



DATE: April 6, 2020

TO: Mayor and Members of the City Council

VIA: Jeff Moneda, City Manager

FROM: Norm Dorais, Public Works Director/City Engineer

SUBJECT: LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT
(CIP 301-657) - GENERAL UPDATE

RECOMMENDATION

It is recommended that the City Council, by Minute Order, consider and accept this progress update on the Levee Protection Planning and Improvements Project (CIP 301-657). No further action is required by the City Council.

EXECUTIVE SUMMARY/ANALYSIS

This report summarizes the progress-to-date of the Levee Protection Planning and Improvements Project, since the last Council update on October 21, 2019, and includes discussion about project activities scheduled over the next few months. Over the last five months, the following accomplishments have been achieved:

- In January 2020, received the final necessary regulatory permit to allow for construction to proceed.
- Selected and awarded an agreement with Tanner Pacific, Inc., to provide Construction Management and Support Services and coordination with the Design Team to finalize design specification and drawings.
- Performed utility location activities to identify utility conflicts along the ~6.5 miles of the project and incorporated findings into the project drawings. Initiated coordination with PG&E to begin the application process to relocate utilities in conflict.

- Completed constructability review of 90% construction drawings by Tanner Pacific, Inc.
- Final constructability review comments are being incorporated into the 95% design drawings and specifications in preparation for issuance for bidding in May.
- Discussion with Bond counsel on options and timing of bond sale considering the recent turmoil surrounding COVID-19 and its significant effects on the short- and long-term bond markets.
- Issued a Request for Qualifications (RFQ) to pre-qualify and determine eligibility of contractors to submit bids for the Project in May. Questionnaires are due on April 2, 2020.

REGULATORY PERMITS

The Levee Project required permits from four major regulatory agencies. They include: the State Lands Commission (SLC), the Regional Water Quality Control Board (RWQCB), the San Francisco Bay Conservation and Development Commission (BCDC), and the U.S. Army Corps of Engineers (USACE). Prior to the last update, the SLC and the RWQCB permits had been issued. The remaining permits were issued in November 2019 (BCDC) and the USACE in January 2020.

CONSTRUCTABILITY REVIEW

What is a Constructability Review (CR)? It is an independent and structured review of construction bid documents by construction professionals to make certain that the work requirements are clear, the documents are coordinated, and that they assist the contractor in bidding, construction, and project administration to result in reduced impacts to the project. The benefits of performing a CR include: reducing requests for information (RFIs), reducing change orders, reducing likelihood of impact claims, and reducing impossible and impracticable requirements in the bid documents. In addition, it provides an independent look at the plans and specifications without the influence of the project designer and allows for any flaws to be uncovered prior to the awarding of a project. A properly performed CR will also allow for an independent corroboration of the probable construction cost estimate.

Subsequent to the award of the Construction Management contract with Tanner Pacific on January 27, 2020, one of the first items of work was to perform a CR on the Levee Project. Following significant effort, the review was completed in mid-March and revealed that the plans and specifications are in very good shape. The Construction

Manager (CM) team provided detailed questions and suggested clarifications to the designer that are currently being incorporated into the plans and specifications. The project team has also discussed strategies for putting together the bid strategies for incorporation into the bidding documents.

Through the course of the CR, a cost estimate was also assembled, again through an independent lens. The estimate is based upon: a thorough review of the plans and verification of material quantities and costs, the construction equipment needs, production rates and costs for the project, and the labor hours and associated rates/costs required to perform the project. The estimate puts the construction costs in the \$80-\$85 million range. While the cost estimate was performed prior to the COVID-19 crisis, it should be noted that due to the unprecedented disruption caused by orders for many areas throughout the country to shelter in-place, any cost estimates for work for the near term could be under or over the historical figures that are used to determine the costs.

The project schedule was also evaluated and determined that the anticipated three-year schedule is reasonable and supportable given the permit constraints that have been placed on the contract.

GENERAL OBLIGATION BOND

Staff, municipal advisors and bond counsel have conducted numerous conference calls since the last update to discuss the issues surrounding the best options for the sale of General Obligation (GO) Bonds required for overall funding of this project. The most recent call occurred on March 23, one week into the COVID-19 virus crisis that has resulted in major uncertainty in the municipal bond market.

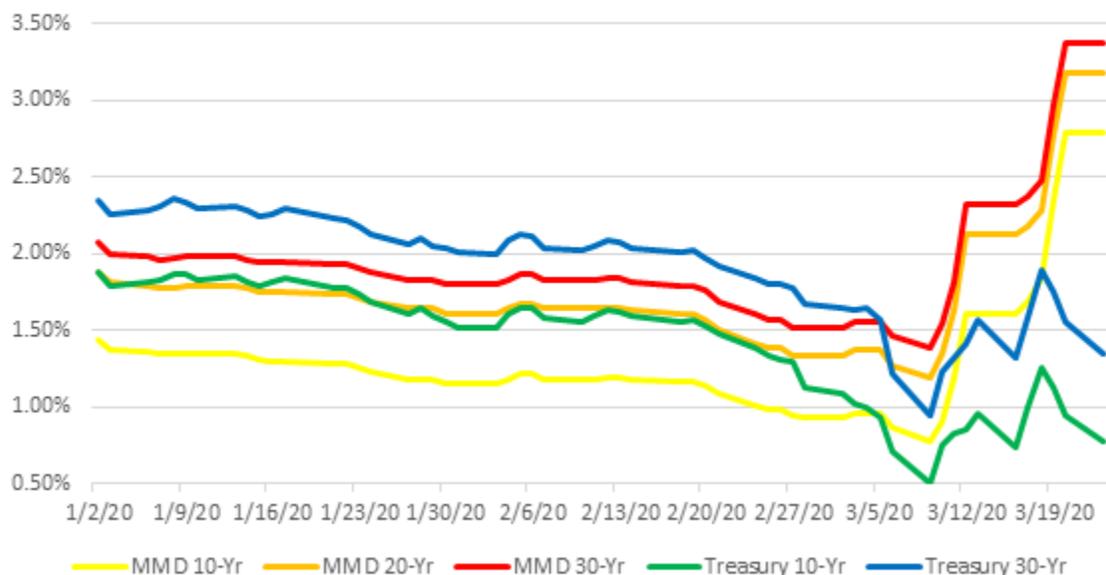
Effect of Municipal Market Disruption on the Sale of Foster City GO Bonds

