taxes imposed by regulatory agencies having jurisdiction over the Site.

3. Shared Costs incurred or expended from and after the Effective Date, up to a total amount of \$500,000, shall be allocated on a 50-50 basis (\$250,000 maximum for PGandE and (\$250,000 for the City), until all Shared Costs Activities are complete. The Shared Costs shall not include any amount in excess of said \$500,000 or any amount incurred or expended after the anniversary of this Agreement in 2006, unless and to the extent that each Party agrees otherwise in writing at its option to increase said amount or extend said date. The Parties will arrange with each Shared Costs contractor for all invoices to be sent to both Parties, each invoice to show the actual total as well as the breakdown of Shared Costs to be paid by the City and by PGandE. Payments will be remitted directly to the Shared Costs contractors on a timely basis, and each of the Parties will provide the other with copies of such remittances.

Notwithstanding any other provision in this Agreement, (1) PGandE shall be obligated

only to pay on a 50-50 basis costs that are incurred in accordance with the provisions of this Agreement, and (2) PGandE shall not be required to make any payment prior to expiration of 100 days after the date PGandE executes this Agreement, provided that PGandE agrees to pay to the Shared Costs contractors or to the City, as appropriate, 10% annual interest from the 31st day of PGandE's receipt of a bill to the date of payment of the bill if the bill is paid by PGandE more than 30 days after PGandE receives the bill.

4. Both Parties shall be entitled to communicate fully with any Shared Costs contractor. All written reports and communications from the date of this Agreement forward pertaining to Shared Costs Activities shall be sent simultaneously by each Shared Costs contractor to both Parties.

5. The City retains sole decision-making authority with respect to timing of permitting steps, final design layout, depths and other operational factors for the renovated harbor. Except as specifically set forth immediately above, the Parties intend to make decisions regarding the Shared Cost Activities for the Site on a cooperative basis and based on all available information. PGandE agrees to exercise good faith in cooperating with the City to adhere to timelines for environmental review and permit applications. If the Parties disagree about a decision, they shall attempt reasonably and in good faith to resolve the disagreement. If the disagreement is not resolved, the Parties may continue to proceed jointly under this Agreement with such activities that are not subject to the disagreement. If the disagreement is not resolved, and either of the Parties reasonably determines that the Parties cannot continue to proceed jointly under this Agreement with Shared Costs Activities that are not subject to disagreement, that Party may terminate this Agreement by giving written notice of termination to the other Party; provided, however, that the Party terminating this Agreement shall remain liable to the other Party for Shared Costs arising before the termination. In the event of breach of this Agreement,

the liability of the breaching Party shall be limited to that remaining portion of its contribution to the Shared Costs.

6. Neither party shall assert that by incurring any Shared Costs that have been approved in advance by the other party pursuant to paragraph 1 of this Agreement, a party has failed to comply with the National Contingency Plan, 40 C.F.R. Part 300

7. This Agreement constitutes the entire agreement between the Parties hereto concerning the matters specifically covered herein, and shall not be amended, supplemented or modified unless in writing signed by all parties. Such modification shall only be effective upon execution of a written modification by the Parties.

8. (a) In the event that the dispute as to responsibility for investigation and remediation of the Site, as described herein, is settled by a submission to alternative dispute resolution procedures and/or federal or state court action, each party agrees to refund to the other party any portion of the payment of Shared Costs made pursuant to Sections 3 and 5 of this Agreement by the party to receive the refund that is in excess of the final award and/or judgment of the dispute resolution representative and/or court, as modified through post-trial motions or appeal, imposed upon that party; provided, however, that such payment shall be made only after all motions for new trial or other post trial motions and appeals have been exhausted.

(b) The Parties agree that by this Agreement and any acts taken thereunder, neither PGandE nor the City has in any way or manner admitted any liability for any Site condition, assessment investigation or remediation costs relating to the Site, and that the fact that PGandE and the City have entered into this Agreement and/or made these payments shall be inadmissible for any and all purposes in any alternative dispute resolution or state or federal court action which might be brought relating to the dispute described herein, with the sole and exclusive exception being the prove-up in an alternative dispute resolution or state or federal court action of the refund set forth in Paragraph 8 (a), supra. This Agreement shall have no

effect on the attribution of responsibility or determination of share of responsibility in any settlement negotiations, alternative dispute resolution proceeding, or court proceeding, except that after responsibility and liability has been determined that amount of Shared Costs paid by the City and/or PGandE shall be taken into account as provided in this Section 8 hereof.

(c) Save and except the sole and exclusive exception set forth in Paragraph 8 (a) herein, this Agreement shall be inadmissible on any issue in dispute herein, whether before regulatory bodies, alternative dispute resolution proceedings or state or federal courts.

