CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

March 29, 2012

TO: Budget and Finance Sub-Committee

FROM: Budget and Legislative Analyst

SUBJECT: April 4, 2012 Budget and Finance Sub-Committee Meeting

TABLE OF CONTENTS

Item 1 File 12-0253	Department: San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would authorize four new nine-year and three-month Lease and Use Agreements (Leases) from April 1, 2012 through June 30, 2021, between the Airport and (a) JetBlue, (b) WestJet, (c) World Airways, and (d) MN Airlines, for flight operations and a total of 3,936 square feet of Exclusive Use space in the International Terminal, from April 1, 2012 through June 30, 2021, as signatories to the 2011 Lease and Use Agreement.

Key Points

- Airlines can operate at the Airport either by: (a) entering into a lease with the Airport as a signatory airline, or (b) obtaining a month-to-month Airline Operating Permit, under which the airline pays the Airport a 25 percent premium on landing fees, and obtaining a month-to-month Terminal Space and Use Permit, wherein the airline is a non-signatory airline.
- The Board of Supervisors approved a 2011 Lease and Use Agreement with 39 signatory airlines for ten years, from July 1, 2011 through June 30, 2021. In addition, 11 other airlines operate at the Airport as non-signatory airlines, for a total of 50 airlines currently operating at the Airport.
- Jet Blue currently operates at the Airport as a non-signatory airline under a month-to-month Airline Operating Permit, and a separate month-to-month Terminal Space and Use Permit which commenced May 2007. As of July 1, 2011, WestJet, World Airways, and MN Airlines, currently operate at the Airport as non-signatory airlines under month-to-month Airline Operating Permits, which commenced October 2004, May 2003 and June 2004, respectively.

Fiscal Impacts

- Jet Blue currently pays the Airport an average of $208,839 per month in landing fees as a non-signatory airline. Due to the elimination of the 25 percent premium for landing fees under the proposed lease, JetBlue's landing fees to the Airport would be reduced by $41,768 to $167,071 per month from approximately April 1, 2012 through June 30, 2012. The $38,118 monthly rent being paid by Jet Blue to the Airport for 3,963 square feet of Exclusive Use Space in the International Terminal would remain the same in FY 2011-12. Projected monthly revenues payable by Jet Blue to the Airport for FY 2012-13 are $176,594 in landing fees and $40,748 in Exclusive Use Rent, or a total of $217,342 per month.
- WestJet, World Airways, and MN Airlines currently pay the Airport a combined average of $94,473 per month in landing fees as non-signatory airlines. With the elimination of the 25 percent premium for landing fees, under the proposed lease, the total landing fees paid by WestJet, World Airways, and MN Airlines to the Airport would be reduced by $18,895 to $75,578 per month from approximately April 1, 2012 through June 30, 2012. Projected landing fee revenues from WestJet, World Airways, and MN Airlines to the Airport for FY 2012-13 are estimated at $79,886 per month.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Section 2A.173 of the City's Administrative Code authorizes the Airport to execute leases of Airport lands and space in Airport buildings without undergoing a competitive bid process, as long as the original term of the lease does not exceed 50 years.

City Charter Section 9.118 states that leases which would result in revenues to the City in excess of $1,000,000 are subject to Board of Supervisors approval.

Background

Airlines can operate at the Airport either by: (a) entering into a lease with the Airport as a "signatory airline" authorizing the airline to operate flights in and out of the Airport, and to rent an amount of exclusive and non-exclusive space for use by the airline, or (b) obtaining a month-to-month Airline Operating Permit for the operation of flights in and out of the Airport and a month-to-month Terminal Space and Use Permit to rent space as a "non-signatory airline."

According to Ms. Diane Artz, Senior Property Manager at the Airport, there are currently 50 airlines operating at the Airport. Of the 50 airlines, 39 airlines are signatory airlines under the Airport's 2011 Lease and Use Agreement and 11 are non-signatory airlines operating under month-to-month Airline Operating Permits. The 2011 Lease and Use Agreements with the 38 airlines extend for ten years from July 1, 2011 through June 30, 2021 with Swiss Air becoming the 39th signatory airline effective as of December 1, 2011. The Board of Supervisors previously approved four resolutions between 2010 and 2011 for the 39 signatory airlines under the 2011 Lease and Use Agreement (File 10-0351, File 10-1213, File 11-0210 and File 11-1152).

Ms. Artz notes that previous to the 2011 Lease and Use Agreement, there was little incentive for airlines to enter into a lease with the Airport as a signatory airline because both signatory and non-signatory airlines paid the same landing fee rates. However, as part of the 2011 Lease and Use Agreements, as of July 1, 2011, each non-signatory airline is required to pay a 25 percent premium on landing fees in excess of the landing fees paid by the signatory airlines to the Airport. According to Ms. Artz, the 25 percent premium on landing fees for non-signatory airlines was intended to create a financial incentive for non-signatory airlines to enter into long term leases with the Airport instead of operating at the Airport under a month-to-month permit.

Jet Blue has operated passenger service in the International Terminal at the Airport under a month-to-month Airline Operating Permit, as a non-signatory airline and has occupied 3,936 square feet of Exclusive Use Space under a Terminal Space and Use Permit under a month-to-month basis since May 3, 2007.

WestJet has operated passenger service at the Airport as a non-signatory airline on a seasonal basis under a month-to-month Airline Operating Permit since October 4, 2004. WestJet does not rent Airport Terminal space.

World Airways has operated cargo operations at the Airport as a non-signatory airline under a month-to-month Airline Operating Permit since May 1, 2003.World Airways does not rent Airport Terminal space.

MN Airlines[1] has operated passenger service at the Airport as a non-signatory airline under a month-to-month Airline Operating Permit since June 1, 2004. MN Airlines does not rent Airport Terminal space.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new Lease and Use Agreement (Lease) between the Airport and Jet Blue, under which Jet Blue would become a signatory airline, for (a) the right to operate flights at the Airport's International Terminal, and (b) occupy a total of 3,936 square feet of Exclusive Use Space in the International Terminal for a period of approximately nine-years and three-months from April 1, 2011 through June 30, 2021.

The proposed resolution would also approve a Lease between the Airport and the following three additional Airlines: (a) WestJet, (b) World Airways, and (c) MN Airlines, under which the three airlines would become signatory airlines, for the right to operate flights at the Airport for a period of approximately nine-years and three-months from April 1, 2011 through June 30, 2021. These three airlines would not rent any Exclusive Use or Non-exclusive Use space at the Airport.

Under the proposed lease agreement, Jet Blue, WestJet, World Airways, and MN Airline would become signatories to the Airport's existing Lease and Use Agreement previously approved in 2010 and 2011 by the Board of Supervisors under four resolutions (File 10-0351, File 10-1213, File 11-0210 and File 11-1152) covering 39 other airlines at the Airport. If the proposed resolution is approved 43 airlines (39 plus 4) would be signatories to the Airport's Lease and Use Agreement, out of the total of 50 airlines currently operating at the Airport. There would be seven non-signatory airlines.

FISCAL IMPACT

Under the terms of the existing Lease and Use Agreement with the signatory airlines, all of the non-signatory airlines, which have operated at the Airport under month-to-month Airline Operating Permits, have been required to pay a 25 percent premium on landing fees in excess of the landing fees paid by the signatory airlines operating.

Currently, under its existing month-to-month Airline Operating Permit, Jet Blue pays the Airport $208,839 per month in landing fees and $38,118 in Exclusive Use Rent for 3,963 square feet of Exclusive Use Space in the International Terminal. As of the date the proposed new signatory lease is executed, or approximately April 1, 2012, Jet Blue will no longer be required to pay the Airport the 25 percent premium on landing fees, such that Jet Blue will instead pay an average of $167,071 per month in landing fees for the remainder of FY 2011-12 as a signatory airline, a

[1] MN Airlines does business as Sun Country Airlines. The name "MN" is an abbreviation for Minnesota.

reduction of $41,768 per month. The rent of $38,118 per month for 3,963 square feet of Exclusive Use Space in the International Terminal would remain the same for FY 2011-12.

As shown in Table 1 below, Jet Blue is currently paying an average of $246,957 per month to the Airport in Landing Fees and Exclusive Use Rent for FY 2011-12. Based on similar levels of passengers and flight activities for the remainder of FY 2011-12 and for FY 2012-13, approval of the proposed resolution would result in Jet Blue paying approximately $205,189 per month between April 1, 2012 and June 30, 2012 resulting in a monthly reduction of $41,768 by not having to pay the 25 percent premium on landing fees. The Airport estimates that Jet Blue will pay the Airport $217,342 per month for FY 2012-13, the first full year under the proposed Lease and Use Agreement.

Table 1: Approximate Monthly Revenues Payable by Jet Blue to the Airport

	FY 2011-12 Rentals Under Non-Signatory Month-to-Month Permits	FY 2011-12 Rentals Under Proposed New Signatory Lease	FY 2012-13 Rentals Under Proposed New Signatory Lease
Landing Fees	$208,839	$167,071	$176,594
Exclusive Use Rent	38,118	38,118	40,748
Total Monthly Revenues:	**$246,957**	**$205,189**	**$217,342**

As shown in Table 2 below, WestJet, World Airways, and MN Airlines currently pay the Airport an average of $32,221, $41,785, and $20,477 respectively in monthly Landing Fees, or a total of $94,473. As of the date that the proposed new signatory lease is executed, or approximately April 1, 2012, WestJet, World Airways, and MN Airlines will no longer be required to pay a 25 percent premium on landing fees, such that WestJet, World Airways, and MN Airlines will instead pay $25,769, $33,428, and $16,381 per month in landing fees, or a total of $75,578, between April 1, 2011 and June 30, 2012, resulting in a monthly reduction of $18,895. The Airport estimates that these three airlines will pay the Airport a total of $79,886 per month in FY 2012-13.

Table 2: Approximate Monthly Revenues Payable by WestJet, World Airways, and MN Airlines

	FY 2011-12 Monthly Landing Fees Under Non-Signatory Month-to-Month Permit	FY 2011-12 Monthly Landing Fees Under Proposed New Signatory Lease	FY 2012-13 Monthly Landing Fees Under Proposed New Signatory Lease
WestJet	$32,211	$25,769	$27,238
World Airways	41,785	33,428	35,333
MN Airlines	20,477	16,381	17,315
Total Monthly Revenues:	**$94,473**	**$75,578**	**$79,886**

Airport's Break Even Policy

As a result of the Airport's "residual rate setting methodology" (the breakeven policy) used by the Airport to determine rental rates, landing fees, and related fees for all Airlines, the proposed leases between the Airport and Jet Blue, WestJet, World Airways, and MN Airlines, will not result in any budgetary shortfall for the Airport. The residual rate setting methodology is a formula which sets the schedule of all rental rates, landing fees, and related fees to a level which ensures that Airport revenues received from all of the airlines at the Airport, plus the non-airline revenues received by the Airport, is equal to the Airport’s total costs, including debt service and operating expenditures. According to the Airport’s breakeven policy, prior to the beginning of each fiscal year, the Airport determines the total airline revenues needed to balance the Airport’s budget in the upcoming year, after considering all other non-airline revenue sources (such as concession revenues and parking revenues) and carrying forward any projected budget shortfall or surplus from the current fiscal year.

The amount needed to balance the Airport’s budget then becomes the basis for calculating, by a formula specified in the leases with all of the airlines operating at the Airport, the rental rates, landing fees, and related fees charged to the airlines each fiscal year, such that the total revenues paid to the Airport by all airlines and other tenants in the upcoming fiscal year is sufficient to balance the Airport’s budget. At the end of the fiscal year, any budgetary shortfall or surplus is carried forward into the following fiscal year and is used in the calculation of the new rental rates, landing fees, and related fees charged to the airlines and other tenants. Therefore, any reductions in landing fees and rental rates do not have a direct fiscal impact on the Airport.

RECOMMENDATION

Approve the proposed resolution.

Item 4 File 12-0260	Department: Port

EXECUTIVE SUMMARY

Legislative Objectives

- Resolution approving a new five-year lease, with one five-year option to extend between the Port, as lessor and Aardvark Storage Unlimited, Inc. (Aardvark), as lessee, for 274,163 square feet of paved vacant land located at 600 Amador Street within Seawall Lot 344 on the southern Waterfront to be used by Aardvark for a container storage facility, which would combine three existing leases.

Key Points

- The Port, as lessor, and Aardvark, as lessee, entered into three separate leases between 1998 and 2001 for three adjacent plots of land known as Parcels A, B and C, which Aardvark uses as a container storage facility.
- In 1998, the Port entered into a three-year lease with Aardvark for 127,704 square feet of vacant land for Parcel A, which has continued on a month-to-month holdover basis since the lease expired on December 1, 2001. Aardvark currently pays the Port $31,046, or $0.24 per square foot per month for Parcel A.
- In 1999, the Port entered into a nine-month lease, with Aardvark for 96,546 square feet of vacant land for Parcel B, which has been subsequently amended twice to extend the term and square footage. As part of the proposed new subject lease, the land was resurveyed at 73,019 square feet. This lease has continued on a month-to-month holdover basis since the lease expired on January 1, 2005. Aardvark currently pays the Port $18,621 or $0.29 per square foot per month.
- In 2001, the Port entered into a five-year lease with Aardvark for 73,440 square feet of vacant land for Parcel C for the term from July 1, 2001 through June 30, 2006, which has continued on a month-to-month holdover basis since the lease expired on July 1, 2006. Aardvark currently pays the Port $10,420 or $0.14 per square foot per month.

Fiscal Impacts

- Aardvark currently pays total rent of $60,087 per month for Plots A, B, and C, for a total of 265,760 square feet of paved vacant land, or an average of $0.226 per square foot per month for the vacant, paved land.
- Under the proposed lease, the first year monthly rent for the three combined parcels consisting of a total of 274,163 square feet would be $58,945, or $0.215 per square foot per month, or $1,142 less per month than the $60,087 of current rent per month being paid to the Port. Based on annual adjustments ranging from 2.33 percent to 4.55 percent over the term of the lease, the total rental revenue payable to the Port over the initial five-year lease would be $3,799,899, and including the five-year option, the total rental revenues payable to the Port would be $8,405,837.

