CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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July 10, 2015

TO: Budget and Finance Sub-Committee

FROM: Budget and Legislative Analyst

SUBJECT: July 15, 2015 Budget and Finance Sub-Committee Meeting

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Item 1 **File 15-0432**	**Department:** **Sheriff's Department (SHF)**

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the City's Administrative Code to add cancer, heart problems, and pneumonia presumptions for Sheriff's Department uniform employees in SFERS, and their beneficiaries, who apply for industrial disability retirement or death as a result of duty benefits.

Key Points

- Under California State law, Labor Code Section 3212.1, peace officers, including all deputized Sheriff personnel, are entitled to a presumption, for the purposes of workers' compensation claims, that any heart problems, pneumonia, or cancer are caused by and in the course of their employment.
- The San Francisco Sheriff's Department offers two distinct retirement programs, including the California Public Employees' Retirement System (CalPERS), and the San Francisco City and County Employees Retirement System (SFERS). Currently, only uniform employees enrolled in the CalPERS program are entitled to the cancer, heart problems, and pneumonia presumptions.
- Under the proposed ordinance, Sheriff uniform employees enrolled in the SFERS program must meet five requirements in order to be eligible for the cancer, heart problems, and pneumonia presumptions when applying for industrial disability retirement or death as a result of duty benefits.
- According to the proposed ordinance, adding the cancer, heart problem, and pneumonia presumptions for the Sheriff's Department's uniform employees who are members of SFERS would ensure equal treatment of uniform employees of the Sheriff's Department who are SFERS to the treatment afforded to uniform employees of the Police and Fire Departments who are members of SFERS.

Fiscal Impact

- Cheiron, the SFERS consulting actuary, estimates that the proposed ordinance would result in increased costs of approximately $133,833 over a five-year period.

Recommendation

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

MANDATE STATEMENT

In accordance with Charter Section A8.500, ordinance provisions already existing with respect to the Retirement System shall continue in force until amended or revoked by the Board of Supervisors as provided in this Section. The Board of Supervisors, by a vote of three-fourths of its members, can approve any and all ordinances necessary to carry into effect the provisions of Sections 12.100 to 12.103 and the Retirement System provisions of the Charter, as set forth in Appendix Sections A8.500 et. seq.; provided that the Board of Supervisors shall secure, through the Retirement Board, an actuarial report of the cost and effect of any proposed change in the benefits under the Retirement System, before enacting an ordinance or before voting to submit any proposed Charter amendment providing for such change.

BACKGROUND

Under California State law, Labor Code Section 3212.1, peace officers, including all deputized Sheriff personnel, are entitled to a presumption, for the purposes of workers' compensation claims, that any heart problems, pneumonia, or cancer are caused by and in the course of their employment. The State Labor Code states that pneumonia and heart problems that develop or manifest are presumed to be as a result of or during the course of employment. The cancer presumption is allowed provided that it develops or manifests during active service in the department or unit, and the member demonstrates that he or she was exposed while in the service of the department or unit to a known carcinogen as defined by the International Agency for Research on Cancer.

The San Francisco Sheriff's Department offers two distinct retirement programs. Uniform employees hired prior to January 7, 2012 are members of the California Public Employees' Retirement System (CalPERS), while uniform employees hired on or after January 7, 2012 are members of the San Francisco City and County Employees Retirement System (SFERS). Currently, only uniform employees enrolled in the CalPERS program are entitled to the cancer, heart problems, and pneumonia presumptions described above.

In 2014, the Board of Supervisors approved an ordinance to amend the City's Administrative Code to provide that for any uniformed member of the Police and Fire Departments enrolled in SFERS and diagnosed with cancer, pneumonia, or heart problems, the diagnosis would be presumed to be duty-related for the purposes of applying for industrial disability retirement benefits or survivor death as a result of duty benefits. Previously, members of the Police and Fire Departments enrolled in SFERS were only eligible for the pneumonia and heart problems presumptions and not for the cancer presumption.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the City's Administrative Code to add Sections 16.72-1 and 16.86-1 to add cancer, heart problems, and pneumonia presumptions for Sheriff's Department uniform employees who are members of SFERS, and their beneficiaries, who apply for industrial disability retirement or death as a result of duty benefits. These presumptions would apply if the Sheriff's Department uniform employee meets certain eligibility criteria. According to the proposed ordinance, adding the cancer, heart problem, and pneumonia presumptions for the Sheriff's Department's uniform employees who are members of the SFERS would ensure equal treatment of uniform employees of the Sheriff's Department who are members of the SFERS to the treatment afforded to uniform employees of the Police and Fire Departments who are members of the SFERS.

Under the proposed ordinance, Sheriff uniform employees enrolled in the SFERS program must meet the following requirements in order to be eligible for the cancer, heart problems, and pneumonia presumptions when applying for industrial disability retirement or death as a result of duty benefits:

1. Sheriff uniform employees must have served a total of five or more years with the Sheriff's Department. Sheriff uniform employees may use time served in a deputized position in another Sheriff Department in the State of California as well as time served in the San Francisco Sheriff Department to determine the total number of years served, provided that the Sheriff uniform employee was entitled to the same cancer presumption in his or her employment and became employed with the San Francisco's Sheriff's Department within six months of separating from the prior Sheriff department outside of San Francisco.
2. The application must be for industrial disability retirement or death as a result of duty benefits under the SFERS.
3. The cancer presumption applies only to applications for benefits in connection with cancer injuries or deaths filed on or after January 7, 2012. However, the cancer presumption does not apply to such an application, if as of the effective date of the proposed new Administrative Code Section 16. 72-1, the hearing officer assigned to hear the application under Charter Section 12.102, and Charter Section A8.518 either: (a) has rendered his or her initial decision on the application and the Sheriff uniform employee did not request rehearing within the time specified under the Charter or (b) has rendered an initial decision and the Sheriff uniform employee timely requested a rehearing under the Charter, and the hearing officer has issued a decision on rehearing.
4. For benefits related to heart problems or pneumonia, the presumption will only apply to injuries or deaths occurring on or after January 7, 2012, and only to applications for benefits under SFERS.
5. The cancer presumption will only apply if the Sheriff uniform employee (a) demonstrates exposure, while in the service of the Sheriff's Department, to a known carcinogen as defined by the International Agency for Research on Cancer; and (b) there was no evidence of cancer identified in the physical examination of the Sheriff uniform employee as part of his or her initial hire in the Sheriff's Department.