Plan Prior to COVID-19 – The financing plan prior to the COVID-19 pandemic was to hold a competitive sale of long-term, fixed rate general obligation bonds after the Levee Project bid opening and before the award of the construction contract, thereby assuring the City of sufficient funds to construct the entire Project.

Effect of COVID-19 – Since it became evident that COVID-19 was a global pandemic, both the equity and municipal bond markets have been displaced. Massive panic selling in both markets has made cash more important than being invested, and there is a lack of buying in either market. Municipal bonds, which usually move in tandem with the Treasury bond market, are moving in the opposite direction, with yields having risen 150 basis points across the scale in the municipal market, while Treasuries have remained relatively stable. New bond

issues were not coming to market as of March 23. While the market is much better as of April 1, rates are not yet stable and we do not know when or if the market will return to "normal". The graph below shows tax-exempt Municipal Market Data (MMD) 10-, 20- and 30-year yields, along with 10- and 30-year taxable U.S. Treasury yields, from the first business day of 2020 until 3/23/20. Tax-exempt rates were trending downward through 3/9/20, then in just 10 business days the 30-year MMD yield increased by almost 200 basis points from 1.38% to 3.37%. By comparison, the 30-year Treasury yield is only 41 basis points higher during this same 10 days.

**Tax-exempt MMD and Taxable Treasury Yields
from 1/2/20 to 3/23/20**



Changes in Method of Sale and Financing Structure – This market dislocation has steered us to reconsider both our method of sale and financing structure for the Levee Project due to the unpredictability of when the market will return to normal. There is also no guarantee that the market will remain stable, so the City will need to prepare for any eventuality.

Move from a Competitive to a Negotiated Sale – If the municipal bond market calms down, and new issues can once again successfully be marketed, we would expect to continue with our initial plan of selling long term bonds. However, given the current uncertainty and tremendous market volatility, the City’s municipal advisors believe that moving from a competitive bond sale to a negotiated bond sale will give us more flexibility in responding to market conditions. A competitive bond sale requires setting a sale date two weeks in advance, advertising the sale, and then accepting bids (via an internet platform) at a specified time on the sale

date. The sale can be postponed with 24 hours' notice, and all bids rejected, but flexibility of last-minute changes to the sale date and the bond pricing structure is limited. A negotiated sale, where the issuer works with a pre-selected bond underwriter, allows for a much nimbler entry into the market (or withdrawal) and changes to the pricing structure on the day of the offering in response to investor demand. In uncertain markets such as we have now, a negotiated sale is considered more advantageous to an issuer than a competitive sale. A negotiated sale will further allow us to respond to market condition on-the-fly and move rapidly from one structuring alternative (such as the BAN discussed below) to another (long-term bonds) should that prove to our advantage.

Alternatives Under Review – The Project's needs should drive the financing, not the other way around. If a delay in the bidding schedule is not recommended by the Project team, then there are alternatives to the sale of a single issue of long-term bonds in an uncertain and volatile market. One alternative would be to issue two series of GO bonds, the first to fund construction costs for the first year and the second a year later to finance the remainder of the Project at a time when we hope the municipal market will be more stable. Another alternative would be to issue short-term debt like bond anticipations notes (BANs) or take out a commercial bank loan that would be paid off by the issuance of long-term GO bonds in a year or so. The municipal advisors are currently working with legal counsel and City staff to examine all the financing options and are preparing an RFP to solicit ideas from a select group of municipal underwriters associated with major commercial banks.

CURRENT SCHEDULE

Approval of Plans and Specs and Call for Bids: May 2020

Bid Opening: June 2019

Award of Contract: July 2020

Notice to Proceed: August 2020

Construction Completion: 2023

The Independent Citizens' Bond Oversight Committee was approved at the December 16, 2019 City Council Meeting per Resolution No. 2019-121. The outreach for the committee member applications will begin around June 2020.

FISCAL IMPACT

A construction cost estimate was prepared by the Construction Manager (CM) as part of the 90% constructability review and submitted on March 17, 2020. The cost estimate was prepared independently based on the CM's review of the 90% plans, specifications, and proposed project schedule. Following is a breakdown of the total project's estimated costs:

Estimated Cost – (in Millions)	
Constructability Review Cost Estimate	\$86
Construction Contingency (10%)	\$9
Construction Management	\$7
Design and Permitting Costs	\$6
Miscellaneous costs incl. outreach, advertising, printing, etc. (Encumbered and anticipated)	\$1
Total Project Expenditures	\$109

The \$6 million in design and permitting costs were authorized by the City Council as a CIP project and funded using the CIP Fund over the past five years. If this portion of the project was not included in the items to be recovered using bond proceeds, and based on the construction cost estimate and project expenditures and encumbrances to date, the Levee Project is still likely to exceed the \$90 million GO bond limit approved by voters in June 2018. As authorized by the City Council, the City has committed to fund up to \$10 million for additional Levee Project costs, for a total of \$100 million. Minus the \$6 million in design and permitting costs, the project exceeds the \$100 million by \$3 million. Based on the Contractor's bid prices anticipated in June 2020, staff will return to the City Council for a discussion of options.