Policy Consideration

- The proposed new lease would be awarded to the existing lessee based on direct negotiations rather than through a competitive process. According to Mr. Jerry Romani of the Port, while bidding the proposed lease would not have been impossible, it was impractical for the Port to undertake a competitive process to select a lessee because, other than Aardvark, the Port had not received any other inquiries to lease large parcels of vacant land on the southern Waterfront, and the Port has an available supply of other vacant land in the area. In addition, the Port did not want to expend the additional time and cost to advertise the proposed lease under a competitive process for the subject parcels. The Port was able to negotiate a lease directly with Aardvark, using the Port's approved Minimum Monthly Rental Rate Schedule, less the incentives.

Recommendation

- Approval of the proposed resolution is a policy decision for the Board of Supervisors.

MANDATE STATEMENT & BACKGROUND

Mandate Statement

Charter Section 9.118(c) requires that any lease for a period of ten or more years, including options to renew, or with anticipated revenues of $1,000,000 or more, be subject to approval of the Board of Supervisors.

Section 2.6-1 of the City's Administrative Code requires that leases of City property be awarded to the highest responsible bidder in accordance with competitive bidding procedures except when bidding procedures are "impractical or impossible." The terms impractical and impossible are not defined in the Administrative Code.

Background

The Port, as lessor, and Aardvark Storage Unlimited, Inc. (Aardvark), as lessee, entered into three separate leases between 1998 and 2001 for three adjacent plots of vacant land known as Parcels A, B and C on Seawall Lot 344, located at 600 Amador Street at Cargo Way on the southern Waterfront, as shown in the attached map to this report. According to Mr. Jerry Romani, Commercial Property Manager for the Port, Parcels A and B were originally partially paved and partially unpaved vacant land and Parcel C was a dirt lot with a large dirt mound that Aardvark, at their own expense, graded and paved, and installed lighting and fencing. Aardvark then transferred various shipping containers onto the three parcels and has used Parcels A, B and C as a container storage facility. Under the existing leases, Aardvark is responsible for all costs associated with the land, including maintenance, improvements, utilities and security.

In 1998, the Port, as lessor, entered into a three-year lease with Aardvark, as lessee, for 127,704 square feet of vacant land known as Parcel A (Lease L-12627), for the term from December 1, 1998 through November 30, 2001. This lease has continued on a month-to-month holdover basis since the lease expired on December 1, 2001. The current monthly rent paid by Aardvark to the Port is $31,046, or $0.24 per square foot per month.

In 1999, the Port, as lessor, entered into a nine-month lease, with Aardvark, as lessee, for 96,546 square feet of land known as Parcel B (Lease L-12628) for the term from February 1, 1999 through October 31, 1999. Subsequently, a First Amendment to this lease extended the term for an additional five years, and two months, or through December 31, 2004. A Second Amendment to this lease reduced the space by 31,930 square feet from 96,546 square feet to 64,616 square feet to accommodate the realignment of adjacent railroad track. As part of the proposed new subject lease, the land was resurveyed and Parcel B was surveyed at 73,019 square feet. This lease has continued on a month-to-month holdover basis since the lease expired on January 1, 2005. The current monthly rent for Parcel B is $18,621 or $0.29 per square foot per month.

In 2001, the Port, as lessor, entered into a five-year lease with Aardvark, as lessee, for 73,440 square feet of vacant land, known as Parcel C (Lease L-13122) for the term from July 1, 2001 through June 30, 2006. This Parcel C Lease has continued on a month-to-month holdover basis since the lease expired on July 1, 2006. The current monthly rent for Parcel C is $10,420 or $0.14 per square foot per month.

According to Mr. Romani, the Port continued these three leases on a month-to-month basis due to the Port's various development plans and analyses for the Pier 90-94 "Backlands" which initially included Parcels A, B, and C. Mr. Romani explains that between 2002 and 2004, the San Francisco Public Utilities Commission approached the Port about developing a power substation and sewage treatment plant and the San Francisco Department of the Environment subsequently pursued developing a biodiesel plant in this area. Between 2005 and 2009, the Port retained various consultants to analyze alternative development proposals, which resulted in the Port determining the best use for this area, excluding Parcels A, B and C, was for bus and truck parking and construction sites. In 2009, the Port initiated negotiations with Aardvark to consolidate the three vacant land leases. Mr. Romani advises that the lease negotiations were difficult and extended for almost two years due to Aardvark's desire to use their bonds for part of the security deposit, which required involving the City's Risk Manager, City Attorney staff, bond companies and underwriters. According to Mr. Romani, the Port Commission approved the use of bonds for part of the security deposit in 2011.

Holdover Lease Project

In January of 2008, the Port implemented a Holdover Lease Project, to reduce the number of Port leases which had expired and continued on a month-to-month basis under the holdover provisions of their leases. According to Mr. Romani, hold-over leases are used (a) when the Port seeks to generate interim revenue while soliciting for a new lease or preparing for a capital project, (b) for storage agreements that do not exceed $5,000 per month in rent, (c) for parking spaces, except for parking lots, (d) for use of public rights of way, (e) for use of, or access to, Port-owned equipment, (f) to allow structural, geotechnical or environmental investigation of Port property, (g) for other short-term agreements, such as for temporary storage for construction materials used in large-scale construction projects, (h) during periods of adverse commercial real estate market conditions, and (i) for other agreements where the Port Executive Director finds a public purpose to enter a month-to-month lease, but where the term of such a lease is limited to a maximum of 24 months. On January 6, 2011, the Executive Director of the Port, Ms. Monique Moyer, issued a memorandum to the Port Commission on the progress of the Holdover Lease Project, which stated that from 2008 through 2010, the Port reviewed 323 agreements and (a) executed 65 new market-rate leases with existing tenants, (b) 62 holdover leases were increased to market rate, (c) 156 agreements were confirmed to be at market rate, and (d) 40 tenants were terminated or chose to terminate their leases with the Port.

According to Mr. Romani, as part of the Port's effort to convert existing month-to-month holdover leases to specific term leases where appropriate, the Port seeks to consolidate the three Aardvark month-to-month holdover leases into one new lease.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would combine three existing leases at Seawall Lot 344 consisting of Parcel A, B and C (see attached map), currently on a month-to-month basis, into one new five-year lease, with one five-year option to extend, between the Port, as lessor, and Aardvark Storage Unlimited, Inc. (Aardvark), the current lessee, for a total of 274,163 square feet, or 6.2 acres of paved vacant land located on Seawall Lot 344 at Amador Street and Cargo Way on the Southern Waterfront. The first year monthly rent of $58,945, or $0.215 per square foot per month, will be adjusted annually, as shown in Table 2 below, at a variable rate from 2.33 percent to 4.55 percent over the term of the lease.

Under the proposed consolidated lease, Aardvark will continue to be responsible for all costs associated with the land, including maintenance, improvements, utilities and security.

FISCAL IMPACTS

The Port adopts a Minimum Monthly Rental Rate Schedule every year for various categories of land, retail, and other space. For FY 2011-12, the minimum monthly rent for paved vacant land was $0.22 - 0.25 per square foot, before any incentives or adjustments are applied. As shown in Table 1 below, Aardvark currently pays a total of $60,087 per month for Plots A, B, and C, for a total of 265,760 square feet of space, or an average of $0.226 per square foot per month for the paved land.

Table 1: Current Monthly Rent

	Square Feet	Monthly Rent	Rent Per Square Foot Per Month	
Parcel A	127,704	$31,046	$0.24	
Parcel B	64,616	18,621	0.29	*
Parcel C	73,440	10,420	0.14	
Total	**265,760**	**$60,087**	**Average of $0.226**	

* The current month-to-month lease for Parcel B is based upon 64,616 square feet. The new lease will be based upon the newly surveyed 73,019 square feet, which will increase the total square footage to 274,163.

On July 7, 2011, the Port Commission approved a five percent discount for land leases with a minimum of 43,560 square feet and a minimum term of three years[1], to encourage the lease of larger Port parcels. Under the proposed new lease with Aardvark, after applying the Port's five percent discount to Aardvark's current average monthly rental rate of $0.226 per square foot, Aardvark would pay an initial monthly rent of $0.215 per square foot per month, or $58,945 per month for 274,163 square feet of paved vacant land.[2] Therefore, Aardvark will pay the Port monthly rent of $58,945 or $1,142 less per month in the first year of the proposed lease than the $60,087 per month that the Port currently receives, or a total of $13,704 less in the first year.

[1] Three years is the standard minimum for Port leases.
[2] The increase in square footage was from resurveying the land, not a physical increase of land.

Table 2 below shows the proposed monthly rents, the monthly rent per square foot, annual rents, and the annual percentage adjustments during each of the initial five years of the proposed lease and for each of the proposed additional five year option period.

Table 2: Proposed Monthly Rent for 274,163 Square Feet of Paved Vacant Land at Seawall Lot 344

	Monthly Rent	Monthly Rent Per Square Foot	Annual Rent	Annual Adjustments
Initial Term				
Year One:	$58,945	$0.21	$707,340	
Year Two:	60,315.86	0.22	723,790	2.33%
Year Three:	63,057.49	0.23	756,690	4.55%
Year Four:	65,799.12	0.24	789,589	4.35%
Year Five:	68,540.75	0.25	822,489	4.17%
	Subtotal		$3,799,899	
Option Term		0.00		
Year Six:	71,282.38	0.26	855,389	4.00%
Year Seven:	74,024.01	0.27	888,288	3.85%
Year Eight:	76,765.64	0.28	921,188	3.70%
Year Nine:	79,507.27	0.29	954,087	3.57%
Year Ten:	82,248.90	0.30	986,986.80	3.45%
	Subtotal		$4,605,938	
	Total		**$8,405,837**	

As shown in Table 2 above, the total rental revenues payable to the Port over the initial five-year lease would be $3,799,899. Including the five-year option, the total rental revenues payable to the Port would be $8,405,837.

POLICY CONSIDERATION

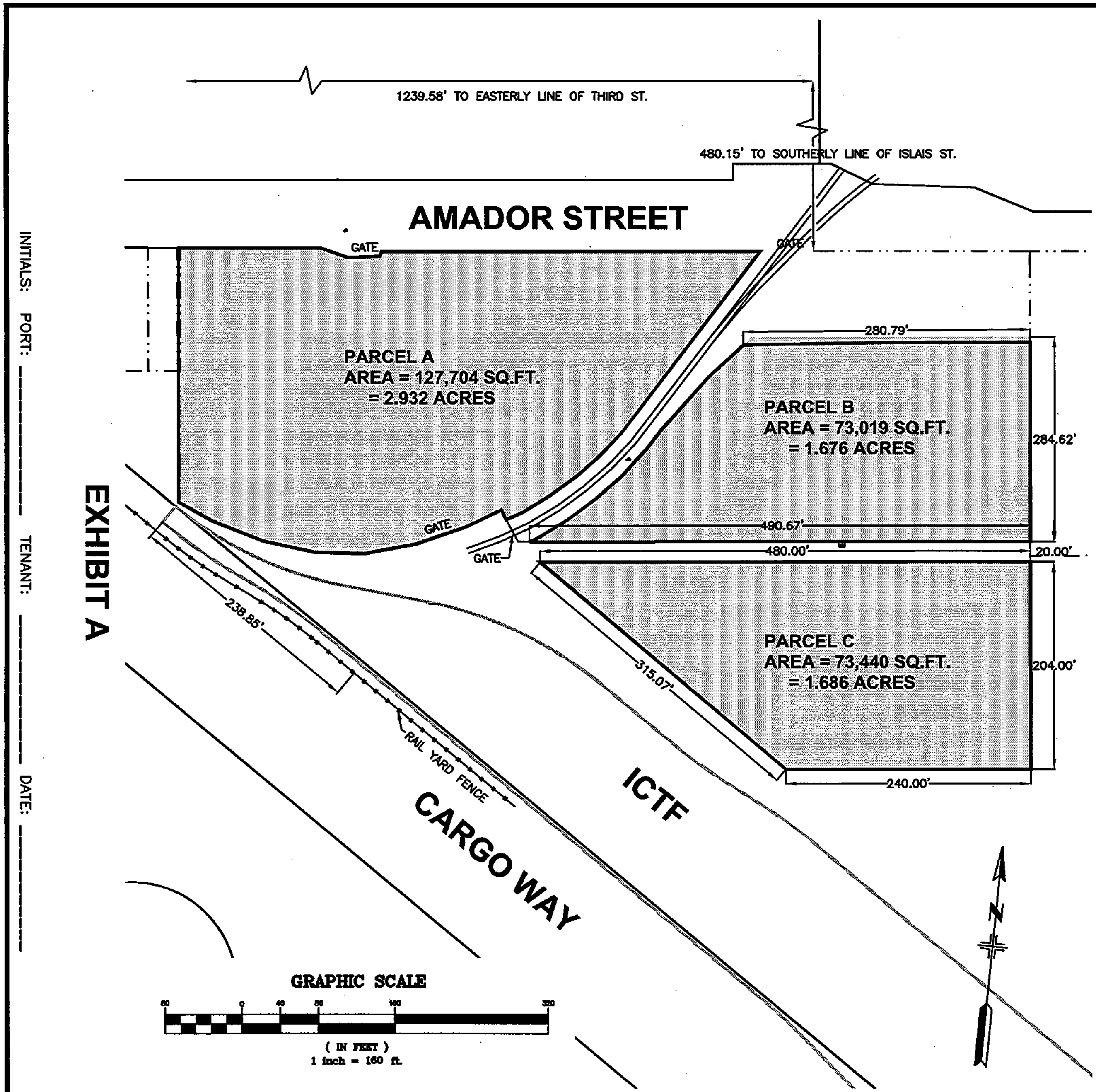
Mr. Romani advises that the proposed new lease between the Port, as lessor, and Aardvark, as lessee, would be awarded to the existing lessee based on direct negotiations rather than through a competitive process. As noted above, Section 2.6-1 of the City's Administrative Code requires that leases of City property be awarded to the highest responsible bidder in accordance with competitive bidding procedures except when bidding procedures are "impractical or impossible." The terms impractical and impossible are not defined in the Administrative Code.