SFERS shall use the Sheriff uniform employee's eligible prior safety service in another sheriff department in California to measure the date upon which the Sheriff uniform employee would be qualified for service requirement.

FISCAL IMPACT

The San Francisco Employees' Retirement System consulting actuary, Cheiron, estimates that the proposed ordinance would result in increased costs to the City of approximately $133,833 over a five-year period. Because of the lack of historical disability data related to this newly-hired uniformed Sheriff employee group, Cheiron is unable to provide a longer-term estimate of the cost to the City resulting from the approval of the proposed ordinance.

RECOMMENDATION

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

Item 2 File 15-0701	Department: General Services Agency - Department of Public Works (DPW)

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would (1) authorize the Sheriff's Department to submit a funding application to the California Board of State and Community Corrections for $80,000,000 to be used towards the costs to replace County Jails No. 3 and 4 (Project); (2) outline the cash contributions funds for the proposed project; (3) conditionally approve the associated financing and construction documents; and (4) adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project.

Key Points

- The City's 2014-2023 Capital Plan recommends a project to replace County Jails #3 and #4. The proposed replacement jail is estimated to cost $240,000,000, and construction is estimated to commence in 2018 and to be completed in early 2021.
- Senate Bill 863 (SB 863) authorizes the State Public Works Board to issue up to $500,000,000 in lease revenue bonds, notes, or bond anticipation notes to finance the acquisition, design and construction of adult local criminal justice facilities. The State issued a Request for Proposals (RFP) on June 10, 2015 in which counties with more than 700,000 residents are eligible to request up to $80,000,000.

Fiscal Impact

- If the City is awarded the full requested amount of $80,000,000, it would offset the estimated $240,000,000 cost of developing and constructing the City's Jail Replacement Project by $80,000,000, reducing the City's total costs to $160,000,000.
- In order to secure the $80,000,000 in financing from the State, the City must provide a match of ten percent of the total estimated Jail Replacement Project cost using local funds. The required local match is $24,000,000, based on an estimated Jail Replacement Project cost of $240,000,000. The Board of Supervisors has previously appropriated $10,190,000 for the replacement of County Jails #3 and #4. If the funding application receives a conditional award of financing from the State, the Board of Supervisors would need to appropriate an additional $13,810,000 to the Project.

Recommendation

- Approve the proposed resolution. Such approval is contingent on the Board of Supervisors approval of the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

MANDATE STATEMENT

California Senate Bill 863 (SB 863) Request for Proposals (RFP) issued by the California Board of State and Community Corrections (BSCC) on June 10, 2015 requires all counties applying for funds under SB 863 to include a Board of Supervisors resolution with the county's proposal. The Board of Supervisors resolution must contain certain designations, authorizations and assurances specified in the RFP.

BACKGROUND

The Hall of Justice Replacement Program

The San Francisco Sheriff's Department operates six jails in San Francisco and San Mateo County. Two of the jails, County Jail #3 and County #4 are located on the sixth and seventh floors respectively of the Hall of Justice (HOJ) at 850 Bryant Street, which also houses the Superior Court, the District Attorney's office, the Adult Probation Department, and other City agencies. County Jail #3 and County Jail #4 have a combined total of 905 (826 rated) beds.[1]

Constructed in 1958, the HOJ has been found to be highly susceptible to severe structural and non-structural damage that could pose "appreciable life hazard to occupants" in the event of an earthquake. Engineering consultants evaluated several alternatives for seismically retrofitting the HOJ, but found that each option would require a major reconfiguration of the building space and/or significant costs.[2]

Replacement of County Jail #3 and County Jail #4

In response to the City's low inmate population and uncertainty about the impact of State Public Safety Realignment, the City's 2014-2023 Capital Plan recommends a project to replace County Jails #3 and #4 with fewer beds than the current number of beds. The Controller's Office forecasts the need for a replacement jail in 2020 (the tentative completion date of a replacement jail) containing 384 beds to replace the 905 beds in County Jails #3 and #4.[3] The Jail Replacement Project (Project) is the construction of a replacement jail estimated to cost $240,000,000[4] on adjacent property east of the current HOJ.[5]

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[1] The number of "rated" beds is the maximum number of beds or inmates that may be housed in a jail as established by State or local rating officials.

[2] *Update to the Jail Population Forecast,* Office of the Controller, City Services Auditor, June 16, 2015.

[3] *Update to the Jail Population Forecast,* Office of the Controller, City Services Auditor, June 16, 2015. The 2012-2021 Capital Plan's proposal for a replacement jail for County Jails #3 and #4 included one-to-one bed replacement, while the 2014-2023 Capital Plan includes less than one-to-one replacement.

[4] The current revised estimated cost of the Jail Replacement Project is $240,000,000, which is less than the estimated cost of $278,000,000 in the 2014-2023 Capital Plan.

[5] The adjacent property east of the current HOJ contains seven lots at the addresses 444, 450, 470 and 482 6th Street, and 804, 814-820, and 820 Bryant Street (Real Estate Division).

