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

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TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: September 21, 2016 Budget and Finance Committee Meeting

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Item 1 **File 16-0199** *(Continued from September 14, 2016)*	**Department:** Office of Labor Standards and Enforcement (OLSE)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the Administrative Code to add Section 21C.10 to require that prevailing wages be paid to workers who (1) load or unload materials, goods, or products into or from a commercial vehicle for special events or shows on City property; and/or (2) drive commercial vehicle for that purpose. For drivers, prevailing wage is paid for all hours driven within City limits.

Key Points

- The Board of Supervisors annually sets prevailing wage rates for employees of businesses with particular types of City contracts. These contracts currently include: (1) public works or construction; (2) janitorial and window cleaning services; (3) public off-street parking lots, garages, and vehicle storage facilities; (4) theatrical performances; (5) solid waste hauling services; (6) moving services; (7) trade show and special event work; and (8) broadcast service work on City property.

Fiscal Impact

- Although the proposed ordinance could increase the wage costs to produce shows or hold special events on City property, it is unknown as to whether or not these increased costs to the show or special events sponsors would reduce the number of shows or special events on City property, and consequently reduce contract, lease, franchise or permit revenues to the City.

Recommendation

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

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance and shall require two readings by the Board of Supervisors.

The City's Administrative Code requires certain businesses that have contracts with the City, including public works contracts, to pay employees the highest general prevailing rate of wages for similar work in private employment. These requirements are enforced by the City's Office of Labor Standards Enforcement.

BACKGROUND

The Board of Supervisors annually sets prevailing wage rates for employees of businesses with particular types of City contracts. Table 1 below identifies the (a) specific Administrative Code Sections, (b) the dates each Administrative Code Section was last amended by the Board of Supervisors, and (c) the types of City contracts, leases, and/or operating agreements in which such businesses are required to pay prevailing wages.

Table 1: List of Contractors Required to Pay Prevailing Wages

Administrative Code	Date of Most Recent Amendment	Type of Contract
Section 6.22 (E)	May 19, 2011	Public works or construction
Section 21C.2	February 2, 2012	Janitorial and window cleaning services
Section 21C.3	February 2, 2012	Public off-street parking lots, garages and vehicle storage facilities
Section 21C.4	February 2, 2012	Theatrical performances
Section 21C.5	February 2, 2012	Solid waste hauling services
Section 21C.6	February 2, 2012	Moving services
Section 21C.8	June 29, 2014	Trade show and special event work
Section 21C.9	February 10, 2016	Broadcast service workers on City property

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Administrative Code to add Section 21C.10 to require that prevailing wages be paid by businesses having contracts, leases, franchise, permits or agreements with the City to their employees who (1) load or unload materials, goods, or products into or from a commercial vehicle for special events or shows on City property; and/or (2) drive commercial vehicle in which materials, goods or products are loaded or unloaded for shows and special events.[1] For drivers, prevailing wage is paid for all hours driven within City limits.

The proposed ordinance would apply to contracts, leases, franchises, permits or agreements for special events or shows on City property, with the following exceptions provided in Administrative Code Sections 21C.4 (b) or 21C.8 (b):

- Celebration of a marriage, domestic partnership, or civil union;
- A show in a City park or City street, or on Port property that has free public access;
- A special event in a City park or City street, or on Port property that has free public access and advertising for the event of less than $10,000;
- Film production;
- Shows or property under the jurisdiction of the Art Commission;
- Shows and special events for which set-up time is three hours or less, or the number of individuals working on the set-up is two or less;
- Special events that require payment of prevailing wage rates applicable to public works projects;
- Street fairs sponsored by nonprofit organizations and have free public access; and
- Any circumstance where application of prevailing wage rates would be preempted by federal or state law.

The proposed new Administrative Code Section 21C.10 also exempts from the prevailing wage requirements:

- Loading or unloading portable toilets and temporary fences or barricades, or driving commercial vehicles for that purpose;
- Individual vendors and farmers at flea markets and farmers markets (but not loading, unloading or driving commercial vehicles to flea markets and farmers markets);
- Individuals covered by a collective bargaining agreement;
- Work performed by city employees; and
- Mass participation sports events sponsored by a nonprofit organization for the purpose of fundraising.