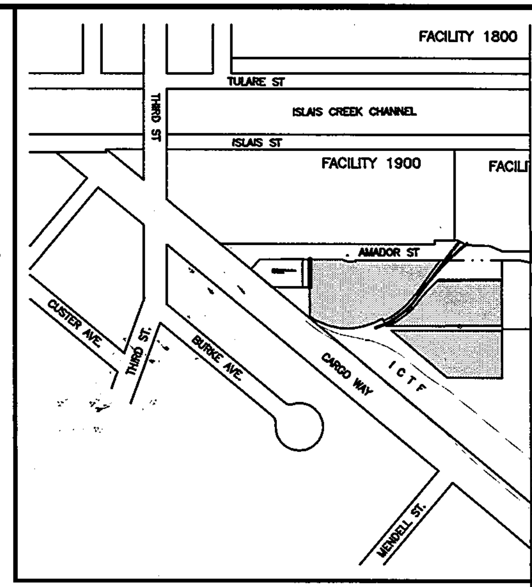
While bidding the proposed lease would not have been impossible, according to Mr. Romani, it was impractical for the Port to undertake a competitive process to select a lessee because, other than Aardvark, the Port had not received any other inquiries to lease large parcels of vacant land on the southern Waterfront, and the Port has an available supply of other vacant land in the area. As noted above, the combined Aardvark lease will contain 274,163 square feet of vacant land, or approximately 6.2 acres. In addition, Mr. Romani advises that the Port did not want to expend the additional time and cost to advertise the proposed lease under a competitive process for the subject parcels. Furthermore, Mr. Romani advises, that given the Port's approved Minimum Monthly Rental Rate Schedule, the Port was able to negotiate a lease directly with Aardvark, using the Port's approved rental rates. Therefore, the Budget and Legislative Analyst considers approval of the proposed new lease to be a policy decision for the Board of Supervisors.

RECOMMENDATION

Approval of the proposed resolution is a policy decision for the Board of Supervisors.

EXHIBIT A





LOCATION MAP

NOT TO SCALE

NOTES:

1. DISTANCES SHOWN ARE GROUND DISTANCES
2. LEASE PREMISES RUN ALONG EXISTING FENCE AND/OR CONTAINER LINES.
3. REFERENCES:
   A. PORT OF SAN FRANCISCO DWG. NO. 8262-344-4 TITLED "SEAWALL LOT 344 AUTO STORAGE LEASE"
   B. PORT OF SAN FRANCISCO DWG. NO. 6463-421 to 428-2 TITLED "SURVEY M"
   C. SAN FRANCISCO DEPT. OF PUBLIC WORKS MONUMENT MAP NO. 306

INITIALS: PORT: ____________ TENANT: ____________ DATE: ____________

LEASE NO.		TENANT		
L-14819	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	AARDVARK STORAGE UNLIMITED, INC., A CALIFORNIA CORPORATION	DRAWN BY: AMN CHECKED BY: J. ROMANI PLACE CODE NO. 3440-00/6020-00	DATE: MAR 17, 2010 SCALE: 1" = 100' SHEET NO. 1 OF 1 SHEETS

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Items 5, 6, 7 and 8 **Files 11-1341, 11-1354, 12-0242 and 12-0243**	**Department:** San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objectives

- File 11-1354: The proposed ordinance would add a new Chapter 43, Article XIII Sections 43.13.1 through 43.13.8 to the City's Administrative Code, subject to Board of Supervisors approval, for the SFMTA to (a) authorize the issuance of revenue bonds for any SFMTA purpose in accordance with Charter Section 8A.102(b)(13) and (b) establish specific procedures for the SFMTA to issue and sell future revenue bonds.

- File 11-1341: The proposed amended resolution would (a) authorize the issuance of not-to-exceed $160,000,000 principal amount of SFMTA revenue bonds to (i) finance SFMTA new capital improvements, and (ii) refinance outstanding parking garage and meter revenue bonds issued by various non-profit parking corporations and/or the Parking Authority, and finance improvements to garages under the jurisdiction of the SFMTA, the Parking Authority, nonprofit corporations, and/or the Recreation and Park Department; (b) provide that such SFMTA revenue bonds shall mature not more than 30 years from the date of issuance, and that the issuance of SFMTA refunding bonds will achieve at least a three percent present value savings calculated on a true interest cost basis, (c) approve the forms of related documents, (d) establish a maximum annual interest rate of 12 percent and provide that compensation payable to the underwriters shall not exceed .6 percent of the par amount of the bonds; (e) authorize any amendments to these agreements, subject to consultation with the Controller and City Attorney, and (f) find that the authorization and issuance of such revenue bonds is not subject to the California Environmental Quality Act (CEQA), and City Administrative Code Chapter 31.

- File 12-0242: The proposed ordinance would (a) appropriate $46,935,000 of SFMTA 2012 Series A Parking Garage Refunding Revenue Bond proceeds, (b) re-appropriate $2,431,363 of existing Debt Service Reserve funds from SFMTA parking meter and parking garage bonds, and (c) place the entire $49,366,363 on Controller's Reserve pending the sale of the 2012 Series A Refunding Revenue Bonds.
- File 12-0243: The proposed ordinance would (a) appropriate $28,300,000 of SFMTA 2012 Series B Revenue Bonds for six SFMTA Transit Projects and one Parking Garage Project to improve transit access, reliability and communication and parking garages, and (b) place the entire $28,300,000 on Controller's Reserve pending the sale of the 2012 Series B Revenue Bonds.

Key Points

- Under the proposed legislation the Board of Supervisors would (a) grant the SFMTA the authorization to issue debt (File 11-1354), and (b) authorize the SFMTA to issue up to $160,000,000 of revenue bonds (File 11-1341) in three separate issuances (i) $46,935,000 for 2012 Series A, (ii) $28,300,000 for 2012 Series B, and (iii) approximately $80,475,000 for 2013 Series A.

- The two proposed supplemental appropriation ordinances will (a) allow SFMTA to refinance four existing City-owned parking garage and one existing parking meter revenue bonds totaling $44,375,000 with one new $46,935,000 SFMTA revenue bond, under the proposed $49,366,363 supplemental appropriation (File 12-0242), and (b) allow SFMTA to partially fund six additional transit projects and one overall parking renovation project under the proposed $28,300,000 appropriation (File 12-0243). The initial $46,935,000 Refunding Parking Revenue Bonds (2012 Series A) and the $28,300,000 New Transit and Parking Revenue Bonds (2012 Series B), or a total of $75,235,000, are anticipated to be sold in June of 2012.

- The proposed authorizing legislation (Files 11-1354 and 11-1341) will also authorize SFMTA to issue the remaining $80,475,000 under a future 2013 Series A Revenue Bond, subject to Board of Supervisors approval of a separate future supplemental appropriation ordinance. The remaining $80,475,000 of New Transit and Parking Revenue Bonds (2013 Series A) are anticipated to be sold in mid to late 2013.

Fiscal Impacts

- SFMTA currently has five outstanding parking meter and parking garage revenue bonds totaling $44,375,000, including Debt Service Reserve Funds of $2,431,363. These five outstanding parking meter and parking garage revenue bonds currently average a 5.6 percent interest rate, with a remaining average term of 6.9 years. SFMTA plans to issue one refunding bond totaling $46,935,000 to refinance all of the existing parking meter and parking garage debt, at an estimated interest rate of 3.41 percent, for 20 years, or through 2031. By reducing the interest rate on these revenue bonds, the SFMTA estimates saving $5,009,618 on a net present value basis, or 10.5 percent of the refunded par amount.
- SFMTA plans to fund six new transit capital projects and one overall parking project, by providing a total of $108,775,000 of additional funding, with the issuance of two additional revenue bonds, including: (a) $28,300,000 for 2012 Series B, and (b) $80,475,000 for 2013 Series A. The proposed ordinance (File 12-0243) would appropriate the $28,300,000 to finance $25,700,000 of new transit and parking garage projects, from the 2012 Revenue Bonds, Series B proceeds, as summarized in Table 4 below. The $28,300,000 2012 Series B Revenue Bonds are estimated to have an interest rate of 5.15 percent for a 30-year term, or through 2042. Total debt service costs are estimated at $67,310,585, including $28,300,000 of principal plus $39,010,585 of interest expense. Over the 30-year term, the proposed $28,300,000 new revenue bonds would result in an average annual debt service cost of $2,237,471 for SFMTA.
- SFMTA anticipates issuing the $80,475,000 2013 Series A Revenue Bonds at an estimated 4.75 interest rate for a 30-year term, or through 2043. Total debt service for the remaining $80,475,000 of revenue bonds is estimated to be $156,927,351, including $80,475,000 of principal plus $76,452,351 of interest expense, or an average annual debt service cost of $5,216,422 for SFMTA.
- SFMTA revenue bonds will be obligations of and secured by the SFMTA, with the principal and interest paid from SFMTA's gross revenues. The City's General Fund will not be pledged or otherwise available for payment of such SFMTA revenue bonds. Together, the 2012 Series A Parking Refunding Bonds, plus the 2012 Series B and 2013 Series A New Transit and Parking Project Revenue Bonds are estimated to result in SFMTA's annual debt service of approximately $10,800,000 through 2018, decreasing to approximately $8,800,000 through 2043. The SFMTA's maximum annual debt service is estimated to total $11,100,000 or approximately 1.4 percent of $796,800,000 total SFMTA FY 2012-13 revenues.
- Although the SFMTA faces annual budgetary challenges, according to Ms. Sonali Bose, Chief Financial Officer at SFMTA, the SFMTA can afford to debt finance the subject transit and parking capital projects, which will require the SFMTA to repay total principal borrowed funds plus additional annual interest expenses, because the proposed projects will result in (a) initial one-time savings of approximately $2,182,269 in FY 2012-13 from restructuring the parking meter and garage debt, (b) annual ongoing savings of approximately $90,000 from refunding the parking meter and garage revenue bonds at lower interest rates, (c) reduced annual maintenance expenses that cannot be currently quantified, and (d) improved transit service related to increased reliability that cannot be currently quantified.
- On September 15, 2009, based on an RFP process, the SFMTA Board of Directors approved separate five-year agreements with three financial advisory firms for the term from January 13, 2010 through January 12, 2015, for a not-to-exceed $2,000,000, or a total not-to-exceed $6,000,000 for the three financial advisor firms. As of the writing of this report, Mr. Steven Lee of the SFMTA advises that a total of $663,782 has been expended, and $2,695,074 has been encumbered for these three firms, in SFMTA's operating budget.

Policy Considerations

- The SFMTA will base its future debt financing funding decisions on the SFMTA's Debt Policy, which was approved by the SFMTA Board of Directors on September 20, 2011.
- On June 9, 2011, the Controller's Office, City Services Auditor Division issued an audit on the SFMTA which found that, among other findings, the five nonprofit parking corporations currently add an estimated $551,000 annually to the City's costs to administer City parking garages, and do not appear to offer tangible operational advantages. Ms. Bose advises that once the proposed refunding of the parking garages outstanding debt is approved, the SFMTA will renegotiate new leases with each of the nonprofit parking corporations in order to (a) delete the provisions related to each parking garage's underlying debt, and (b) include a 90-day termination provision, subject to approval by the SFMTA Board of Directors.
- The Planning Department has issued categorical exemptions from environmental review in accordance with CEQA requirements, for the proposed transit and parking projects, such that the proposed resolution should be amended to reflect such CEQA determinations.
- Because there are so many unknowns regarding the repair and renovation of the City's 18 parking garages, the SFMTA is currently working with the Department of Public Works (DPW) to further determine the condition of each parking garage and to determine the need and detailed costs for improvements.
- If the City were to issue $75 million of Certificates of Participation (COPs) on behalf of the SFMTA, instead of the SFMTA issuing its own $75 million of revenue bonds, the SFMTA could realize debt service savings of approximately $860,000 over 30 years, or approximately $28,500 savings per year.

Recommendations

1. Amend the proposed resolution (File 11-1341) to incorporate the various changes, as submitted by the SFMTA.

2. Amend the proposed resolution (File 11-1341) to reflect that all of the proposed projects have now received categorical exemptions from the Planning Department.

3. Amend the proposed resolution (File 11-1341) to request that the Controller's Office work with the SFMTA in order to report back to the Board of Supervisors within six months after the Series 2012 A and B issuances on the costs and benefits of (a) using outside financial advisors, (b) using in-house City debt management staff, and (c) SFMTA's initial revenue bond issuances.

4. Amend the proposed resolution (File 11-1341) to reduce the requested $160,000,000 authorization to issue revenue bonds by $80,000,000 to $80,000,000, which would allow (a) the SFMTA to issue the initial 2012 Series A and B revenue bonds, (b) sufficient time for DPW to complete its parking garage assessment to determine the amount and priorities for improvements, and (c) the Controller's Office to report back to the Board of Supervisors on the costs and benefits of the initial SFMTA revenue bond issuances.

5. Amend the proposed ordinance (File 12-0243) to place $1,600,000 designated for the Muni System Radio Replacement Project on Budget and Finance Committee Reserve, pending the recommendations of the Committee on Information Technology (COIT), regarding how to proceed with the City's various voice and data communications systems.

6. Approval of the proposed three ordinances (Files 11-1354, 12-0242 and 12-0243) and one resolution (File 11-1341) are policy decisions for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with City Charter Section 8A.102(b)(13), the San Francisco Municipal Transportation Agency (SFMTA), subject to the approval by the Board of Supervisors, and notwithstanding the requirements and limitations of Sections 9.107, 9.108, and 9.109[1], has the authority without further voter approval to incur debt for SFMTA purposes and to issue bonds, notes, certificates of indebtedness, commercial paper, financing leases, certificates of participation or any other debt instruments. Section 8A.102(b)(13) of the City's Charter also provides that, upon recommendation from the SFMTA Board of Directors, the Board of Supervisors may authorize the SFMTA to incur on behalf of the City such debt or other obligations provided: (a) the Controller first certifies that sufficient unencumbered balances are expected to be available in the proper fund to meet all payments under such obligations as they become due; and (b) any debt obligation, if secured, is secured by revenues or assets under the jurisdiction of the SFMTA.

Background

In 2007, San Francisco voters approved Proposition A, which authorized the SFMTA to issue revenue bonds and other forms of indebtedness upon approval by the Board of Supervisors, without further voter approval, which became the above-noted Charter Section 8A.102.

However, according to Ms. Sonali Bose, Chief Financial Officer at the SFMTA, since the passage of Proposition A, the SFMTA has not previously requested Board of Supervisors approval to issue its own debt, such that the SFMTA currently funds transit capital projects on a cash basis with available Federal, State and local grants, San Francisco County Transportation Authority half-cent Sales Tax revenues (Proposition K) and SFMTA operating funds. Although the SFMTA is not currently authorized to issue debt, the City on behalf of the SFMTA or the Parking Authority[2] can issue debt. In addition, between 1955 and 1964, the City established five nonprofit parking corporations to issue debt as revenue bonds to finance the construction and renovation of six City-owned public parking garages[3], which are currently under the jurisdiction of the SFMTA.