According to Ms. Jumoke Akin-Taylor, Project Manager at the Department of Public Works (DPW), construction of the proposed replacement jail is estimated to commence in 2018 and to be completed in early 2021. The estimated costs to construct the proposed Jail Replacement Project are shown in Table 1 below.

Table 1: Estimated Project Costs for the Proposed Jail Replacement Project

Project Element	Amount
Construction	$169,312,150
Project Control [i]	50,700,000
Site Control [ii]	14,375,000
Program Contingency	5,274,226
Bond Oversight	338,624
Total	**$240,000,000**

Source: Department of Public Works

i. Project control includes architectural and engineering, construction management, and project management services, as well as permits.

ii. Site control includes the cost of purchasing the proposed property, consultant contract expenses related to due diligence, relocation expenses for displaced occupants, and demolition.

Construction of the Jail Replacement Project would be financed by Certificates of Participation. According to Ms. Nadia Sesay, Director of Public Finance in the Controller's Office, the issuance of Certificates of Participation for construction of the $240,000,000 Project in FY 2016-17 as currently planned would result in annual debt service that does not exceed the City's 3.25% limit on the percentage of discretionary revenue that can be used to fund annual debt service costs.

In addition to the proposed issuance of Certificates of Participation for construction, the Board of Supervisors has appropriated $10,190,000 from the City's General Fund from FY 2011-12 to FY 2014-15 as a continuing project for architectural, engineering, and project management services related to the planning of the project. Ms. Akin-Taylor advises that $2,616,653 of the $10,190,000 in appropriated funds has been expended to date.

Senate Bill 863 Request for Proposals

Senate Bill 863 (SB 863), signed by the Governor on June 20, 2014, authorizes the State Public Works Board to issue up to $500,000,000 in lease revenue bonds to finance the acquisition, design and construction of adult local criminal justice facilities.[6] The California Board of State and Community Corrections (BSCC) issued a Request for Proposals (RFP) on June 10, 2015 in which counties with more than 700,000 residents are eligible to request up to $80,000,000 or

[6] Under SB 863, an "adult local criminal justice facility" may include any custodial housing, reentry program, mental health, or treatment space necessary to manage the adult offender population.

up to 90% of the estimated project costs, whichever is less, of the available SB 863 funding. SB 863 financing is distributed to counties for their jail projects. Participating counties are not responsible for any repayment of such State funds.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) authorize the Sheriff's Department to submit a funding application to the California Board of State and Community Corrections for $80,000,000 to be used towards the costs to replace County Jails No. 3 and 4 (Project); (2) outline the cash contributions funds for the proposed project; (3) conditionally approve the associated financing and construction documents; and (4) adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the project.

Application for Funding

The proposed resolution would authorize the Sheriff's Department to submit a funding application for $80,000,000 of financing for the City's Jail Replacement Project. The receipt of $80,000,000 in financing from the State will leave $160,000,000 to be financed through the City's issuance of Certificates of Participation. Proposals for projects are due to the State by August 28, 2015, and conditional awards are to be announced on November 12, 2015.

Funding preference will be given to counties that are most prepared to proceed successfully with this financing in a timely manner. Readiness to proceed, as defined in the State RFP, includes (1) approval of a resolution by the Board of Supervisors that authorizes adequate matching funds for the City's Jail Replacement Project, and approves project documents; and (2) documentation evidencing compliance with the California Environmental Quality Act (CEQA). Approval of the subject resolution satisfies both of these requirements.

Approval of the subject resolution by the Board of Supervisors authorizes the City to proceed with the Jail Replacement Project if the City is awarded and accepts the SB 863 financing. According to Mr. John Updike, Director of Real Estate, future Board of Supervisors approval is necessary to purchase the property planned on Bryant Street for construction of the Jail, to issue Certificates of Participation to finance the Project, and for professional services for the project exceeding $10 million.

Conditionally Approve Construction and Financing Documents

The proposed resolution authorizes the execution of the Construction Documents and Financing Documents[7], which are required to proceed with the Project. Under the financing structure authorized by SB 863, the State will own the completed jail facility during the time in which the State lease revenue bonds are being repaid by the State, and the City leases the jail from the State during this period. Ownership of the jail will revert to the City once the lease revenue bonds have been paid by the State. The Construction and Financing Documents detail this ownership and leasing structure between the State and the City for the City's proposed Jail Replacement Project.

Adopt Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

The application for State financing requires that the City provide evidence that the Jail Replacement Project complies with the California Environmental Quality Act (CEQA). On June 25, 2015, the San Francisco Planning Commission approved the Final Mitigated Negative Declaration (FMND) for the Project and prepared a Mitigation Monitoring and Reporting Program (MMRP) in compliance with CEQA.

The Board of Supervisors is scheduled to review the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program at a public hearing on July 21, 2015.

FISCAL IMPACT

The proposed resolution would authorize the City to submit a funding application to the State for $80,000,000 under SB 863 to fund the construction of the City's proposed Jail Replacement Project to replace County Jails #3 and #4 at the Hall of Justice. If the City is awarded the full requested amount of $80,000,000, it would partially offset the estimated $240,000,000 construction cost of the City's Jail Replacement Project, reducing the City's construction costs to $160,000,000. The State does not require the City to repay any of the State funds which are awarded to the City for the Jail Replacement Project.

In order to secure the $80,000,000 in State funds, the City must provide a match of ten percent of the $240,000,000 estimated Jail Replacement Project construction cost. Therefore, the required local match is $24,000,000. The Board of Supervisors has previously appropriated $10,190,000 for the replacement of County Jails #3 and #4. Therefore, the Board of Supervisors would need to appropriate an additional $13,810,000 to the Project.