The Budget and Legislative Analyst's Office has been advised that the Office of the Sponsor will introduce amendments to the proposed ordinance at the September 14, 2016 Budget and Finance Committee meeting. This report is based on the proposed amendments.

[1] A commercial vehicle is defined as a vehicle that is (1) primarily used for the transportation of materials, goods, or products, (2) has six wheels or more, and (3) is required to be registered as a commercial vehicle with the California Department of Motor Vehicles. Commercial vehicles shall not include vehicles used exclusively for food catering purposes.

FISCAL IMPACT

Although the proposed ordinance could increase the wage costs to produce shows or hold special events on City property, it is unknown as to whether or not these increased costs to the show or special events sponsors would reduce the number of shows or special events on City property, and consequently reduce contract, lease, franchise or permit revenues to the City.

RECOMMENDATION

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

Item 4 **File 16-0926**	**Department:** Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the General Manager of the Public Utilities Commission (PUC) to execute Amendment No. 4 to an agreement with Kennedy/Jenks Consultants for continued engineering design and services during the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project.
- The amendment would increase the agreement by $2,000,000 from $16,500,000 to not to exceed $18,500,000, and extend the term by three years through December 2019, for a total agreement duration of 12 years.

Key Points

- The PUC awarded the agreement to Kennedy/Jenks Consultants in 2007 to provide, following a competitive Request for Qualifications to provide engineering services to Water System Improvement Project-funded projects. The original agreement was for seven years from December 2007 to December 2014, and for $9,000,000.
- Two amendments approved by the Board of Supervisors (Files 09-1068 and 11-0872) have increased the agreement's not-to-exceed amount to $16,500,000 and duration to nine years to December 2016. A third amendment revised the task orders but did not change the agreement amount or term. According to PUC, Kennedy/Jenks was engaged before the final details of the projects were established, and once the work began the contract required amendments to account for the revised scope of work. The amendments allowed for necessary ongoing and additional engineering services from Kennedy/Jenks due to expanded design scopes and construction schedules associated with the projects.
- Amendment No. 4 is for engineering services during Phase I construction of the Regional Groundwater Storage and Recovery San Francisco Groundwater Supply Projects, expected to be completed in 2017, and completion of the engineering design for and engineering services during construction for Phase 2 of the Regional Groundwater Storage and Recovery Project, expected to be completed in 2019. PUC anticipates that this fourth amendment will be the final amendment to the agreement.

Fiscal Impact

- The proposed resolution would increase the agreement by $2,000,000 to a total amount not to exceed $18,500,000. Funding for the agreement is included in the approved WSIP budgets, including supplemental funding approved as part of the 10-year Water Capital Improvement Plan.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

The Public Utilities Commission (PUC)'s Water System Improvement Program (WSIP) is a multi-year capital program to repair, replace, and seismically upgrade the Hetch Hetchy water system's aging pipelines, tunnels, pumps, tanks, reservoirs, and dams. Current total estimated costs for all WSIP projects are $4,845,483,670, including financing costs.

On October 9, 2007, as the result of a competitive Request for Qualifications process, PUC awarded Agreement No. CS-789.C to Kennedy/Jenks Consultants (Kennedy/Jenks) to provide as-needed engineering design services to the WSIP-funded Harry Tracy Water Treatment Plant Long-Term Improvements Project, the Regional Groundwater Storage and Recovery Project, and the San Francisco Groundwater Supply Project.