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[1] Charter Section 9.107 authorizes the Board of Supervisors to provide for the issuance of revenue bonds. Charter Section 9.108 specifies provisions for lease financing of the acquisition, construction or improvement of real property or equipment. Charter Section 9.109 authorizes the Board of Supervisors to provide for the issuance of bonds to refund any outstanding General Obligation or revenue bonds of the City and County, which will result in net debt service savings to the City on a present value basis.

[2] In accordance with Chapter 17 of the City's Administrative Code, the SFMTA has jurisdiction and control over parking facilities open to the public that are owned by the City and County or the City's Parking Authority (except for garages under the jurisdiction of the Recreation and Park Department, for which the SFMTA has only administrative authority). The City's Parking Authority was created in accordance with California Streets and Highways Code Sections 32500 et seq., which authorizes parking authorities to issue revenue bonds.

[3] The five nonprofit corporations that operate the six City parking garages are: (1) Ellis-O'Farrell Parking Corporation operates the Ellis-O'Farrell garage, (2) Downtown Parking Corporation operates the Fifth and Mission garage, (3) Japan Center Garage Corporation operates the Japan Center garage, (4) Uptown Parking Corporation operates the Sutter-Stockton garage, (5) Uptown Parking Corporation operates the Union Square garage and (6) Portsmouth Plaza Parking Corporation operates the Portsmouth Square garage. The Japan Center garage, Sutter-Stockton garage and Portsmouth Square garage do not currently have any outstanding debt related to the garages' construction or improvement.

In May 1999, the Parking Authority issued $22,390,000 of Series 1999-1 Parking Meter Revenue Refunding Bonds to refinance the acquisition, installation, equipment and rehabilitation of SFMTA parking meters. In July 2000, the Parking Authority issued $8,185,000 of 2000A Lease Revenue Bonds to finance the design and construction of a four-level North Beach Parking Garage. In May 2001, the Uptown Parking Corporation issued $19,000,000 of Series 2001 Parking Revenue Bonds to finance improvements to the Union Square Garage. In June 2002, the Downtown Parking Corporation issued $13,550,000 of Parking Revenue Refunding Bonds, Series 2002 to refinance the Series 1993 Parking Revenue Bonds originally issued to finance improvements for the Fifth and Mission Garage. In October 2002, the Ellis-O'Farrell Parking Corporation issued $5,465,000 of Parking Revenue Refunding Bonds to refinance Series 1992 Parking Revenue Bonds originally issued to finance improvements to the Ellis-O'Farrell Garage. Currently, parking revenues from each City-owned parking garage are pledged to repay the debt service on each garage's outstanding revenue bond. Any surplus revenues from each City parking garage, after debt service and operating expenses are deducted, are transferred to the SFMTA[4].

Table 1 below summarizes these outstanding revenue bond issuances by the Parking Authority and three of the nonprofit parking corporations totaling $68,590,000, identifying the existing Debt Service Reserve Funds totaling $2,431,363 and the total outstanding principal of $44,375,000 that is projected to be remaining from each of these Revenue Bonds as of May 1, 2012.

[4] It should be noted that parking revenues from the Sutter-Stockton Garage are also pledged to repay the debt service on the Union Square Garage. In addition, SFMTA does not receive the surplus revenues from the parking garages under the Recreation and Park Department's jurisdiction, as those surplus revenues accrue to the Recreation and Park Department.

Table 1: Existing Parking Revenue Bonds by Issuance Agency, Type and Purpose, Issuance Date, Issuance Amount, Projected Final Maturity Dates and Projected Principal Outstanding as of May 1, 2012

Issuing Agency	Type and Purpose of Bonds	Issuance Date (Month, Year)	Final Maturity Date (Month, Year)	Debt Service Reserve Funds[5]	Issuance Amount	Projected Principal Outstanding Revenue Bonds (as of 5/1/12)
Parking Authority	Parking Meter Revenue Refunding Bonds	May, 1999	June, 2020	$0	$22,390,000	$14,385,000
Parking Authority	Lease Revenue Bonds for North Beach Garage	July, 2000	June, 2022	$673,850	8,185,000	5,455,000
Ellis-O'Farrell Parking Corporation	Parking Revenue Refunding Bonds for Ellis-O'Farrell Garage	October, 2002	April, 2017	546,500	5,465,000	2,535,000
Downtown Parking Corporation	Parking Revenue Refunding Bonds for Fifth and Mission Garage	June, 2002	April, 2018	1,211,013	13,550,000	6,095,000
Uptown Parking Corporation	Revenue Bonds for Union Square Garage	May, 2001	July, 2031	0	19,000,000	15,905,000
Total				**$2,431,363**	**$68,590,000**	**$44,375,000**

[5] Debt Service Reserve Funds are required to be set aside by the indenture of trust as additional security for bondholders that the debt service can be fully paid. The Parking Meter Revenue Refunding Bonds and the Union Square Garage Revenue Bonds have zero Debt Service Reserve Funds because surety bonds, which are no longer available, were established when these bonds were initially issued.

DETAILS OF PROPOSED LEGISLATION

File 11-1354: The proposed ordinance, would add a new Chapter 43, Article XIII, Sections 43.13.1 through 43.13.8 to the City's Administrative Code, providing Board of Supervisors approval for the SFMTA to (a) authorize the issuance of revenue bonds by the SFMTA for any SFMTA purpose in accordance with Charter Section 8A.102(b)(13), and (b) establish specific procedures for the SFMTA to issue and sell future revenue bonds, including (i) defining terms and setting the purposes for which SFMTA could issue debt; (ii) authorizing the SFMTA Board of Directors to approve, amend, or reject future issuances of revenue bonds; (iii) authorizing the future issuance of revenue refunding bonds, certificates of participation, or other types of debt obligations to refund any prior bond issuance, subject to the SFMTA Board of Directors approval by resolution; (iv) authorizing the SFMTA Board of Directors by resolution to also issue special facility revenue bonds, notes or commercial paper and related credit enhancement or liquidity facilities, and the related agreements, secured by a parity or subordinate lien on SFMTA revenues; (v) allowing the SFMTA Board of Directors to appoint agents and other professionals as necessary or desirable in connection with the issuance of any revenue bonds; (vi) allowing future revenue bonds to be sold at either competitive or negotiated sale, as determined by the SFMTA Board of Directors or Director of Transportation; (vii) specifying that SFMTA revenue bonds would be fully secured by SFMTA gross revenues (including parking garage and parking meter revenues, and any other specific revenues described in the bond issuance related documents, but excluding General Fund transfers), such that future SFMTA revenue bonds would be obligations of the SFMTA with the principal and interest payable solely from SFMTA revenues; (viii) specifying that the City's General Fund would not be liable for the repayment of SFMTA revenue bonds and neither the credit nor taxing power of the City, State or any political subdivision would be pledged to the repayment of the principal or interest on SFMTA revenue bonds[6]; (ix) providing that Charter Section 9.107, 9.108 and 9.109 requirements not limit the SFMTA's authority to issue revenue bonds or refunding revenue bonds, such that specific lease financing provisions would be imposed; (x) providing that the Board of Supervisors would be authorized to approve, amend, or reject the issuance of individual SFMTA revenue bonds and refunding bonds, and each refunding bond must result in net debt service savings on a present value basis, as provided by ordinance; and (xi) authorizing and directing the Mayor, Director of Transportation, City Attorney, Controller, Treasurer, City Administrator, Clerk of the Board and other officers of the City to take future actions to execute and deliver required and related financing documents.

File 11-1341: The proposed resolution reflects an amended version that, according to Ms. Bose, will be introduced for approval at the April 4, 2012 Budget and Finance Sub-Committee meeting. The proposed amended resolution would specifically (a) authorize the issuance of not-to-exceed $160,000,000 principal amount of SFMTA revenue bonds to (i) finance SFMTA new capital improvements, and (ii) refinance outstanding revenue bonds issued by various non-profit

[6] Because SFMTA revenue bonds would only be obligations of the SFMTA, SFMTA revenue bonds would not be included in the City's bonded debt limit. In accordance with Section 9.106 of the City's Charter, a limit of three percent of the assessed value of all taxable property is imposed for outstanding City General Obligation bonded indebtedness. However, the proposed ordinance would not prevent the City from issuing General Obligation Bonds to acquire, construct, improve or develop transit, transportation or other related facilities in the City.

parking corporations and/or the Parking Authority for City-owned parking garages and/or parking meters, and to finance improvements to garages under the jurisdiction of the SFMTA, the Parking Authority, nonprofit corporations, and/or the Recreation and Park Department[7]; (b) provide that these SFMTA revenue bonds shall mature not more than 30 years from the date of issuance, and that SFMTA will achieve from any refinancing at least a three percent present value savings calculated on a true interest cost basis, (c) approve the forms of related documents, including an Indenture of Trust and the First Supplement to the Indenture of Trust[8], the bond purchase contract, Preliminary Official Statement, and Continuing Disclosure Certificates; (d) approve a maximum annual interest rate of 12 percent and provide that compensation payable to the underwriters shall not exceed .6 percent of the par amount of the bonds; (e) authorize any amendments to these agreements and additional agreements and any modifications to the financial covenants to issue, sell and deliver the subject SFMTA Revenue Bonds, upon consultation with the Controller and the City Attorney, and (f) find that the authorization and issuance of such revenue bonds is not subject to the California Environmental Quality Act (CEQA), and City Administrative Code Chapter 31.

File 12-0242: Out of the proposed issuance of $160,000,000 principal amount of SFMTA revenue bonds, the proposed ordinance would (a) appropriate $46,935,000 of SFMTA 2012 Series A Parking Garage Refunding Revenue Bond proceeds, (b) re-appropriate $2,431,363 of existing Debt Service Reserve funds, for SFMTA parking meter and parking garage refunding, and (c) place the entire $49,366,363 on Controller's Reserve pending the sale of the 2012 Series A Refunding Revenue Bonds.

File 12-0243: Out of the proposed issuance of $160,000,000 principal amount of SFMTA revenue bonds, the proposed ordinance would (a) appropriate $28,300,000 of SFMTA 2012 Series B Revenue Bond proceeds for Transit and Parking Garage Projects for SFMTA improvements for transit access, reliability and communication and capital improvements for parking garages, and (b) place the entire $28,300,000 on Controller's Reserve pending the sale of the 2012 Series B Revenue Bonds.

Under the proposed authorizing legislation (File 11-1354 and File 11-1341), the four existing City-owned parking garage and one existing parking meter revenue bonds totaling $44,375,000, shown in Table 1 above, would be refinanced to fund one new $46,935,000 SFMTA revenue bond, including financing costs, under the proposed $49,366,363 supplemental appropriation (File 12-0242) at lower interest rates, to achieve annual overall debt service savings.

In addition to refunding the existing parking garage and parking meter revenue bonds, the proposed authorizing legislation (Files 11-1354 and 11-1341) would enable the SFMTA to fully fund six new transit capital projects and one overall parking garage renovation project, by

[7] The Recreation and Park Department is included in the proposed resolution because the Recreation and Park Commission has approved the participation of the Civic Center Garage, Union Square Garage and St Mary's Square Garage, which are under the jurisdiction of the Recreation and Park Department, to pledge a portion of their parking garage revenues to the SFMTA, as part of the proposed parking garage renovation program.

[8] An Indenture of Trust is the agreement between the SFMTA and a trustee selected by the Director of Transportation, which sets forth the security for the bonds and remedies for the bondholders. The First Supplement to the Indenture of Trust is the agreement between the SFMTA and a trustee selected by the Director of Transportation, which provides the detail specific to the series of bonds being issued.

providing $99,247,460 of additional funding for these projects, or a total principal issuance amount of $108,775,000, including the issuance costs and debt service reserve funds. Attachment I, provided by Ms. Bose, (a) describes each of the six transit projects, (b) the total cost of each transit project, and (c) the total revenue bond funding proposed for each transit project. Attachment II, provided by Mr. Amit Kothari, Director of Off-Street Parking for SFMTA, identifies each of the 18 City-owned parking garages, under the jurisdiction of the SFMTA and the Recreation and Park Department, and provides a summary breakdown of the estimated costs totaling $51,247,460, all of which would be funded with the subject revenue bonds. Attachment III summarizes the subject revenue bond portion for each of the six transit projects and one overall parking project, separating the costs into the $28,300,000 2012 Series B Revenue Bonds and the $80,475,000[9] 2013 Series A Revenue Bonds (see Table 2 below), and identifies $176,700,000 of other sources of funding that SFMTA plans to use to complete funding for each transit project, resulting in total SFMTA budgeted costs of $275,947,460 for these projects.

In accordance with the above-noted Charter provisions, on December 6, 2011, the SFMTA Board of Directors approved a resolution recommending that the Board of Supervisors authorize the proposed bond issuance. On February 27, 2012, the City's Capital Planning Committee[10] approved the proposed SFMTA authorization to issue up to $160,000,000 in MTA revenue bonds and appropriate (a) $46,935,000 of 2012 Parking Garage Refunding Bonds, and re-appropriate $2,431,363 in existing Debt Service Reserve funds, and (b) $28,300,000 of 2012 Revenue Bonds for new transit and parking garage projects. According to Mr. Brian Strong of the Capital Planning Committee, the SFMTA will be required to receive future appropriation approval of the remaining $80,475,000 from the Capital Planning Committee, prior to submitting such an appropriation request for the Board of Supervisors approval.

FISCAL IMPACTS

Issuance Authority for Up To $160,000,000 (File 11-1341)

The proposed resolution (File 11-1341) would authorize the SFMTA to issue up to $160,000,000 of revenue bonds, in three separate issuances (2012 Series A, 2012 Series B and 2013 Series A), in order for the SFMTA to refinance outstanding debt for SFMTA's City-owned parking garages and meters, and plan, design, construct and improve transit facilities and parking garages, as summarized in Table 2 below:

[9] Although the SFMTA initially estimated $80,475,000 would be issued in the 2013 Series A Revenue Bond, this amount was recently reduced to an estimated $80,150,000, or $325,000 less. The actual amount that will be issued will be determined by the SFMTA prior to the issuance of the 2013 Series A Revenue Bonds in mid to late 2013. For consistency purposes, this report reflects the initial estimated $80,475,000 amount.