[7] Construction Documents include a Project Delivery and Construction Agreement, a BSCC Jail Construction Agreement, and a Right of Entry for Construction and Operation. The Financing Documents include a Ground Lease, Facility Lease, and a Facility Sublease.

SUMMARY

In summary, the proposed resolution authorizes the City to submit an application to the State for $80,000,000 in SB 863 funds to pay a portion of the construction costs of a new jail to replace County Jails #3 and #4. If the State conditionally awards funding to the City, City staff shall submit legislation to the Board of Supervisors authorizing the appropriation of $13,810,000 in commercial paper to the Jail Replacement Project.

Approval of the proposed resolution includes:

- Adoption of the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program in compliance with CEQA;
- Authorization to proceed with the Jail Replacement Project if (a) the City is awarded and accepts the SB 863 financing; (b) acquires the property to construct the Jail Replacement Project; (c) obtains sufficient financing to development and construction of the Jail Replacement Project, and (d) approves the professional services design contract if the contract exceeds $10,000,000; and
- Approval of the form of the Construction and Financing Documents.

RECOMMENDATION

Approve the proposed resolution. Such approval is contingent on the Board of Supervisors approval of the Final Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

Item 4 File 15-0509	Department: San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a new, five-year lease between the Airport and WDFG North America, LLC to provide a specialty retail space at a post-security location near Boarding Areas E and F in Terminal 3, with a total minimum rent amount of $813,210 over the five-year term of the lease.

Key Points

- In September 2014, the Airport Commission issued a competitive Request for Proposals (RFP) for a combined Terminal 3 Specialty Retail Stores Lease.
- In December 2014, the Airport Commission authorized revised lease specifications, minimum qualifications, and proposal requirements to be contained in the RFP for the separated Terminal 3 Specialty Retail Stores Leases A and B.
- In January 2015, seven vendors submitted proposals for the Terminal 3 Specialty Retail Store Lease A, which were evaluated by a three-member scoring panel.
- In February 2015, WDFG North America, LLC was determined to be the highest-ranking, responsive, and responsible proposer by the panel, and was awarded the lease by the Airport Commission.

Fiscal Impact

- The proposed resolution would require WDFG North America, LLC to pay the Airport a rent amount that is the greater of: (1) the Minimum Annual Guarantee of $162,642 per year (adjusted annually to reflect inflation as calculated by the Consumer Price Index) or (2) percentage rent based on annual gross revenues (see Table 2).
- The proposed resolution will generate minimum revenues paid by WDFG North America, LLC to the Airport of $813,210 total over the next five years. The Budget and Legislative Analyst's Office notes that the actual rent paid by WDFG North America, LLC to the Airport will be higher since the Minimum Annual Guarantee will be increased annually to reflect inflation as calculated by the Consumer Price Index.

Recommendation

- Approve the proposed resolution as amended.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

City Charter Section 9.118(a) states that agreements entered into by a department, board or commission that will generate revenue in excess of $1 million or any modification of that contract is subject to Board of Supervisors approval.

Background

In 2014, the Airport issued a competitive Request for Proposals (RFP) for a retail store to be provided at a post-security location near Boarding Areas E and F of Terminal 3.

Seven vendors submitted proposals which were evaluated by a three-member scoring panel comprised of two Airport staff and one architect. The proposals were evaluated using five criteria: proposed concept, design intent and capital investments, customer service and quality control, business plan, and Minimum Annual Guarantee (MAG) offer. The panel determined that WDFG North America, LLC received the highest score. Table 1 below shows the proposed MAG and score for each proposer.

Table 1: Vendor Proposals and Final Scores

No.	Proposer	Concept Name	MAG Offer	Final Score
1	Genesco, Inc.	Johnston & Murphy	$100,000	73.22
2	McEvoy of Marin, LLC	McEvoy Ranch	$75,000	67.28
3	RDG Concessions, LLC	Pacific Outfitters	$75,000	67.74
4	WDFG North America, LLC	Jo Malone, Tom Ford, Aveda	$162,642	81.73
5	Brookstone SFO T-3, LLC	Brookstone	$125,000	77.55
6	Pacific Gateway Concessions, LLC	Ghirardelli	$161,000	80.30
7	Melshire DFW, L.P.	Natalie's Candy Jar	$96,000	74.37

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new five-year lease between the Airport and WDFG North America, LLC for WDFG to sell duty-paid products through three distinct specialty retail brands at a post-security location near Boarding Areas E and F of Terminal 3. Table 2 below summarizes the provisions of the subject lease.

Table 2: Summary of Lease Provisions

Term	Five years from approximately July 2015 through June 2020
Options to Extend	One (1) two-year option to extend exercisable at the sole discretion of the Airport Commission
Premises	Approximately 1,111 square feet of post-security space near Boarding Areas E and F of Terminal 3
Rent	Greater of the Minimum Annual Guarantee or percentage rent
Minimum Annual Guarantee (MAG)	$146.39 per square foot - $162,642 per year
MAG Adjustment	Adjusted annually based on the Consumer Price Index (CPI)
Percentage Rent Paid to the Airport by WDFG	12 percent of revenues up to and including $500,000
	Plus 14 percent of revenues between $500,001 and $1,000,000
	Plus 16 percent of revenues greater than $1,000,000
Promotional Fee	$1 per square foot totaling $1,111 per year
Deposit Amount	50 percent of MAG in effect when lease commences, or $81,321
Minimum Required Initial Investment by WDFG	$350 per square foot totaling $388,850

FISCAL IMPACT

Under the proposed lease, WDFG North America, LLC is required to pay the Airport the greater of the initial MAG amount of $162,642, or percentage rent as shown in Table 2 above. The subject lease will generate MAG revenues payable by WDFG North America, LLC to the Airport of at least $813,210 over the next five years, excluding annual CPI adjustments.