- San Francisco Groundwater Supply Project: This project includes all facilities required to produce and deliver groundwater from the Westside Basin in San Francisco to the existing Sunset and Sutro reservoirs. The first phase includes four new groundwater well stations consisting of new production wells, buildings, pumps, electrical equipment, treatment facilities for disinfection and pH adjustment, and piped connections to Sunset Reservoir. The second phase includes improvements of two irrigation well stations in Golden Gate Park, which would be converted to potable use when recycled water is available to replace irrigation needs. This project is forecast to be completed by December 4, 2019.
- Regional Groundwater Storage and Recovery Project: This project includes the construction of 15 groundwater wells and well stations to be used as a regional dry-year water supply. Phase 1 includes the construction of 13 well stations, and Phase 2 includes the construction of 2 additional well stations in the San Bruno area. The wells will be connected to three wholesale customer water systems on the Upper Peninsula (the Cities of Daly City and San Bruno, and California Water Service Company) and to the PUC transmission system. Disinfection will be required for all wells and treatment is included at some of the well stations to meet water quality standards. This project is scheduled to be completed by July 30, 2019.
- Harry Tracy Water Treatment Plant Long-Term Improvements Project: This project increases the treatment plant sustainable capacity and provides seismic reliability following a major seismic event. The project includes: extensive seismic, hydraulic and electrical upgrades throughout the plant; five new filters; improvements to the wash water and sludge handling systems; a new 11 million gallon treated water reservoir; and

associated piping and equipment replacement. This project is scheduled to be completed by December 30, 2016.

The agreement between PUC and Kennedy/Jenks has been amended four times. The original agreement between PUC and Kennedy/Jenks was for a not-to-exceed amount of $9,000,000 with a term of seven years, from December of 2007 through December of 2014. Because the agreement did not exceed the $10,000,000 and ten-year thresholds established in City Charter Section 9.118(b), it was not subject to approval by the Board of Supervisors. In October of 2009 the Board of Supervisors approved Amendment No. 1 to this agreement for an additional $4,800,000, increasing the not-to-exceed amount to $13,800,000 and extending the agreement term by two years through December 2016 for a total contract duration of nine years (File 09-1068). In October of 2011, the Board of Supervisors approved Amendment No. 2 to this agreement for an additional $2,700,000, increasing the not-to-exceed amount to $16,500,000 with no change in the agreement duration (File 11-0872). Amendment No. 3 revised the task orders but did not change the agreement amount or term.

Table 1 below summarizes the first and second amendments to the agreement.

Table 1: Summary of Amendments to Agreement between PUC and Kennedy/Jenks

	Year	Increased Amount	Total Not-To-Exceed Amount	Increased Duration (Years)	Total Duration (Years)
Original Agreement	2007		$9,000,000		7
Amendment No. 1	2009	$4,800,000	13,800,000	2	9
Amendment No. 2	2011	2,700,000	16,500,000	0	9

According to Mr. Daniel Wade, Director of the Water System Improvement Program at PUC, Kennedy/Jenks was engaged before the final details of the projects were established, and once the work began the contract required amendments to account for the revised scope of work. The amendments allowed for necessary ongoing and additional engineering services from Kennedy/Jenks due to expanded design scopes and construction schedules associated with the projects.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the PUC General Manager to execute Amendment No. 4 to the Agreement with Kennedy/Jenks for continued engineering design services to the Regional Groundwater Storage and Recovery Project and the San Francisco Groundwater Supply Project. The amendment would increase the agreement by $2,000,000 to a total amount not to exceed $18,500,000 and extend the term by three years through December 2019, for a total agreement duration of 12 years. Mr. Wade expects that this proposed amendment will be the final amendment to the agreement with Kennedy/Jenks.

The amendment has been requested for:

- Engineering services during construction of Phase 1 of the Regional Groundwater Storage and Recovery Project and Phase 1 of the San Francisco Groundwater Supply Project, and
- Completion of the engineering design for and engineering services during construction for Phase 2 of the Regional Groundwater Storage and Recovery Project.

Status of the San Francisco Groundwater Supply Project

According to Mr. Carlos Jacobo at PUC, the Phase 1 construction of the San Francisco Groundwater Supply Project, Project (4 well stations) is approximately 50 percent complete and is anticipated to reach final completion by April 2017. Design of Phase 2 (improvements to two existing irrigation well stations for conversion to potable use) is nearly complete and it is anticipated that Phase 2 construction will begin in January 2017.