[10] The City's Capital Planning Committee, chaired by the City Administrator, is comprised of the President of the Board of Supervisors, Mayor's Finance Director, Controller, City Planning Director, Director of Public Works, Airport Director, Director of Transportation for SFMTA, General Manager of the Public Utilities Commission, General Manager of Recreation and Parks Department and the Executive Director of the Port. The Capital Planning Committee is responsible for making recommendations to the Mayor and the Board of Supervisors on all of the City's capital expenditures, including reviewing and approving the City's 10-Year Capital Plan, Capital Budget and issuances of long-term debt.

Table 2: Issuance Authority of up to $160,000,000

Bond Issuances	Amount
Refunding Parking Revenue Bonds (2012 Series A)	$46,935,000
New Transit and Parking Revenue Bonds (2012 Series B)	28,300,000
New Transit and Parking Revenue Bonds (2013 Series A)	80,475,000
Total	**$155,710,000**

The initial $46,935,000 Refunding Parking Revenue Bonds (2012 Series A) and the $28,300,000 New Transit and Parking Revenue Bonds (2012 Series B), or a total of $75,235,000, are anticipated to be sold in June of 2012. The remaining $80,475,000 of New Transit and Parking Revenue Bonds (2013 Series A) are anticipated to be sold in mid to late 2013. According to Ms. Bose, the total $155,710,000 shown in Table 2 above is $4,290,000 less than the not-to-exceed $160,000,000 authorization being requested in order to provide for financial flexibility to allow for potential interest rate fluctuations in the financial markets.

Appropriation of $49,366,363 for SFMTA Parking Garage Refunding (File 12-0242)

The proposed ordinance (File 12-0242) would appropriate a total of $46,935,000 of the not-to-exceed $160,000,000 authorization, plus re-appropriate $2,431,363 of existing Debt Service Reserve Funds, as identified in Table 1 above, for a total requested supplemental appropriation of $49,366,363 in 2012 Series A bonds to refund all outstanding SFMTA parking revenue bonds. The total estimated cost to redeem the $44,375,000 of current outstanding parking meter and garage bonds, including additional accrued interest and redemption premium penalty for one bond (Uptown Parking Corporation Revenue Bond), would total $45,445,890 as of May 1, 2012, as shown in Table 3 below.

In addition, as shown at the bottom of Table 3 below, an estimated $3,427,862 would be appropriated to provide a new Debt Service Reserve Account for the SFMTA 2012 Series B Revenue Bonds, which will be calculated as the lesser of (i) 100 percent of the maximum annual debt service, (ii) 125 percent of the average annual debt service, or (iii) 10 percent of the bond proceeds. In addition, as shown at the bottom of Table 3 below, an estimated $492,611 of the subject bond proceeds would be appropriated to cover the cost to issue the new SFMTA revenue bonds, including the underwriters discount.

Table 3: Total Estimated Cost for Redemption of Existing Parking Meter and Parking Garage Outstanding Debt

Issuing Agency	Projected Principal Outstanding (as of 5/1/12)	Additional Accrued Interest (as of 5/1/12)	Redemption Premium (% and $)	Total Cost of Redemption of Outstanding Bonds (as of 5/1/12)
Parking Authority (Parking Meters)	$14,385,000	$293,003	0	$14,678,003
Parking Authority (North Beach Garage)	5,455,000	110,058	0	5,565,058
Ellis-O'Farrell Parking Corporation	2,535,000	9,475	0	2,544,475
Downtown Parking Corporation	6,095,000	25,337	0	6,120,337
Uptown Parking Corporation	15,905,000	314,917	2% $318,100	16,538,017
Total	**$44,375,000**	**$752,790**	**$318,100**	**$45,445,890**

Debt Service Reserve Account Estimate	$3,427,862
Cost of Issuance Estimate	492,611
Total Supplemental Appropriation	**$49,366,362**

As shown in Tables 1 and 3 above, SFMTA currently has five outstanding parking meter and parking garage revenue bonds totaling $44,375,000, including the Debt Service Reserve Fund of $2,431,363. These five outstanding parking meter and parking garage revenue bonds currently have an average 5.6 percent interest rate, and extend for an average additional 6.9 years, with one revenue bond (Union Square Garage) having a final maturity in 2031. If the Board of Supervisors approves the various proposed legislation, SFMTA plans to issue one refunding bond totaling $46,935,000 to refinance all of the existing parking meter and parking garage debt, at an estimated interest rate of 3.41 percent, for 20 years, or through 2031. By restructuring and reducing the interest rate on these revenue bonds from 5.6 percent to 3.41 percent, the

SFMTA estimates saving $5,009,618 on a net present value basis, or 10.5 percent of the refunded bonds.

Appropriation of $28,300,000 for SFMTA New Transit and Parking Projects (File 12-0243)

In addition, as shown in Attachment III, the SFMTA plans to fully fund six new transit capital projects and one overall parking project, by providing a total of $108,775,000 of additional funding, with the issuance of two additional revenue bonds, including: (a) $28,300,000 for 2012 Series B, and (b) $80,475,000 for 2013 Series A (see Table 2 above). The proposed ordinance (File 12-0243) would appropriate the $28,300,000 to finance $25,700,000 new transit and parking garage projects, from the 2012 Revenue Bonds, Series B proceeds, as summarized in Table 4 below.

Table 4: Proposed Expenditures for Supplemental Appropriation Request (File 12-0243)

Description of Use	Amount
1. Systemwide Transit Access and Reliability Program	$1,500,000
2. Muni Metro Sunset Tunnel Rehabilitation	900,000
3. Muni Metro Turnback Rehabilitation	3,000,000
4. Muni Metro System Public Announcement and Public Display System Replacement	6,500,000
5. Muni Radio System Replacement Project	1,600,000
6. Muni Green Light Rail Facility Rehabilitation	7,200,000
7. Parking Projects	5,000,000
Subtotal Project Costs	**$25,700,000**
Debt Service Reserve Fund	2,031,361
Cost of Issuance and Underwriters Discount	517,239
City Services Auditor Allocation of 0.2% of Project Costs	51,400
Total	**$28,300,000**

According to Ms. Bose, the 2012 Series B issuance of the $28,300,000 new revenue bonds that would be appropriated for the transit and parking projects shown in Table 4 above is anticipated to be issued in June of 2012 at an estimated interest rate of 5.15 percent for a 30-year term, or through 2042. Total debt service costs are estimated at $67,310,585, including $28,300,000 of principal plus $39,010,585 of interest expense. Over the 30-year term, the proposed $28,300,000 new revenue bonds would result in an average annual debt service cost of $2,237,471 for SFMTA.

Future Issuance and Appropriation for SFMTA New Transit and Parking Projects

The remaining $80,475,000 ($108,775,000 total less $28,300,000 proposed supplemental appropriation), which would become available from the 2013 Series A Revenue Bond proceeds would be used to finance additional transit projects and parking facilities, under a separate supplemental appropriation ordinance, subject to future Board of Supervisors approval. SFMTA anticipates issuing these 2013 Series A Revenue Bonds in mid to late 2013 at an estimated 4.75 interest rate for a 30-year term, or through 2043. Total debt service for the remaining

$80,475,000 of revenue bonds is estimated to be $156,927,351, including $80,475,000 of principal plus $76,452,351 of interest expense, or an average annual debt service cost of $5,216,422 for SFMTA.

Ability of SFMTA to Cover New Debt Service Costs

The proposed ordinance (File 11-1354) states that SFMTA revenue bonds will be obligations of and secured by the SFMTA, with the principal and interest payable from SFMTA's gross revenues (including parking garage, parking meter, citation, traffic fines, passenger fares, and Sales Tax revenues, but excluding General Fund transfers), such that the City's General Fund will not be liable for payment of such SFMTA revenue bonds. As shown in Attachment IV, provided by Ms. Bose, in FY 2012-13, SFMTA anticipates pledging an estimated $480,557,000 of the SFMTA's total annual $796,800,000 FY 2012-13 revenues.

Together, the 2012 Series A Parking Refunding Bonds, plus the 2012 Series B and 2013 Series A New Transit and Parking Project Revenue Bonds are projected to result in SFMTA's annual debt service of approximately $10,800,000 through 2018, decreasing to approximately $8,800,000 through 2043. The SFMTA's maximum annual debt service is estimated to total $11,100,000 or approximately 1.4 percent of the $796,800,000 in total SFMTA FY 2012-13 revenues.

Although the SFMTA faces annual budgetary challenges, according to Ms. Bose, the SFMTA can afford to debt finance the subject transit and parking capital projects, which will require the SFMTA to repay total principal borrowed funds plus additional annual interest expenses, because the proposed projects will result in (a) initial one-time savings of approximately $2,182,269 in FY 2012-13 from restructuring the parking meter and garage debt, (b) annual ongoing savings of approximately $90,000 from refunding the parking meter and garage revenue bonds at lower interest rates, (c) reduced annual maintenance expenses that cannot be currently quantified, and (d) improved transit service related to increased reliability, which also cannot be currently quantified.

In accordance with the above-noted Charter provisions, (a) the Controller must first certify that sufficient unencumbered balances are expected to be available in the proper fund to meet all payments under such proposed revenue bond obligations as they become due; and (b) any debt obligation, if secured, is secured by revenues or assets under the jurisdiction of the SFMTA. On March 21, 2012, Mr. Ben Rosenfield, the City Controller executed this certification.

SFMTA's Financial Advisors

In accordance with the proposed ordinance (File 11-1354), the SFMTA Board of Directors may appoint agents and other professionals as necessary or desirable in connection with the issuance of any revenue bonds. On December 2, 2008, the SFMTA approved the issuance of a Request for Proposal (RFP) for financial advisory services to assist the SFMTA in analyzing its finances and developing a Financial Plan, including providing financial advice regarding credit, financial markets and alternative financing strategies and potential refundings. According to Mr. Steven Lee of the SFMTA, in response to the RFP, SFMTA received seven proposals and the SFMTA approved a pool of the following three financial advisors: (a) Public Financial Management Group (PFM Group), (b) Backstrom McCarley Berry and Company, and (c) Ross Financial.

According to Mr. Lee, on September 15, 2009, the SFMTA Board of Directors approved separate five-year agreements with each of the three financial advisor firms for the term from January 13, 2010 through January 12, 2015, for a not-to-exceed $2,000,000, or a total not-to-exceed $6,000,000 for the three financial advisor firms. As of the writing of this report, Mr. Lee advises that a total of $663,782 has been expended, and $2,695,074 has been encumbered for these three firms, in SFMTA's operating budget. However, the SFMTA anticipates that a portion of these expenditures will be recovered from future SFMTA bond issuances.

In comparison to the total not to exceed $6,000,000 that the SFMTA has authorized to be expended for five years for financial advisors, according to Ms. Nadia Sesay, Director of the Office of Public Finance in the Controller's Office, the City has expended a total of approximately $1,700,000 on financial advisors for the five-year period from 2006 through 2011 for all City General Obligation Bonds, Certificates of Participation (COPs) and revenue bond issuances. The Budget and Legislative Analyst notes that the Office of Public Finance has in-house staff that are knowledgeable about debt financing and can provide much of the available staff financial needs without relying exclusively on outside financial analysts for support. Currently, the SFMTA does not have any in-house debt financial management staff and the SFMTA does not coordinate directly with the Controller's Office of Public Finance.

Therefore, the Budget and Legislative Analyst recommends that, if the Board of Supervisors approves the proposed legislation, the proposed resolution (File 11-1341) should be amended to request that the Controller's Office work with the SFMTA and report back to the Board of Supervisors within six months after the Series 2012 A and B issuances on the costs and benefits of (a) using outside financial advisors, (b) using in-house City debt management staff, and (c) SFMTA's initial revenue bond issuances.

Controller's Reserve on Both Supplemental Appropriations

Under both of the proposed supplemental appropriation ordinances (Files 12-0242 and 12-0243) all of the requested funds would be placed on Controller's Reserve pending the sale of the Revenue Bonds. As discussed above, the supplemental appropriation for $49,366,363 from the 2012 Series A Revenue Bonds and the $28,300,000 from the 2012 Series B new Revenue Bonds are anticipated to be sold in June of 2012.

POLICY CONSIDERATIONS

SFMTA's Recently Approved Debt Policy

Given that the SFMTA did not previously have the authority to debt finance capital projects, the Budget and Legislative Analyst questions what projects the SFMTA will determine to debt finance, through the use of revenue bonds, commercial paper, or other financing mechanisms in the future. In response, Ms. Bose advises that the SFMTA will likely debt finance those transit and parking garage capital projects that are significant infrastructure facilities in critical need of repair, that have gaps in funding that cannot be filled with other available sources of funding. In addition, the SFMTA will base its future debt financing funding decisions on the SFMTA's Debt Policy, which was approved by the SFMTA Board of Directors on September 20, 2011.

The SFMTA's Debt Policy publicly establishes the following process, guidelines, restrictions and specific financial criteria that will direct the SFMTA in issuing debt to fund capital projects:

- Future SFMTA debt issuances would be consistent with other SFMTA planning documents, such as the SFMTA's Five-Year Capital Investment Plan and Capital Budget;
- Maintenance of a SFMTA Rainy Day/Contingency Reserve with a goal equivalent to ten percent of annual operating costs, ramped up to this desired reserve target over a ten-year period, to cover unexpected revenue losses, operating and maintenance costs, extraordinary payments and other contingencies[11];
- Creation and maintenance of a separate SFMTA Operational Debt Reserve with a goal equivalent to three years of annual SFMTA debt service payments, but available for other SFMTA purposes;
- Capital projects that provide new revenue sources for the SFMTA would be prioritized for new debt financing as would projects that result in lower maintenance costs;
- SFMTA could issue alternative types of long-term or short-term debt, with preference to fixed interest rates, such that variable interest rate debt cannot exceed 20 percent of all outstanding debt;
- SFMTA could enter into lease financing structures, including Certificates of Participation (COPs), lease revenue bonds and capital equipment leases;
- SFMTA may consider financial derivative products, after separate approval by the SFMTA Board of Directors, subject to Board of Supervisors future approval;
- SFMTA will seek to maintain annual debt service payments that do not exceed five percent of SFMTA's annual total operating expenses;
- All capital debt financed improvements would not exceed 120 percent of the average useful life of the assets debt financed;
- Refunding of existing SFMTA debt would achieve a minimum net present value debt service savings threshold goal of three percent of the refunded bond principal amount, unless there are other compelling reasons for defeasance;
- Bond insurance would be determined on a maturity-by-maturity basis based on a comparison of the bond insurance premium costs versus the present value debt service savings from bond insurance;
- SFMTA would determine, on a case by case basis, whether to sell bonds competitively or through negotiation, based on various factors including prevailing market conditions and the size of transaction;
- SFMTA will select professional financial advisors, legal bond counsel and other outside advisors by a competitive Request for Proposal process;

[11] According to Ms. Bose, the SFMTA's Rainy Day/Contingency Reserve previously had approximately $80 million, but the SFMTA has used these funds to cover SFMTA's operating shortfalls, such that the Rainy Day/Contingency Reserve currently has an approximately $27 million balance. Ms. Bose advises that the SFMTA plans to contribute an additional $10 million in both FY 2013 and FY 2014 to this Fund to increase this Reserve to approximately $47 million.