RECOMMENDATION

Approve the proposed resolution.

Item 5 File 15-0649	Department: General Services Agency - Department of Public Works (DPW)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes DPW to retroactively accept and expend \$11,420,360 in Federal Highway Bridge Replacement and Rehabilitation Program grant funds in order to reimburse the City for a portion of the cost of its settlement with Mitchell Engineering/Obayashi Corporation, Joint Venture, (MEOC), its principal contractor for the 4th Street Bridge.

Key Points

- In 2012, the Board of Supervisors authorized a \$14,950,000 settlement with MEOC, for direct costs and delay damages associated with the 4th Street Bridge Project. The Board also directed DPW to apply for eligible reimbursements from Caltrans.

Fiscal Impact

- The Federal Highway Administration (FHWA) authorized a grant of \$11,420,360 equal to 80 percent of \$14,275,450 in costs eligible for reimbursement by FHWA. Eligible costs consist of MEOC settlement costs and legal expenses, less costs related to transit (rather than highway) uses.

Recommendations

- Amend the proposed resolution to state on page 1, line 21, that the correct grant amount is \$11,420,360, and not \$11,168,368.
- Approve the proposed resolution as amended.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

City Administrative Code Section 10.170-1 states that accepting Federal, State, or third-party grant funds in the amount of $100,000 or more, including any City matching funds required by the grant, is subject to Board of Supervisors approval.

Background

Before construction of the 4th Street Bridge Seismic Retrofit and Rehabilitation Project was completed and opened to traffic in 2006, the project experienced significant delays and cost overruns. In 2008, the principal contractor, Mitchell Engineering/Obayashi Corporation, Joint Venture, (MEOC), filed a lawsuit against the City for direct costs and delay damages. In January 2012, the Board of Supervisors approved an ordinance authorizing a settlement with and payment to MEOC in the amount of $14,950,000.

The ordinance also directed the Director of the Department of Public Works (DPW) to apply for reimbursement from Caltrans for eligible costs. Caltrans and the Federal Highway Administration (FHWA) agreed to reimburse the City $11,420,360, or 80 percent of the $14,275,450 in costs deemed eligible for reimbursement, as detailed in Table 1 below. The City received the payment in February 2015.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes DPW to retroactively accept and expend $11,420,360 in Federal Highway Bridge Replacement and Rehabilitation Program grant funds in order to reimburse the City for a portion of the cost of its settlement with MEOC, its principal contractor for the 4th Street Bridge.

The proposed resolution should be amended to state on page 1, line 21, that the correct grant amount is $11,420,360, and not $11,168,368.

FISCAL IMPACT

The Federal grant amount of $11,420,360 is equal to 80 percent of the settlement costs incurred by the City for the 4th Street Bridge Project that were deemed eligible for reimbursement, or $14,275,450, as shown in Table 1 below.

Table 1: Federal Grant Amount to Be Received By City

Total Settlement Amount	14,950,000
Additional Legal Costs	1,660,171
Portion of Settlement Costs Related to Non-Highway Uses[1]	(2,334,721)
Total Costs Allowable for Reimbursement	**14,275,450**
Federal Grant Amount (80% of Allowable Reimbursement Amount)	**11,420,360**

RECOMMENDATIONS

1. Amend the proposed resolution to state on page 1, line 21, that the correct grant amount is $11,420,360, and not $11,168,368.

2. Approve the proposed resolution as amended.

[1] Costs related to transit uses, including larger steel pipe piles to allow Muni light rail vehicles to use the bridge and the strengthening of the movable steel span to hold the light rail tracks, are eligible for reimbursement by SF Municipal Transportation Agency (SFMTA) and Caltrans. SFMTA has agreed to pay the City this portion of the settlement costs.

Item 6 **File 15-0728**	**Department:** Administrative Services, Real Estate Division

EXECUTIVE SUMMARY

Legislative Objectives

- Ordinance authorizing the sale, by public competitive bid, of City-owned property located at 30 Van Ness Avenue for not less than $87,000,000; authorizing the use of a portion of the proceeds from the sale for the defeasance of up $31,770,000 of outstanding principal of Certificates of Participation (COPs); excluding the sale from the requirements of the Surplus Property Ordinance; affirming the Planning Department's determination under the California Environmental Quality Act (CEQA); and adopting findings that the sale is consistent with the General Plan and Planning Code.

Key Points

- 30 Van Ness Avenue, located on the northeast corner of Van Ness Avenue and Market Street, is a five-floor 180,363 square foot City-owned office building, housing five City departments. The City has a total capital investment of approximately $44,139,800 in the 30 Van Ness Avenue building, including a current outstanding principal debt service balance of $31,770,000.
- On April 13, 2015, the City's Real Estate Division, working with the selected real estate investment brokers, Newmark, Cornish & Carey, put 30 Van Ness on the market for sale. Based on several iterations, the City's review committee has now selected the top four bid responses, all of which are equal to or greater than $87,000,000.

Fiscal Impact

- If the 30 Van Ness building is sold for $87,000,000, after $435,000 for broker commission, $40,000 of marketing costs and paying off the outstanding debt service balance of $31,770,000, the City will receive $54,755,000 in net sale proceeds.

Policy Consideration

- The proposed ordinance would exclude the sale of 30 Van Ness Avenue from the requirements of the City's Surplus Property Ordinance as the sale proceeds would provide funds for new City offices.