Status of the Regional Groundwater Storage and Recovery Project

The Phase 1 construction of the Regional Groundwater Storage and Recovery Project (13 well stations) is nearly 70 percent complete and is anticipated to reach final completion by September 2017. The Planning Phase has been initiated for Phase 2, which will include the construction of two additional well sites planned for the San Bruno area.

Local Business Enterprise Participation

A Contract Monitoring Division subconsulting requirement of 10% Local Business Enterprise (LBE) participation has been established for this agreement. Kennedy/Jenkins has committed to meet its proposed LBE subconsultant participation goal of 13.6%.

FISCAL IMPACT

According to Mr. Jacobo, funding for the agreement is included in the WSIP budget previously approved by the Board of Supervisors. Of the additional requested $2,000,000, $830,000 would be allocated to the San Francisco Groundwater Supply Project (CUW30102) and $1,170,000 to the Regional Groundwater Storage and Recovery Project (CUW30103). Table 2 below summarizes the breakdown of the requested additional $2,000,000 under the proposed resolution.

Table 2: Summary of Additional Funding Uses

	San Francisco Groundwater Supply Project	Regional Groundwater Storage and Recovery Project
Design Services, Phase 2	$150,000	$500,000
Water Quality Support and Permitting	200,000	300,000
Construction Testing and Startup Services	150,000	100,000
Training for Operations Personnel	100,000	100,000
Preparing Standard Operating Procedures	150,000	
Drinking Water Source Assessments, Phase 2	50,000	120,000
Contingency	30,000	50,000
Total	**$830,000**	**$1,170,000**
Total for both projects	***$2,000,000***	

RECOMMENDATION

Approve the proposed resolution.

Item 5 File 16-0769	Department: San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objectives

- Ordinance to waive the competitive process requirement in Section 2A.173 of the Administrative Code for a new lease agreement between Amoura and the Airport for an employee café at Airport Terminal 1 for three years, with an option for more two years.

Key Points

- City Administrative Code Section 2A.173 authorizes the Airport Commission, subject to a competitive process and award to the highest or best responsible bidder, to lease out concession space at the Airport.
- In 2011, the San Airport awarded a permit to Amoura to operate an employee café in Terminal 1 at the Airport, without competitive bid, with no expiration date and with only a monthly $1 permit fee paid to the Airport.
- The existing employee café in Terminal 1 operated by Amoura will be demolished in fall 2016 as part of the Terminal 1 Redevelopment Program. The proposed new employee café location in Boarding Area C will be demolished in 2019, or approximately three years.

Fiscal Impact

- Under this lease, Amoura will pay a Minimum Annual Guarantee rent (MAG) to the Airport of $36,000 in the first year or $3,000 per month, and a Tenant Facility Reimbursement Fee of $24,000 annually or $2,000 per month, which approximately represents the lowest tier for food and beverage leases at the Airport.
- The Airport paid for construction of the café space and adjacent seating areas at a total cost of $366,000.
- Total estimated revenue to be paid by Amoura to the Airport is $183,272 over the three-year lease. Including the two-year options, or a total of five-years, the Airport would receive $311,129. This five-year total of $311,129 is $54,871 less than the $366,000 the Airport will expend to construct the café space.

Policy Consideration

- Without undertaking a competitive bid process, it is impossible to know if the Airport is receiving the best possible vendor and compensation for their employee café.

Recommendation

- Approval of the proposed ordinance to waive the competitive bidding requirement to award an employee café lease is a policy consideration for the Board of Supervisors.

MANDATE STATEMENT

City Administrative Code Section 2A.173 authorizes the Airport Commission, subject to a competitive process and award to the highest or best responsible bidder, to lease out any concession in which the concessionaire is given an exclusive right to occupy space at the Airport.

BACKGROUND

Existing Employee Café Permit

In 2011, the San Francisco International Airport (Airport) awarded a nonairline terminal use permit to Amoura International, Inc. (Amoura) to operate an employee café in Terminal 1 at the Airport. To select Amoura, the Airport staff approached several existing businesses that were operating at the Airport. Ms. Cheryl Nashir, Director of Revenue Development and Management at the Airport advised that a competitive selection was not conducted because Amoura was the only business willing to work with the Airport to provide an employee cafe.