(d) The City and PGandE agree that the monies paid by the City and PGandE under the provisions of this Agreement shall be credited against any final settlement of the dispute described herein, including any alternative dispute resolution award or court judgment relating to the settlement of said dispute.

9. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and affect.

10. The Parties and each of them deny any and all liability with respect to the Site. No part of this Agreement, no joint efforts by the Parties hereunder, nor any application by PGandE or by the City to the California Public Utilities Commission ("CPUC") or to any other governmental agency for funds or for authority to collect rates, charges or assessments to repay the applicant for its portion of Shared Costs, shall: 1) constitute or be construed as an admission by the other Party of any fact, law, legal responsibility or liability; or 2) be admissible in any trial, regulatory proceeding, or alternative dispute resolution proceeding relative to the liability, damages or other issues between the Parties for the assessment of or cleanup of contamination at the Site, save and except as set forth in Section 8 hereof. This Agreement is not intended, nor can it be construed, to create rights in persons or entities not parties to the Agreement.

11. Unless and until (a) this Agreement is terminated as provided in Section 5 hereof or (b) Shared Costs reach \$500,000 or a greater amount agreed to by the Parties pursuant to

Section 3 or (c) the anniversary of the Effective Date of this Agreement in 2006, or such later date agreed to by the Parties pursuant to Section 3 (herein said item (a), (b) and (c) are collectively referred to as "the Claim Events"), the City shall not seek to prosecute the CERCLA Action, and neither of the Parties shall commence any other action or proceeding against the other Party to recover past or future damages or for any other relief on account of any existing contamination of the Site, except an action or proceeding for breach of this Agreement. During the period that this Agreement remains in effect, and as consideration for the City's agreement not to prosecute the CERCLA Action during that period, PGandE agrees to suspend the statute of limitations governing the CERCLA Action, and to assert no other defense, such as laches, waiver or estoppel, based on the passage of time from the date of the court's dismissal without prejudice of the CERCLA Action to the date that this action may be reopened or another action arising out of the same circumstances is filed. Provided that the Party has paid its stated allocation of shared Costs as required by this Agreement, then after the occurrence of any one of the Claim Events, said Party may seek to reopen this action or commence any other action or proceeding against the other Party to recover damages or any other relief on account of any contamination of the Site, including, without limitation, the CERCLA Action, or an action or proceeding to recover all or any portion of any Shared Costs paid by the Party pursuant to this Agreement.

12. This Agreement shall be interpreted pursuant to California law.

13. The parties affirm that their representatives have read and fully understand this Agreement, and that the below-signed individuals have and hereby exercise the power to bind their respective principals.

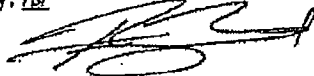
14. This Agreement shall become effective upon its execution by PGandE and the City and approval as to its form and legality by the City Attorney and by the designated PGandE attorney.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be

executed the day and year below written.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

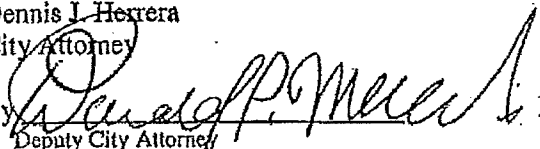
By: /s/ YOMI AGUNBIADE, ACTING EM



Dated: AUG. 10, 2004

Approved as to Form:

Dennis I. Herrera
City Attorney

By: 
Deputy City Attorney

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

By: /s/

Dated:

Approved as to Form:

By _____

executed the day and year below written.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

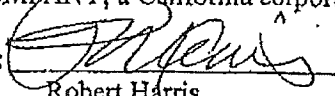
By: /s/

Dated:

Approved as to Form:
Dennis J. Herrera
City Attorney


By _____
Deputy City Attorney

PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation

By: 
Robert Harris
Vice President Environmental
Affairs

Dated: 8/6/04

Approved as to Form:

By 
Juan M. Mayo Attorney

Wong, Linda (BOS)

From: Hobson, Mary (REC)
Sent: Friday, August 29, 2014 11:46 AM
To: Wong, Linda (BOS)
Cc: Taylor, Yadira (CAT)
Subject: RE: REQUEST FOR DOCUMENTS - File No. 140595 - East Harbor Marina Project

Dear Ms. Wong,

The project team has yet to negotiate the details for the scope of services and pricing for the next set of environmental services needed for the East Harbor project . We therefore, do not have a contract to submit to you at this time. The process of negotiating and drafting a contract with Leidos will begin after approval of this ordinance. Once final, staff will then seek approval from the Recreation and Parks Commission for approval of the contract.

Sincerely,

Mary A. Hobson

Capital Project Manager

San Francisco Recreation and Park Department | City & County of San Francisco
Capital Improvement Division | 30 Van Ness Ave., 5th Floor | San Francisco, CA | 94102
(415) 581-2575 | Mary.Hobson@sfgov.org



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