Recommendations

- Amend the proposed ordinance to require subsequent approval by the Board of Supervisors of the specific preferred bid to sell 30 Van Ness Avenue, including the name of the specific developer, the sales price, City leaseback provisions, percentage of affordable housing, and net sales revenues that the City would receive.
- Except for excluding the sale of 30 Van Ness Avenue from the requirements of the City's Surplus Property Ordinance under Administrative Code Chapter 23A, which is a policy decision for the Board of Supervisors, approve the proposed ordinance as amended.

MANDATE STATEMENT

Mandate Statement

City Administrative Code Section 23.3 provides that the Director of Property may convey (sell) any real property owned by the City, after the Board of Supervisors determines that the public interest or necessity will not be inconvenienced by the conveyance, authorizes the means of conveyance, whether by public auction, competitive bidding process or other means of disposition and approves the conveyance. In accordance with Section 23.3, before the Board of Supervisors approves the conveyance, the Director of Property must appraise the fair market value of the City's real estate and every conveyance, other than from public auction or competitive bidding, must be sold for at least 100% of the Director of Property's appraisal, except when the Board of Supervisors determines either that (a) a lesser sum will further a proper public purpose, or (b) based on substantial evidence that such conveyance is reflective of the fair market value.

In addition, City Administrative Code Chapter 23A provides that it is City policy that the proceeds from the sale of City surplus property be used to finance affordable housing in San Francisco.

BACKGROUND

30 Van Ness Avenue, located on the northeast corner of Van Ness Avenue and Market Street, is a five-floor 180,363 square foot City-owned office building. In May, 2001, the Board of Supervisors approved a resolution (Resolution 344-01) authorizing the City to issue up to $35,950,000 of Certificates of Participation (COPs) to partially finance the City's purchase and renovation of the property at 30 Van Ness Avenue. In October of 2001, the City purchased 30 Van Ness from the Herbst Foundation for $32,000,000 and expended an additional $5,830,000, for tenant improvements, for a total initial cost of $37,830,000.

In November, 2006, the Board of Supervisors approved a resolution (Resolution 680-06) authorizing the City to issue up to $162,000,000 of additional COPs to finance the acquisition and renovation of additional City properties[1]. The $162,000,000 COPs included $6,309,800 to renovate the 30 Van Ness City office building. Therefore, the City has a total capital investment of approximately $44,139,800 ($37,830,000 + $6,309,800) in the 30 Van Ness Avenue building. The City's total current outstanding principal balance on the COPs related to 30 Van Ness is $31,770,000, with debt service payments for 30 Van Ness of approximately $3,000,000 annually.

Decision to Sell 30 Van Ness Avenue

City employees from the Department of Public Works, Department of Public Health, Department of Emergency Management, Office of Civic Engagement and Immigrant Affairs, and Administrative Services' Contract Monitoring Division are currently located in the 30 Van Ness

[1] Major acquisitions of City properties with the $162,000,000 of COPs in 2006 included the purchase of 1 South Van Ness Avenue and 1650 Mission Street.

City office building. In addition, the building includes privately leased spaces on the ground floor and one suite on the second floor. All the private leases expire before December 31, 2018.

Mr. John Updike, Director of Real Estate, advises that the current offices at 30 Van Ness are dysfunctional because (a) the interior layout is inefficient, given current fire code exiting requirements, (b) the building systems are not effective, and (c) this modest 5-story office building, including Walgreens on the ground floor, does not take full advantage of the transit-rich location at Van Ness and Market which could support a larger, residentially focused mixed use development. In addition, Mr. Updike notes that the City is currently pursuing options to consolidate City office functions with improved resiliency and enhanced customer service capabilities elsewhere in the Civic Center. And finally, Mr. Updike advises that the current economic conditions are very favorable to sell real estate to maximize the City's monetary interests in the 30 Van Ness property.

Selection of Real Estate Investment Brokers

In 2013, the City's Real Estate Division prequalified four firms to provide real estate investment brokerage services for the City. In early 2015, based on a competitive process with these four prequalified firms, the Real Estate Division selected the lowest bidder, Newmark, Knight, Frank, Cornish & Carey (Newmark, Cornish & Carey) to provide brokerage services for the sale of 30 Van Ness. Newmark, Cornish & Carey bid the lowest commission of 0.5% of the sale price.

Offering of 30 Van Ness Avenue

On April 13, 2015, the City's Real Estate Division, working with the selected real estate investment brokers, Newmark, Cornish & Carey, issued a preliminary offer of interest to sell the City-owned property at 30 Van Ness Avenue. Over 100 interested parties responded to this preliminary offer. Then, an initial call for bid offers was issued to these interested parties and by the due date of May 28, 2015, the City received 15 offers to purchase 30 Van Ness Avenue.

Based on evaluation by the City's review committee[2], the 15 bid offers were reduced to 11 offers. On June 8, 2015, five questions were sent to these 11 offerers, requesting responses by June 12, 2015, regarding (1) affordable housing provisions[3], (2) plans to enhance transit experience at Market and Van Ness, (3) leaseback terms and conditions with the City, (4) entitlement provisions in San Francisco, and (5) source of capital financing.

The City's review committee evaluated the 11 responses and on June 16, 2015 invited the top eight offerers, all of which included housing and some of which included office use proposals, to further respond with their: (1) best offer price with 12% affordable housing; and (2) best offer price with 20% affordable housing. The City received six responses by the June 19, 2015 due date.

[2] The City's review committee consisted of representatives from the Real Estate Division, Economic and Workforce Development, Controller's Office, Office of Public Finance, Planning Department, Mayor's Office of Housing, and Mayor's Budget Office, with advisory services provided by Newmark, Cornish & Carey.

[3] Affordable housing is defined as persons making no more than 55% of the Area Median Income (AMI). In 2015, a 4-person household making 55% of the AMI would be $56,050.