– Each debt financing would be subject to authorization by the SFMTA Board of Directors and the Board of Supervisors;
– Debt policy would be reviewed every three years, and updated more frequently, if needed, subject to approval by the SFMTA Board; and
– Circumstances may require modifications or exceptions to these policies, subject to specific authorization by the SFMTA Board.

In addition, the SFMTA Board approved a Reimbursement Resolution on September 20, 2011 which allows the use of bond proceeds to reimburse eligible project costs incurred prior to the issuance of bonds, specifying (a) the intent to use bonds to reimburse costs associated with the project; (b) that costs must be incurred within a window of 60 days of payment and within 18 months of the project being placed in service; and (c) that eligible "soft costs" (i.e. architectural, engineering, and transaction costs) can be reimbursed regardless of such timing.

SFMTA Bond Oversight Committee

On December 6, 2011, the SFMTA Board of Directors approved a SFMTA Bond Oversight Committee, comprised of seven members, including (a) three members recommended by the SFMTA Chair and approved by the SFMTA Board of Directors, (b) two members appointed by the SFMTA Citizens' Advisory Council, (c) one member appointed by the Director of Transportation, and (d) one member appointed by the Controller[12]. The SFMTA Bond Oversight Committee is responsible for (1) inquiring into the disbursement and expenditure of SFMTA's bond proceeds, (2) holding public hearings to review such disbursements and expenditures, (3) inspecting facilities and infrastructure financed with such bond proceeds, (4) reviewing project statements and status reports, (5) reviewing SFMTA's efforts to maximize bond proceeds through the implementation of cost-saving measures, and (6) retaining independent auditors to analyze the disbursement and expenditure of SFMTA bond proceeds.

California Environmental Quality Act (CEQA) Requirements

The proposed resolution (File 11-1341) on page 5, Section 11 would find that issuance of the proposed $160,000,000 SFMTA Bonds is not subject to the California Environmental Quality Act (CEQA) because, as the establishment of a government financing mechanism that does not identify individual specific projects to be constructed with the funds, it is not a project as defined by CEQA and CEQA Guidelines and that the SFMTA will consult with the City Attorney regarding CEQA requirements prior to the expenditure of bond proceeds.

However, as of the writing of this report, the Planning Department has issued categorical exemptions from environmental review in accordance with CEQA requirements, primarily because the proposed SFMTA projects involve existing transit and parking facilities which involve negligible expansions, on the specified dates shown in Table 5 below:

[12] The seven-member SFMTA Bond Oversight Committee have been appointed and currently include the following: Rudy Nothenberg, Chair, Leona Bridges, Jose Cisneros, Steve Ferrario, Harlan Kelly, Daniel Murphy and Nadia Sesay.

Table 5: Planning Department's Approval of Categorical Exemptions

Description of Use	Date of Planning Department's Certification of Categorical Exemption from Environmental Review
1. Systemwide Transit Access and Reliability Program	March 6, 2012
2. Muni Metro Sunset Tunnel Rehabilitation	February 14, 2012
3. Muni Metro Turnback Rehabilitation	February 14, 2012
4. Muni Metro System Public Announcement and Public Display System Replacement	February 6, 2012
5. Muni Metro Radio Replacement Project	December 15, 2011
6. Muni Green Light Rail Facility Rehabilitation	October 6, 2010
7. Parking Projects	March 23, 2012

Given that each of the proposed projects has received a categorical exemption from the City's Planning Department, the proposed resolution should be amended to replace the CEQA language on page 5, Section 11 to instead state that all of the proposed projects have now received categorical exemptions from the Planning Department, in accordance with CEQA requirements.

Controller's Audit on City Parking Garages

On June 9, 2011, the Controller's Office, City Services Auditor Division issued an audit on the SFMTA which found that (a) based on the results of a survey, only the City and County of San Francisco leases City-owned parking garages to five nonprofit corporations, which in turn, sublease parking operations in five of the six parking garages, (b) the five nonprofit parking corporations currently add an estimated $551,000 annually to the City's costs to administer City parking garages, (c) nonprofit parking corporations do not appear to offer tangible operational advantages, (d) the City is unlikely to need nonprofit parking corporations to help construct or expand parking garages in the future, and (e) as of February 28, 2011, there was an estimated total of $4.7 million in the non-profit corporations capital reserve funds available. Ms. Bose advises that once the proposed refunding of the parking garages outstanding debt is approved, the SFMTA will work to negotiate new leases with each of the nonprofit parking corporations in order to (a) delete the provisions related to each parking garage's underlying debt, and (b) include a 90-day termination provision, subject to approval by the SFMTA Board of Directors.

Proposed Parking Garage Improvements

As shown in Attachment II, SFMTA's plans to expend a total of $51,247,460 from the proposed revenue bond proceeds to repair and renovate 18 City-owned parking garages, including $18,310,432 or 54.9 percent of the subtotal $33,364,232 on Architectural Services. However, in response to inquiries from the Budget and Legislative Analyst, according to Mr. Amit Kothari, Director of Off-Street Parking for SFMTA, the $18,310,432 for Architectural Services are actually mislabeled in Attachment II and primarily represent the cost of the Parking Access and

Revenue Control System equipment and repair and replacement of elevators, as shown in Table 6 below.

Table 6: Proposed Architectural Services Breakdown for Parking Garages

Architecture Related Services*	$1,189,600
Parking Access & Revenue Control System Equipment**	13,670,832
Elevator Repair & Replacement	3,450,000
Total	**$18,310,432**

*Architectural Services includes American with Disabilities (ADA) modifications, striping of parking stalls, painting, façade repair, drainage, expansion joints and doors.
** The Parking Access & Revenue Control System Equipment includes all fee computers, gate arms, vehicle sensors and pay station equipment that together keep track of vehicle entry and exit times, calculate parking fees and generate various occupancy and revenue reports.

In addition, in response to the Budget and Legislative Analyst's questions regarding why Attachment II indicates that SFMTA plans to expend $17,883,228 or 53.6 percent of the $33,364,232 subtotal parking garage repair and renovation costs for Other Costs (Project Management, Construction Management, Design, Legal and Contingency), Mr. Kothari advises that because there are so many unknowns regarding the repair and renovation of the City's parking garages, all of these soft project management, construction management, and contingency costs are higher than would normally be expected.

According to Mr. Kothari, the SFMTA is currently working with the Department of Public Works (DPW) to further determine the condition of each parking garage and to determine the need and detailed costs for improvements. Mr. Edgar Lopez, Deputy Division Manager of Capital Projects at DPW advises that DPW anticipates conducting a detailed assessment of each of the 18 City garages, similar to what DPW did for the Fire Department's Fire Stations to identify and prioritize objectives (seismic, life safety, maintenance), specify criteria for improvements, conduct testing in each garage and estimate costs for improvements. Given that the total estimated $51,247,460 (Attachment II) for the 18 parking garages includes an estimated $13,670,832 is for the Parking Access and Revenue Control System equipment as shown in Table 6 above, the remaining $37,576,628 would be available for construction improvements and related project design and management costs. According to Mr. Lopez, the cost for such improvements for all of the 18 parking garages is likely to exceed the total estimated $37,576,628. However, Mr. Lopez cannot estimate the total costs until the DPW's detailed assessment of the 18 parking garages is completed, which is estimated to take approximately six months to complete and cost approximately $500,000.

As shown in Attachment III and Table 4 above, SFMTA is requesting $5,000,000 for the parking garages from the initial 2012 Series B issuance, to be sold in June of 2012. Mr. Kothari advises that, although a specific budget is not available, the $5,000,000 will be needed to fund DPW's assessment, prepare bid packages, provide project management and begin to undertake some of the initial parking garage testing and work. As shown in Attachment III, the remaining $46,247,460 for the parking garages is included in the 2013 Series A bond issuance, representing 57.5 percent of the total $80,475,000 2013 Series A bond, to be sold in mid to late 2013.

Given that (a) the SFMTA will not know the actual amount required to complete the renovations of the City's 18 parking garages until the DPW assessment is completed, and the priorities for completing the garages are established, (b) the requested supplemental appropriation (File 12-0243) provides $5,000,000 of funding for the parking garages, and (c) the Budget and Legislative Analyst recommends that the Controller's Office work with the SFMTA and report back to the Board of Supervisors within six months after the Series 2012 A and B issuances on the costs and benefits of the initial revenue bond issuances, the Budget and Legislative Analyst also recommends reducing the requested $160,000,000 authorization to issue revenue bonds (File 11-1341) by $80,000,000 to $80,000,000, which would allow the SFMTA to issue the initial 2012 Series A and B and allow sufficient time for DPW to complete its parking garage assessment.

Muni Radio Replacement Project

As shown in Attachments I and III, SFMTA is planning to expend a total of $115,000,000 on a Muni System Radio Replacement Project. As shown in Table 4 above, the proposed $28,300,000 supplemental appropriation ordinance (File 12-0243) includes $1,600,000 for this Muni System Radio Replacement Project. Mr. Shahnam Farhangi of the SFMTA advises that in December 2009 the SFMTA issued an RFP for the SFMTA's Radio Replacement Project. According to Mr. Farhangi, SFMTA received two proposals, both of which were deemed non-responsive. Based on SFMTA's request to both proposers to rebid, one firm responded, and SFMTA has now selected this firm, Harris Corporation, to enter into an $86,648,058 agreement, with options for an additional $22,572,461 for this Radio Replacement Project. Mr. Farhangi advises that this agreement will be subject to the SFMTA Board of Directors approval in April 2012.

However, Mr. Jon Walton, Acting Chief Information Officer for the Department of Technology advises that the Department of Technology, the Department of Emergency Management, and SFMTA have all recently agreed to hire a consultant through the City's Computer Store to evaluate the City's three major voice and data communications systems currently being proposed to be improved and upgraded, including the (a) recently approved regional Motorola interoperable communication system, (b) City's existing 800 Mhz voice radio system, and (c) proposed SFMTA voice and data communication system, to determine which City systems are justified and whether significant efficiencies can be achieved. Mr. Walton advises that the proposed evaluation is projected to be completed for a final presentation to the Committee on Information Technology (COIT) in May 2012. Therefore, the Budget and Legislative Analyst recommends that the requested $1,600,000, under the proposed supplemental appropriation (File 12-0243), be placed on Budget and Finance Committee Reserve, pending the recommendations of COIT, regarding how to proceed with the City's various voice and data communication systems.

Alternatives

As noted above, currently the City may issue debt on behalf of the SFMTA. Based on a March 15, 2012 analysis completed by Backstrom McCarley Berry and Co., LLC, one of SFMTA's financial advisors, if the City were to issue approximately $75 million of Certificates of Participation (COPs) on behalf of the SFMTA, instead of the SFMTA issuing its own $75 million of revenue bonds, the SFMTA could realize debt service savings of approximately $860,000 over 30 years, or approximately $28,500 savings per year. It should be noted that if the

City were to issue COPs for an enterprise department, such as the SFMTA, the cost of such COP issuance would not be included in the City's General Fund debt limits.

However, as noted above, Charter Section 8A.102(b)(13) authorizes the SFMTA to issue bonds, notes, certificates of indebtedness, commercial paper, financing leases, certificates of participation or any other debt instruments, subject to the approval by the Board of Supervisors, which the SFMTA is now requesting. Therefore, approval of the proposed three ordinances and one resolution are policy decisions for the Board of Supervisors.

RECOMMENDATIONS

1. Amend the proposed resolution (File 11-1341) to incorporate the various changes as submitted by the SFMTA.

2. Amend the proposed resolution (File 11-1341) to replace the CEQA language on page 5, Section 11 to instead state that all of the proposed projects have now received categorical exemptions from the Planning Department, in accordance with CEQA requirements.

3. Amend the proposed resolution (File 11-1341) to request that the Controller's Office work with the SFMTA in order to report back to the Board of Supervisors within six months after the Series 2012 A and B issuances on the costs and benefits of (a) using outside financial advisors, (b) using in-house City debt management staff, and (c) SFMTA's initial revenue bond issuances.

4. Amend the proposed resolution (File 11-1341) to reduce the requested $160,000,000 authorization to issue revenue bonds by $80,000,000 to $80,000,000, which would allow (a) the SFMTA to issue the initial 2012 Series A and B revenue bonds, (b) sufficient time for DPW to complete its parking garage assessment to determine the amount and priorities for improvements, and (c) the Controller's Office to report back to the Board of Supervisors on the costs and benefits of the initial SFMTA revenue bond issuances.

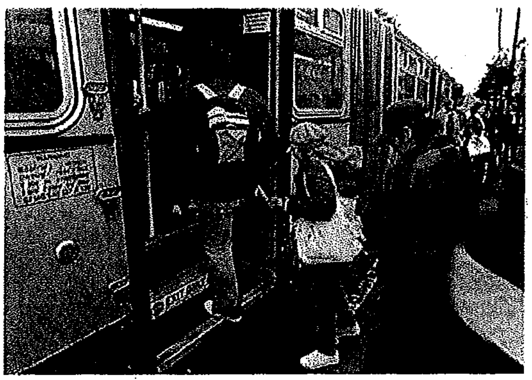
5. Amend the proposed ordinance (File 12-0243) to place $1,600,000 designated for the Muni System Radio Replacement Project on Budget and Finance Committee Reserve, pending the recommendations of COIT, regarding how to proceed with the City's various voice and data communications systems.

6. Approval of the proposed three ordinances (Files 11-1354, 12-0242 and 12-0243) and one resolution (File 11-1341) are policy decisions for the Board of Supervisors.

San Francisco Municipal Transportation Agency (Multiple Capital Improvement Projects)

SFMTA will apply the $48 million in Bonds proceeds to finance the projects and programs summarized below.