The permit with Amoura did not establish an expiration date, or require Amoura to pay rent to the Airport. Rather, Amoura only pays the Airport a monthly $1 permit fee to operate the employee café. According to Ms. Nashir, the establishment of an employee cafeteria was an effort to improve workplace satisfaction. That desire, coupled with labor costs necessary to feed the Airport work force at peak times (breakfast and lunch), with fast service and lower prices than other food and beverage locations in the Airport, and a lack of historical sales data for an employee café resulted in the Airport deciding to award this no rent permit to Amoura.

Airport Permit vs Lease

Ms. Nashir advises that the Airport chose to award a month-to-month permit rather than a lease to Amoura because the employee café was envisioned as a short-term arrangement to test the viability of an employee cafe. Ms. Nashir advises that in 2011 when the permit was executed, the Airport had not had an employee café for approximately seven years. The Airport did not want to enter into a long-term lease without knowing if the concept of an employee café would be successful. Ms. Nashir further states that the permit with Amoura was allowed to continue because of anticipated plans to renovate Terminal 1.

Terminal 1 Redevelopment Program

In 2015, the Airport commenced construction on the Terminal 1 Redevelopment Program to modernize Terminal 1, Boarding Area B. The Terminal 1 Redevelopment Program will provide improved passenger circulation with access to 24 gates, new passenger loading bridges and new concessions. The estimated cost of this Program is $2,400,000,000, and is expected to be completed in 2021.

Redevelopment Program Impacts on Employee Cafe

The existing employee café in Terminal 1 operated by Amoura will be demolished in fall 2016 as part of the Terminal 1 Redevelopment Program. In January 2016, the Airport Commission authorized the issuance of a Request for Proposals (RFP) for a new Airport employee café lease in Terminal 1 Boarding Area C for a term of five years with two one-year options to extend the lease. However, changes to the Terminal 1 Redevelopment Program now require that the proposed café premises in Boarding Area C be demolished in 2019, or in approximately three years. As a result, the lease for an employee café in this space would only be available for three years.

Proposed Interim Lease

The Airport has identified a temporary replacement location for the employee café in Terminal 1, pre-security Boarding Area C, and Amoura has agreed to continue its operations under an interim employee café lease until the Terminal 1 Redevelopment Program is completed and a RFP can be issued for a full five-year term. In order to accommodate the interim lease, the Airport now requests the Board of Supervisors to waive the competitive bidding requirements of San Francisco Administrative Code Section 2A.173.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would waive the competitive process requirement in Section 2A.173 of the Administrative Code for a new three-year lease agreement, with two one-year options between Amoura and the Airport for an interim employee café at Airport Terminal 1.

According to Mr. Luke Bowman, Deputy City Attorney, the Administrative Code does not specify criteria that the Airport must meet to seek a waiver from competitive bidding. Airport staff notes that a RFP will require prospective café tenants to construct their own premises and likely pay higher rent to the Airport, such that prospective tenants will need a longer lease term to be profitable after complying with these requirements. Therefore, Ms. Nashir advises that the three-year available term for a new employee café in the pre-security Boarding Area C is not sufficient time for an attractive business opportunity through competitive bidding at this time. Ms. Nashir reports that the Airport will construct the employee café space and furnish the seating and Amoura will provide their restaurant equipment.

On March 1, 2016, the Airport Commission approved the new lease with Amoura, subject to waiver by the Board of Supervisors of the competitive process requirement of Administrative Code Section 2A.173. Amoura is scheduled to move into the new space in early October 2016, subject to approval of this ordinance by the Board of Supervisors. Ms. Nashir advises that this legislation was delayed from March 2016 till now, or approximately six months, as the Airport sought approval for more time-sensitive leases and the annual budget.