The City's review committee has now selected the top four responses, all of which have offered to purchase the 30 Van Ness City-owned building at a price equal to or greater than $87,000,000. According to Mr. Updike, all four respondents have committed to a primarily residential redevelopment of the site, including approximately 600 units of housing.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would:

(a) Authorize the sale, by public competitive bid, of City-owned property located at 30 Van Ness Avenue for not less than $87,000,000;

(b) Authorize the use and appropriation of a portion of the proceeds from the sale for the defeasance of up to $31,770,000 of outstanding principal of Certificates of Participation;

(c) Exclude the sale from the requirements of the City's Surplus Property Ordinance under Administrative Code Chapter 23A;

(d) Affirm the Planning Department's determination under the California Environmental Quality Act (CEQA); and

(e) Adopt findings that the sale is consistent with the General Plan and the eight priority policies of Planning Code Section 101.1.

The proposed ordinance specifies that the Board of Supervisors finds that the public interest or necessity will not be inconvenienced by the sale of the 30 Van Ness Avenue property, as required under City Administrative Code Section 23.3.

Under the proposed ordinance, the Board of Supervisors would authorize the Director of Property, on behalf of the City, to sell 30 Van Ness Avenue, through a competitive bid process without subsequent approval or confirmation by the Board of Supervisors. The ordinance specifies that (a) the sale price must be equal to or greater than $87,000,000; (b) the sale must be effectuated through a conveyance deed imposing redevelopment requirements that meet or exceed minimum affordable housing provisions and obligations as set forth in the Market Octavia Area Plan in Planning Code Section 416; and (c) the sale includes a holdover lease for the City. If approved, the Director of Property would be authorized to take any and all actions deemed necessary or advisable to secure bids for the sale of 30 Van Ness, accept the most responsive bid[4], execute a purchase and sale agreement and Holdover Lease, and close escrow for the sale of the property. Within 30 days of the sale, the Director of Property would report the final sales price and conditions of the sale in writing to the Clerk of the Board of Supervisors.

[4] Mr. Updike advises that the most responsive bid would be based on numerous factors, including (1) proposed sales price, (2) financial capacity of the acquiring entity to effect a close of escrow, (3) amount of the non-refundable deposit, (4) time required for due diligence, (5) specific terms of City leaseback agreement, (6) buyer's level of commitment regarding their future development with respect to affordability, and (7) investment in improving the transit experience at the Market/Van Ness station.

According to Mr. Updike, the Real Estate Division is requesting the Board of Supervisors approval of the proposed ordinance to authorize the sale by public competitive bid, rather than requesting the Board of Supervisors subsequent approval of a specific development offer and price for the sale of 30 Van Ness, based on the advice of the City's real estate broker team. Mr. Updike explains that there is a need to show the potential bidders for purchase of the 30 Van Ness building that the City is serious and sincere about selling this parcel for private development and doing so will enhance the final bids received for the sale of the property.

Affordable Housing Obligations

The proposed ordinance specifies that the conveyance deed will impose redevelopment requirements that meet or exceed the minimum affordable housing provisions and obligations as set forth in the Market Octavia Area Plan in Planning Code Section 416. Planning Code Section 416 requires inclusion of 12% affordable housing on site or 20% affordable housing off site at 55% of Area Median Income (AMI). If the proposed development includes 600 units of housing, 12% would mean 72 units of affordable housing and 20% would mean 120 units of affordable housing.

Mr. Updike notes that with the reinvestment of future potential City fees and property sales revenues that exceed the threshold[5], the 30 Van Ness redevelopment project could potentially include 33% (or approximately 200 units) of affordable housing on this site.

Holdover Lease for City

The proposed ordinance would authorize the Director of Property to enter into a holdover office lease, to be included in the Purchase and Sale Agreement, to allow City departments to continue to occupy 30 Van Ness Avenue office building, without subsequent approval by the Board of Supervisors. Mr. Updike advises that this holdover lease would extend from the close of escrow, estimated to occur in early September, 2015, through December 31, 2018, with two six-month options for renewal, or potentially through December 31, 2019. Under the holdover lease, the City would be responsible for paying for all utilities, custodial, engineering, maintenance, property management and security services.

Mr. Updike advises that the Real Estate Divisions' budget for FY 2015-16 and FY 2016-17 anticipates continued work order rent payments from the departments that occupy 30 Van Ness to cover the cost of debt service and maintenance of the building. Under the proposed sale and related holdover lease, the City would defease the existing debt on 30 Van Ness, such that the amount paid by City departments previously used for debt service payments would be available to pay rent to a new landlord. The current annual debt service for 30 Van Ness is approximately $3 million. The leaseback cannot cost the City more than the Real Estate's budget, without subsequent Board of Supervisors appropriation approval.

[5] Under the proposed ordinance, the first $122,000,000 of proceeds from the sale of 30 Van Ness and 1660 and 1680 Mission Streets, would be deposited into a continuing project account to repay debt and develop other office space to accommodate City functions being relocated. Sales proceeds that exceed the first $122,000,000 would be used to develop affordable housing at these or other sites.

Therefore, City departments would continue to pay approximately $27 per square foot per year, including all related utility and maintenance costs to occupy 30 Van Ness. In contrast, the current fair market value for all leases in the Civic Center/Van Ness area is approximately $46 per square foot per year, which is $19 or 70% higher. Mr. Updike anticipates that the City will receive more favorable leaseback terms in the final offer.