Systemwide Transit Access and Reliability Program



Description:
Projects that support development of pedestrian and bicycle amenities that expand the ridership area and utility of public transit stops and stations. Projects must have a functional relationship to a public transportation facility. In addition, projects would include small signal upgrades or modifying signal phases at an intersection, adding bus or pedestrian bulbs to coordinate with a paving project, or street design changes to reduce delays for transit at busy intersections.

Benefits:
The proposed program would increase transit ridership and improve the path of travel to transit stops and stations. It would also minimize delays encountered by Muni transit vehicles associated with customer boarding and alighting, the time required to pull into and out of bus zones, and the delays associated with traffic signals.

Estimated Budget: $8.8M **Estimated Bond Proceeds: $7.5M**
The improvement program budget is $8.8 million and will be funded primarily through Bond proceeds and local sales taxes.

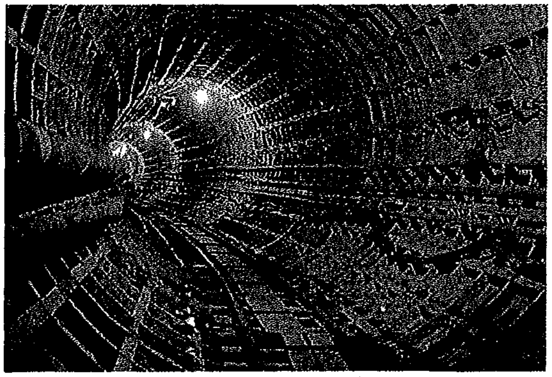
Muni Metro Sunset Tunnel Rail Rehabilitation

Description:
The Sunset Tunnel was built in October 1928 and lies directly beneath Buena Vista Park. The western entrance to the tunnel is located near the intersection of Carl and Cole Streets in Cole Valley. The eastern entrance is at Duboce and Noe Streets, in the Duboce Triangle neighborhood adjacent to Duboce Park. The Muni Metro N-Judah line uses the tunnel for approximately 70,000 trips per year. Upgrade of the rail track, ties and ballast is essential to continuing the outstanding record of operation in the tunnel. The project would occur concurrently with the Carl and Cole Rail Replacement project, during which time the N-Judah line will be shut down, resulting in significant cost savings for this project.

Benefits:
The proposed project would improve the safety, reliability and quality of the ride on the system's busiest rail line.

Estimated Budget: $23.4M **Estimated Bond Proceeds: $8.4M**
The estimated project budget is $23.4 million for the conceptual engineering, design and construction of improvements. Funding includes Bond Proceeds, Federal Funds and Local Sales Taxes.

Muni Metro Turnback Rehabilitation (MMT)



Description:
The MMT extends Muni Metro Light Rail Transit Line underground approximately one mile from Embarcadero Station to a tunnel portal connecting to the Mission Bay surface line. The MMT includes 800 feet of bored tunnel, cut-and-cover structure, and an extensive underground turnback complex with two pocket tracks. The MMT was designed to improve turnback operations, reduce headways, and provide underground train storage to increase system capacity. The turnback and pocket track just east of Embarcadero Station has been damaged over time by water intrusion from the San Francisco Bay. The worn track has resulted in numerous service delays.

7

Benefits:
Completion of this work would improve service reliability by reducing train and control failures, improving the system safety margin by reducing the number of trains that need to be on manual operation, and reducing on-going maintenance costs. The project is currently in the Conceptual Engineering Phase.

Estimated Budget: $7.7M **Estimated Bond Proceeds: $7.7M**
The estimated project budget is between $7.7million, to fund conceptual engineering, design and construction. The project would replace the rail in the MMT, determine and mitigate water intrusion issues in this portion of the Muni Metro System. The project will be paid for by Bond Proceeds.

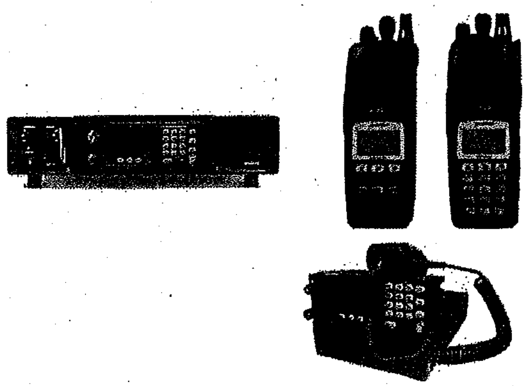
Muni Metro System Public Announcement and Public Display System Replacement

Description:
Terminals and transfer points are stops that handle significant customer interchanges and/or handle vehicle layovers. Specific improvements include the installation of the LED displays (visual) for passenger info for the nine stations for a total of 108 signs. Station improvements also include speakers, microphones, ambient noise sensors and digital voice announcement system. The project is currently in the design phase.

Benefits:
The proposed project would improve the customer experience within the Muni Metro system through the replacement of the existing 28-year old subway Public Address System & Platform Display systems (PDS). Linking this system with the Advanced Train Control System will increase system reliability through integration of these two systems.

Estimated Budget: $25.8M **Estimated Bond Proceeds: $10.0M**
The estimated project budget is $25.8 million for the construction of improvements. Funding includes Bond Proceeds, Federal Funds and Local Sales Taxes.

Muni System Radio Replacement Project



Description:

The project will replace and modernize the SFMTA's radio communication system using seventeen 700 MHZ voice channels and six 800 MHZ data channels as the basis for the communication network. The new system will utilize five existing antennae sites and will meet the regional Intelligent Transportation Standard and the P25 interoperability criteria.

Benefits: The project will modernize the Muni Transit fleet communication system and meet Federal Communication Commission (FCC) narrow banding requirements, including Computer Aided Dispatch/Automatic Vehicle Monitoring (CAD/AVL) and integrated incident management/reporting, as well as ADA compliant traveler information (i.e. DVAS) on the Muni Light Rail Fleet.

Estimated Budget: $115M **Estimated Bond Proceeds: $4.0M**
The estimated total project budget for this project is $115 million, of which $4 million would be from Bond Proceeds, in addition of Federal Funds and Local Sales Taxes.

Muni Green Light Rail Facility Rehabilitation

San Francisco Municipal Railway Green Division Yard in San Francisco, CA on 4-18-05. This Muni Metro (Light Rail) facility is named for former General Manager, Curtis Green.

Description:
The Green Rail Facility was redesigned in 1974 to store the Boeing Light Rail Vehicles (LRVs) that were put into operation in 1979 with the purpose of storing and maintaining the LRVs. Of the total SFMTA LRV fleet of 151 cars, SFMTA currently stores 89 or more Breda LRVs at Green. The scope of this project is to replace approximately 11,200 track feet of worn rails and track switches at the north and south ladder track in the Green Light Rail Facility. Most of the track is beyond its useful life. In addition, the project would include the replacement of the roof at the Green Maintenance Yard, which is also beyond its useful life.

Benefits: The project will enhance system reliability, while reducing the need for excess maintenance. The planning and design phases of this project are complete.

Estimated Budget: $44M **Estimated Bond Proceeds: $10.4M**
The estimated total project budget for this project is $44 million, of which $12 million would be from Bond Proceeds, in addition of Federal Funds and Local Sales Taxes.

Estimated Costs to Improve 18 Parking Garages With SFMTA's Lease Revenue Bonds

Facility	Architectural	Electrical	Fire Protection	Mechanical	Structural & Waterproofing	Total
16th and Hoff	$430,875	$166,000	$5,000	$6,500	$45,000	$653,375
Fifth and Mission	2,320,526	275,000	15,000	4,000	2,232,500	4,847,026
Civil Center	1,555,642	650,000	0	279,500	195,000	2,680,142
Ellis-O'Farrell	1,172,000	180,000	0	54,000	1,579,000	2,985,000
Golden Gateway	828,642	228,000	0	240,000	52,000	1,348,642
Japan Center	1,159,000	205,000	0	295,000	37,000	1,696,000
Lombard	520,000	180,000	0	63,500	119,000	882,500
Mission-Bartlett	441,075	214,000	60,000	213,500	31,000	959,575
Moscone Center	1,264,000	220,000	0	8,500	23,000	1,515,500
North Beach	594,000	166,000	0	18,000	49,000	827,000
Performing Arts	558,000	150,000	10,000	38,000	357,000	1,113,000
Pierce Street	48,680	173,300	0	15,000	189,000	425,980
Polk-Bush	706,000	187,000	5,000	52,000	17,000	967,000
SF General Hospital	1,264,000	217,000	35,000	55,000	210,000	1,781,000
St. Mary's Square	864,914	200,000	10,000	121,000	122,000	1,317,914
Sutter-Stockton	1,820,000	460,000	20,000	285,000	478,000	3,063,000
Union Square	1,552,300	760,000	0	611,500	1,675,000	4,598,800
Vallejo Street	1,210,778	335,000	15,000	76,000	66,000	1,702,778
SUBTOTAL	**$18,310,432**	**$4,966,300**	**$175,000**	**$2,436,000**	**$7,476,500**	**$33,364,232**

OTHER (Project Management/Construction Management/Design/ Legal/Contingency)	**17,883,228**
TOTAL	**$51,247,460**

MTA Municipal Transportation Agency

SFMTA BOND PROGRAM OF PROJECTS

PROJECT	SERIES 2012B	SERIES 2013A	OTHER SOURCES	TOTAL BUDGET
Systemwide Transit Access and Reliability Program	$ 1,500,000	$ 6,000,000	$ 1,300,000	$ 8,800,000
Muni Metro Sunset Tunnel Rehabilitation	$ 900,000	$ 7,500,000	$ 15,000,000	$ 23,400,000
Muni Metro Turnback Rehabilitation	$ 3,000,000	$ 4,700,000	$ -	$ 7,700,000
Muni Metro System Public Announcement and Public Display System Replacement	$ 6,500,000	$ 3,500,000	$ 15,800,000	$ 25,800,000
Muni System Radio Replacement Project	$ 1,600,000	$ 2,400,000	$ 111,000,000	$ 115,000,000
Muni Green Light Rail Facility Rehabilitation	$ 7,200,000	$ 3,200,000	$ 33,600,000	$ 44,000,000
Parking Projects	$ 5,000,000	$ 46,247,460	$ -	$ 51,247,460
PROJECT TOTALS	**$ 25,700,000**	**$ 73,547,460**	**$ 176,700,000**	**$ 275,947,460**
FINANCING COSTS & RESERVE	**$ 2,600,000**	**$ 6,927,540**		
TOTAL	**$ 28,300,000**	**$ 80,475,000**		1

SFMTA | BOND FINANCING PROGRAM OF PROJECTS
DETAILED PROJECT FUNDING PLANS BY PROJECT & FUND

FUND: SFMTA-Bond-FY12

BOND PROJECT HIGH LEVEL FUNDING ANALYSIS

PROJECT	SERIES 2012B	SERIES 2013A	OTHER SOURCES	TOTAL BUDGET
Systemwide Transit Access and Reliability Program	$ 1,500,000	$ 6,000,000	$ 1,300,000	**$ 8,800,000**
Muni Metro Sunset Tunnel Rehabilitation	$ 900,000	$ 7,500,000	$ 15,000,000	**$ 23,400,000**
Muni Metro Turnback Rehabilitation	$ 3,000,000	$ 4,700,000	$ -	**$ 7,700,000**
Muni Metro System Public Announcement and Public Display System Replacement	$ 6,500,000	$ 3,500,000	$ 15,800,000	**$ 25,800,000**
Muni System Radio Replacement Project	$ 1,600,000	$ 2,400,000	$ 111,000,000	**$ 115,000,000**
Muni Green Light Rail Facility Rehabilitation	$ 7,200,000	$ 3,200,000	$ 33,600,000	**$ 44,000,000**
Parking Projects	$ 5,000,000	$ 46,247,460	$ -	**$ 51,247,460**
PROJECT TOTALS	**$ 25,700,000**	**$ 73,547,460**	**$ 176,700,000**	**$ 275,947,460**

BOND PROJECT FUNDING PLANS

Systemwide Transit Access and Reliability Program

FUND	AMOUNT
Local Proposition K Sales Tax	$ 300,000
Local Proposition AA Vehicle Licence Fees	$ 1,000,000
SFMTA Revenue Bond	$ 7,500,000
TOTAL:	**$ 8,800,000**

Muni Metro Sunset Tunnel Rehabiltiation

FUND	AMOUNT
SFMTA Revenue Bond	$ 8,400,000
Federal FTA Section 5309 Fixed Guideway	$ 15,000,000
TOTAL	**$ 23,400,000**

Muni Metro Turnback Rehabilitation*

FUND	AMOUNT
SFMTA Revenue Bond	$ 7,700,000
TOTAL	**$ 7,700,000**

Muni Green Light Rail Facility Rehabilitation

FUND	AMOUNT
Federal FTA Section 5309 Fixed Guideway	$ 27,000,000
Local Proposition K Sales Tax	$ 6,600,000
SFMTA Revenue Bond	$ 10,400,000
TOTAL	**$ 44,000,000**

Muni System Radio Replacement Project

FUND	AMOUNT
Local Proposition K Sales Tax	$ 62,000,000
State Proposition 1B Bonds	$ 26,000,000
SFMTA Operating Funds	$ 5,000,000
Regional AB 664 Bridge Tolls	$ 600,000
Federal FTA Section 5307	$ 14,147,000
SFMTA Revenue Bond	$ 4,000,000
Other Local	$ 150,000
Other Federal	$ 3,103,000
TOTAL	**$ 115,000,000**

Muni Metro System Public Announcement And Public Display System Replacement

FUND	AMOUNT
Local Proposition K Sales Tax	$ 2,300,000
Federal FTA Section 5307	$ 2,500,000
Federal FTA Section 5309 Fixed Guideway	$ 9,000,000
Regional AB 664 Bridge Tolls	$ 2,000,000
SFMTA Revenue Bond	$ 10,000,000
TOTAL	**$ 25,800,000**

PLEDGED REVENUE

- The proposed financing will be structured as a Revenue Bond with Pledged Revenues outlined in the table below:
  - Does not include General Fund Baseline Transfer or General Fund Transfer in Lieu of Parking Tax
  - Parking Meter Revenues are pledged to repay debt related to Parking and Traffic Control projects (garages)

REVENUE SOURCE (amounts in thousands)	FY2010	FY2011	FY2012 (Budget)	Growth Rate for Planning Purposes
Passenger Fares (fixed route & paratransit)	187,629	191,626	182,312	2.47% (Bay Area CPI)
Traffic Fines, Fees, Permits & Taxi	106,627	123,327	132,024	2.47% (Bay Area CPI)
Parking Meters	38,868	40,531	48,527	2.47% (Bay Area CPI)
Parking Garages (net)	32,080	46,025	38,450	2.47% (Bay Area CPI)
Other (includes rent, advertising & interest)	22,565	25,898	24,032	2.47% (Bay Area CPI)
State Sales Tax (AB 1107)	27,767	30,145	25,282	2.47% (Bay Area CPI)
TDA Sales Tax	29,647	32,021	29,929	2.47% (Bay Area CPI)
TOTAL PLEDGED REVENUES:	**$445,183**	**$489,573**	**$480,557**	
Annual Growth Rate		*9.97%*	*-1.84%*	

Item 10 File 12-0082 (continued from March 14, 2012 meeting)	Departments: Human Rights Commission (HRC) City Controller's Office

EXECUTIVE SUMMARY

Legislative Objectives

- Ordinance amending the City's Administrative Code by adding Chapter 14C to provide for a four percent bid discount for companies qualifying under State law as a benefit corporation.