FISCAL IMPACT

New Lease with Amoura

The new Amoura lease would commence upon approval by the Board of Supervisors, on approximately October 1, 2016, and extend for a term of three years, expiring in September 2019, with two one-year options to extend the lease, for a total term of up to five years. Ms. Nashir advises that the two one-year options will allow the Airport flexibility if there are delays in construction or in completing a permanent space for an employee café. The Airport is currently considering a potential long-term permanent location for an employee café in Terminal 2 however; such plans are still being developed. Ms. Nashir further notes that is standard for tenants to amortize capital investments over the guaranteed lease term, which in this case would be three years.

Minimum Annual Guarantee and Tenant Facility Reimbursement Fee

The new lease with Amoura would be approximately 3,225 square feet in the pre-security Boarding Area C in Terminal 1. Under this lease, Amoura will pay a Minimum Annual Guarantee rent (MAG) to the Airport of $36,000 in the first year or $3,000 per month, and a Tenant Facility Reimbursement Fee of $24,000 annually or $2,000 per month, or a total of $60,000 in the first year. The Tenant Facility Reimbursement Fee represents reimbursement to the Airport for construction of the café space and adjacent seating areas, which cost a total of $366,000. However, as shown in Table 1 below, based on the proposed tenant reimbursement rates, Amoura will only repay $72,000 over three years and a total of $120,000 over five years, such that the Airport will subsidize at least $246,000 ($366,000 less $120,000) of the cost for improvements to the employee café.

Ms. Nashir advises that the Airport staff set the MAG and Tenant Facility Reimbursement Fee based on total targeted rent of $60,000 in the first year of the lease, assuming conservative forecasting of café sales of approximately $1,000,000 annually. Ms. Nashir advises that this rate of 6% approximately represents the lowest tier for food and beverage leases at the Airport[1]. The division of the $60,000 annual rent into $36,000 for rent and $24,000 for the facility fee is based on the typical proportion of rent to construction amortization. Ms. Nashir notes that the employee café is considered a service for Airport employees as Amoura provides lower prices, longer operating hours and is only accessible by badged employees and flight crews at the Airport.

[1] The lowest tier for food and beverage leases at the Airport is currently 6% for quick serve restaurants and markets and 8% for sit down restaurants.

Projected Revenues to the Airport

The MAG will be adjusted annually based on the Consumer Price Index. Table 1 below shows the total estimated revenue paid by Amoura to the Airport to be $183,272 over the three-year lease term. With the two one-year options, or a total five-year period, the Airport would receive a total of $311,129. However, this five-year total MAG rent and Tenant Facility Reimbursement Fee is still $54,871 less than the $366,000 the Airport will expend to construct the café space.

Table 1: Estimated Revenue paid by Amoura to Airport for Lease Term

Year	MAG Rent	Tenant Facility Reimbursement Fee	Total Revenue
Year 1	$ 36,000	$24,000	$60,000
Year 2	37,080	24,000	61,080
Year 3	38,192	24,000	62,192
Original Term Subtotal	*$111,272*	*$72,000*	*$183,272*
Option Year 1	$39,338	$24,000	$63,338
Option Year 2	40,518	24,000	64,518
Option Years Subtotal	*$79,856*	*$48,000*	*$127,856*
Total	**$191,129***	**$120,000**	**$311,129**

* Rent increases based on CPI are assumed at a rate of three percent.

POLICY CONSIDERATION

The proposed ordinance would waive the competitive bidding requirement to allow the Airport to award an interim employee café lease to Amoura for three years and two one-year options, on a sole source basis.

The Airport staff and Commission believe the current guaranteed three-year term under the Terminal 1 Redevelopment Program is not sufficient time for an attractive business opportunity that would be required through a full competitive RFP. However, the Airport constructed the new space for the employee café and is only being partially reimbursed for such expenses. Furthermore, without undertaking a competitive process, it is impossible to know if the Airport is receiving the best possible vendor and compensation for their employee café.

RECOMMENDATION

Approval of the proposed ordinance to waive the competitive bidding requirement to award an employee café lease is a policy consideration for the Board of Supervisors.