Key Points

- Under the traditional corporate structure, corporations must consider profit-making and the financial interests of shareholders above all else. As of January 2012, the California State Legislature authorized a new form of incorporation, known as a benefit corporation, which created a legal framework for socially-minded companies to consider non-financial interests when making business decisions.
- Since 1984, the City has granted bid preferences for several categories of disadvantaged businesses. The proposed ordinance provides a four percent bid discount for bid proposals from benefit corporations, if the result of the ranked proposal would not displace a local business enterprise (LBE), a nonprofit organization or a San Francisco-based business from being the apparent lowest bidder.

Fiscal Impacts

- It is uncertain as to how many, and what types of, companies will seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco, such that the Budget and Legislative Analyst cannot quantify the fiscal impact of the proposed ordinance at this time. However, as a comparison, the Budget and Legislative Analyst reviewed 2011 construction contract award information for construction contracts of less than $10,000,000, in which an LBE was awarded the contract and a bid discount was applied, and found that the total additional cost to the City as a result of granting such LBE bid discounts was $822,172.
- In response to inquiries by the Budget and Finance Committee on March 14, 2012, an analysis was also completed on 2011 commodities purchases, which showed a potential impact only in the vehicle purchasing category, and on 2011 professional services contracts, which was inconclusive due to the subjective nature of the proposal review process for professional services contracts.

Policy Consideration

- According to the proposed ordinance, the process of applying the bid discount will require the collection and verification of additional documents. The Budget and Legislative Analyst recommends that one City department, the HRC, manage the benefit corporation bid discount process on a centralized basis in which to ensure a uniform process and to facilitate data tracking for future evaluation purposes.

Recommendations

- Amend the proposed ordinance to centralize the management of the benefit corporation bid discount program at the HRC.
- Approval of the ordinance, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT

According to Charter Section 2.105, the Board of Supervisors shall act only by written ordinance or resolution, except that it may act by motion on matters over which the Board of Supervisors has exclusive jurisdiction.

BACKGROUND

Benefit Corporation Status

A benefit corporation is a new form of incorporation that is legally recognized in seven States, including California. Under the traditional corporate structure, corporations must consider profit-making and the financial interests of shareholders above all else. Benefit corporation status was developed as a response to the inability of existing legal frameworks to meet the needs of entrepreneurs and investors seeking to use business to solve social and environmental problems so that companies can balance the pursuit of corporate profits with environmental and social goals.

Because traditional corporate law has a narrow definition of fiduciary duty that makes it difficult for business leaders to focus on a mission that is broader than simply maximizing profit, businesses with a social mission need alternatives that allow them to be operate in ways that benefit more stakeholders. Maryland was the first State to allow benefit corporations in April 2010.

California Benefit Corporation Legislation – AB 361

Assembly Bill (AB) 361was adopted by the California State Legislature on October 9, 2011, and became effective on January 1, 2012, making California the sixth of seven States in the United States to recognize benefit corporations. AB 361 states that a benefit corporation may be formed for the purpose of creating a general public benefit, defined as a material positive impact on society and the environment, taken as a whole.

AB 361 is intended to encourage environmental and social responsibility, as well as greater standards of accountability and transparency for corporations, and as such allows benefit corporations to identify one or more specific public benefits including but not limited to: (a) providing low-income or underserved communities with beneficial products or services; (b) promoting economic opportunity for individuals or communities beyond the creation of jobs in the ordinary course of business; (c) preserving the environment; and (d) improving human health. In addition, AB 361 expands the fiduciary duty to create clarity for boards of directors about their obligations and liability protection, as well as for consumers and investors about what to expect from the business.

Since AB 361 became effective in January of 2012, 21 California companies have filed for incorporation as benefit corporations.

<u>Existing Bid Discounts for Competitively Solicited Contracts in San Francisco</u>

Since 1984, with the passage of the Minority/Women/Local Business Utilization Ordinance by the Board of Supervisors, the City and County of San Francisco has granted bid preferences for disadvantaged businesses. These businesses include minority-owned business enterprises (MBEs), women-owned business enterprises (WBEs), and locally-owned business enterprises (LBEs). Today, in accordance with City Administrative Code Chapter 14B, those businesses are now collectively categorized as LBEs, and receive 2 percent to 10 percent bid discounts when competing for City contracts.

Locally-owned businesses in San Francisco must receive certification of their LBE status from the San Francisco Human Rights Commission (HRC), which administers the bid discount. There are three levels of discounts available to certified LBEs, as follows: (1) a two-percent preference to Small Business Administration firms (SBAs)[1]; (2) a seven and one-half percent preference to joint ventures with local MBE or WBE participation; and (3) a 10 percent preference to "micro" and "small" LBEs. Classifications for "micro", "small" and "SBA" businesses are based on maximum annual gross revenues for each type of business, as shown in Table 1 below.

Table 1:
Maximum Annual Gross Revenues for LBE Certified Firms

	Micro Bid Discount: 10%	Small Bid Discount: 10%	SBA Bid Discount: 2%
Class A and Class B General Contractors	$7,000,000	$14,000,000	$33,500,000
Specialty Construction Contractors	3,500,000	7,000,000	17,000,000
Trucking and Hauling	1,750,000	3,500,000	8,500,000
Goods, Materials and Equipment Suppliers	3,500,000	7,000,000	17,000,000
General Service Providers	3,500,000	7,000,000	17,000,000
Architect/Engineering	1,250,000	2,500,000	7,000,000
Professional Services	1,250,000	2,500,000	7,000,000

DETAILS OF LEGISLATION

This report is based on the amended ordinance that was signed on March 26, 2012. The sponsor of the ordinance will be submitting additional amendments to the Budget and Finance Committee on April 4, 2012.

The proposed ordinance would add Chapter 14C, Sections 14C.1 through 14C.3 to the City's Administrative Code in order to provide a four percent bid discount for benefit corporations that

[1] SBA firms are defined by the U.S. Small Business Administration.

submit bids for competitively solicited City contracts. The proposed four percent bid discount is intended to provide a competitive advantage to benefit corporations, whose ability to submit the lowest bids for City contracts may be compromised by their commitment to supporting social and environmental justice.

Under the proposed ordinance, the subject discount of four percent would apply to (a) all commodities and professional services contracts between $100,000 and $10,000,000, and (b) all general services contracts between $400,000 and $10,000,000, as established in Chapters 6 and 21 of the City's Administrative Code.

Under the proposed ordinance, the subject four percent bid discounts for benefit corporations would be administered by individual City departments that award contracts, such that each department's awarding authorities would be required to verify the benefit corporation's current status with the California Secretary of State. In addition, in accordance with the proposed ordinance, each City department's contracting authorities would be required to obtain (a) a copy of the benefit corporation's share certificates, which is required under Division 1, Chapter 4 of the California Corporations Code, and (b) a copy of the benefit corporation's most recent annual benefit report, which is required under Sections 14621 and 14630 of Division 3, Title 1 of the California Corporations Code[2]. Additionally, under the proposed ordinance, benefit corporations would be required to provide evidence of third-party certification of compliance with public benefit goals, as determined by the HRC, to each City department contracting authority.

In accordance with the proposed ordinance, the City department contracting authority would only apply a four percent discount to the benefit corporation if the results of the ranked proposals would not displace a 14B[3] LBE, a non-profit organization or a San Francisco-based business[4] from being the apparent lowest bidder. In addition, under the proposed ordinance, the four percent bid discount could not be combined with any other bid discount – for example, LBEs that are also benefit corporations would only be eligible for the LBE ten percent bid discount, as opposed to a combined 14 percent bid discount. Table 2 below details the proposed bid discount percentages.

[2]California Corporations Code, Title 1, Division 3, Section 14630 requires that California benefit corporations produce an annual benefit report that details the reasons for selecting the third-party standard, the ways in which a public benefit was pursued, and an assessment of overall social and environmental performance, based on the selected third party standard. California Corporations Code, Title 1, Division 3, Section 14621 requires a statement by the Benefit Corporation's Board of Directors to be included in the annual benefit report, stating whether or not the Board of Directors believes that the benefit corporation achieved its public benefit goals.

[3] "14B LBEs" are LBEs that receive a bid discount when competing for City contracts, according to the Administrative Code Chapter 14B.

[4] "San Francisco business" is defined in the proposed ordinance as a business that is registered with the Office of the Treasurer and Tax Collector's Business Registration records, and maintains an address located within the geographic limits of the City and County of San Francisco.

Table 2: Bid Discount Amounts

	Current Bid Discount Amount	Benefit Corporation Bid Discount Amount	Total Bid Discount Amount
SBA-LBE	2%	0%	2%
Joint Venture LBE	7.5%	0%	7.5%
Micro/Small LBE	10%	0%	10%
Nonprofit Organization	10%	0%	10%
Non-LBE	0%	4%	4%

The proposed ordinance also requires that the Human Rights Commission (HRC), in coordination with the City Controller's Office, conduct biannual evaluations of the impact of the Benefit Corporation Discount on City contracting for the first two years of the effective date of the proposed ordinance. Thereafter, HRC, in coordination with the Controller's Office, would be required to conduct annual evaluations. These evaluations would analyze Benefit Corporation participation levels by reviewing the number of City contracts awarded by size, type and amount of discount.

FISCAL IMPACT

As noted above, benefit corporation legislation has only been effective in the State of California since January of 2012, and to date, there are only 21 companies that have filed for benefit incorporation with the California Secretary of State. At this time, it is uncertain as to how many, and what types of, companies will eventually seek benefit corporation status, and of those, which will seek contracts with the City and County of San Francisco.

Therefore, the Budget and Legislative Analyst cannot quantify the actual fiscal impact of the proposed ordinance at this time. However, as a comparison, based on 2011 construction contract award information provided by HRC[5], for construction contracts of less than $10,000,000, in which an LBE was awarded the contract and a bid discount was applied, the total additional cost to the City as a result of granting such LBE bid discounts was $822,172.

In response to inquiries by the Budget and Finance Committee on March 14, 2012, in addition to construction contracts, the Budget and Legislative Analyst has also reviewed 2011 professional services contract award information provided by HRC and individual contract awarding authorities. Because of the more subjective nature of the proposal review process for professional services contracts, where a low bid is only one factor in determining the contract

[5] The data used in this analysis was provided by HRC for the Recreation and Park Department, Public Utilities Commission, Department of Public Works, and the Airport. The total number of construction contracts under $10,000,000 awarded in 2011 was 69, for a total amount of $466,495,034, of which the value of the bid discount was less than one percent.

award, it is impossible to quantify the actual cost to the City as a result of granting such LBE bid discounts for professional services contracts. Unlike construction contracts which are awarded to the lowest most qualified bidder, professional services contracts are awarded based upon an evaluation of various criteria, of which the cost of services only represent one factor in the contract award process.

In addition, the Budget and Legislative Analyst reviewed a sample of data provided by the Purchasing Department reflecting the City's 2011 purchases in three categories: (a) vehicles, (b) Information Technology (IT) equipment, and (c) transportation equipment. The Budget and Legislative Analyst found that most of these purchases were under the threshold of $100,000 for commodities, as defined by the proposed ordinance, and therefore would not be impacted by the proposed four percent bid discount for benefit corporations. From the sample provided by the Purchasing Department, vehicles were the only category where a bid discount could have had an impact. On the six bids reviewed pertaining to vehicle purchases, three bids, or 50 percent of the bids reviewed, could potentially have gone to a higher bidder, if that bidder had been eligible for a benefit corporation bid discount. Assuming the proposed benefit corporation bid discount of four percent was applied in those three instances, the additional cost to the City from applying these bid discounts would have totaled a maximum amount of $17,108, or 2.98 percent of the maximum total contract award amount of $575,170.

POLICY CONSIDERATION

The implementation process for applying the benefit corporation bid discount should be centralized under the management of the HRC to ensure consistency and facilitate data tracking

According to the proposed ordinance, the subject four percent bid discount for benefit corporations would be applied by individual City departments contracting authorities. As noted above, the process of applying these bid discounts would require the individual City departmental contracting authorities to collect the required documentation and verify each benefit corporation's current status. For example, for each benefit corporation seeking City contracts, the appropriate City department must collect annual benefit reports and the benefit corporation's share certificates.

The appropriate City department must also determine whether the four percent benefit corporation bid discount would displace an LBE, a nonprofit organization or a business located in San Francisco from being the lowest bidder. Presently, the department which oversees the contract certification of all LBEs and nonprofit organizations is the Human Rights Commission (HRC). As a result, currently, when LBEs or nonprofit organizations are competing for City contracts, individual City contracting authorities provide relevant proposal review information to the HRC so that the HRC can apply any applicable bid discount and thereby determine the winning bid.

Given the HRC's current role in managing the LBE and nonprofit organization bid discounts for City contracts, and the new responsibilities of the HRC as set forth in the proposed ordinance to biannually and then annually evaluate the benefit corporation bid discount, the Budget and Legislative Analyst recommends that the HRC be designated to similarly manage, on a centralized basis, the process of certifying benefit corporation status and awarding the benefit corporation bid discount. Implementation of this recommendation would: (1) help ensure a uniform process for applying the benefit corporation bid discount, and (2) help facilitate data tracking and measurement for future evaluation purposes.

RECOMMENDATIONS

1. Amend the proposed ordinance to centralize the management of the benefit corporation bid discount program at the HRC.
2. Approval of the proposed ordinance, as amended, is a policy decision for the Board of Supervisors.

Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Controller
Kate Howard