Use and Appropriation of Funds to Repay Certificates of Participation

As discussed above, the City issued COPs of $35,950,000 in 2001 and $6,309,800 in 2006 related to the purchase and renovation of 30 Van Ness. The current outstanding principal for the 2001 COPs is $25,870,000 and the current outstanding principal for the 2006 COPs is $5,900,000, or a total aggregate amount of $31,770,000. Including related expenses of approximately $20,000, a total of $31,790,000 would be appropriated after the sale of 30 Van Ness to fully pay the remaining debt and related costs on the COPs. The proposed ordinance also authorizes and appropriates potential accrued interest, if redeemed after September 1, 2015 when additional interest accrues on the remaining outstanding COP debt.

Surplus Property Ordinance

As noted above, under Administrative Code Chapter 23A, it is City policy that the proceeds from the sale of City surplus property be used to finance affordable housing in San Francisco. The proposed ordinance states that the provisions of Administrative Code Chapter 23A shall not apply to the sale of the 30 Van Ness Avenue property. Rather, the ordinance states that the proceeds from the sale of 30 Van Ness, together with the potential future proceeds from the sale of City-owned properties at 1660 and 1680 Mission Streets, would be deposited into a continuing project account that would be established by the Controller. The first $122,000,000 deposited into this account would be used to develop other office space to accommodate City functions relocated from these City facilities and to repay debt on the properties sold. Sales proceeds that exceed the first $122,000,000 would be used to develop affordable housing at these or other sites.

CEQA and Planning Approvals

Mr. Updike reports that on July 10, 2015, the Planning Department will determine that the sale of 30 Van Ness Avenue is categorically exempt from CEQA and is consistent with the City's General Plan and the eight priority policies of Planning Code Section 101.1.

FISCAL IMPACT

Appraisal Value of Property

As noted above, Section 23.3 of the Administrative Code states that before the Board of Supervisors approves a conveyance resolution, the Director of Property must appraise the fair market value of the City's real estate and every conveyance, other than from public auction or competitive bidding, must be sold for at least 100% of the Director of Property's appraisal. The proposed 30 Van Ness sale will be based on competitive bidding, and is therefore not subject to being sold for at least 100% of the appraisal value. Nonetheless, as of June 15, 2012, the Director of Property secured an appraisal from CBRE, Inc. of 30 Van Ness Avenue, which determined the value of this City office building to be $43,500,000. As noted above, the proposed ordinance would approve the sale of 30 Van Ness for not less than $87,000,000, which is $43,500,000 or 100% more than the appraisal of $43,500,000 conducted three years ago.

Commission and Fees

Based on an agreement between the Real Estate Division and the brokerage firm, Newmark, Cornish & Carey regarding the sale of 30 Van Ness Avenue, the City will pay Newmark, Cornish & Carey (a) up to $40,000 for marketing materials based on actual costs, and (b) 0.5% commission based on the sale price of the 30 Van Ness building. If the 30 Van Ness building is sold for $87,000,000, the commission to Newmark, Cornish & Carey would be $435,000.

Net Revenues to the City

As noted above, in 2001 and 2006, the City purchased and renovated 30 Van Ness for a total capital investment of approximately $44,139,800 ($37,830,000 + $6,309,800). The City currently owes a total of $31,770,000 of outstanding COPs, which would be fully repaid after the sale of the property. Therefore, as shown in the Table below, if the City sells 30 Van Ness at the minimum price of $87,000,000, it will result in $54,755,000 in available net sale proceeds for the City. Mr. Updike anticipates that the City will receive more than the $87,000,000 minimum sale price reflected in the Table.

Table: Sale Proceeds and Expenses for 30 Van Ness

Minimum Sale Price	$87,000,000
Less Broker Commission	(435,000)
Less Broker Marketing Fee (not to exceed)	(40,000)
Net Sale Proceeds	$86,525,000
Repayment of COPs (2001 and 2006)	(31,770,000)
Total Net Proceeds to City	**$54,755,000**

POLICY CONSIDERATION

The proposed ordinance would exclude the sale of 30 Van Ness Avenue from the requirements of the City's Surplus Property Ordinance under Administrative Code Chapter 23A.

On December 9, 2014, the Board of Supervisors approved an ordinance (File 14-1120; Ordinance 254-14) for a Conditional Land Disposition and Acquisition Agreement with Related California Urban Housing, LLC (Related)[6] for the City's acquisition of part of a 2.5 acre site at 1500-1580 Mission Street, including a Construction Management Agreement for the development of a City office building on this site. The site is currently a Goodwill Industries operations center at Van Ness Avenue and Mission Streets. Related plans to develop this site to

[6] Related California Urban Housing LLC created a subsidiary, Goodwill SF Urban Development to acquire and develop this site.

include (a) an approximate 463,300 gross square foot 18 story City-owned office building along 11th street and (b) an approximate 38 story, 550 multifamily residential unit development, with ground level retail, along Van Ness Avenue.

The City anticipates consolidating office space for five major departments into this new City-owned office building, including the (a) Department of Public Works, (b) Department of Building Inspection, (c) City Planning Commission, (d) Retirement and (e) Health Services Systems, which are currently in City-owned space or leasing office space in the Civic Center. The new City office building's total project cost is $326,690,953. At the time of approval of Ordinance 254-14, one of the major sources of funding identified for the land disposition and development of this new City office building was $122,000,000 from the sale of three existing City office buildings. The three existing City office buildings proposed for sale were (1) 30 Van Ness (subject of the proposed ordinance), (2) 1660 Mission Street, and (3) 1680 Mission Street, which are yet to be approved for sale by the City. As noted above, the proposed ordinance would approve the sale of 30 Van Ness for not less than $87,000,000, resulting in net proceeds of an estimated $54,755,000, or approximately 45% of the $122,000,000 estimated cost needed for the development of a new City office building.

RECOMMENDATIONS

1. Amend the proposed ordinance to require subsequent approval by the Board of Supervisors of the authorization to sell 30 Van Ness Avenue, including the name of the specific preferred respondent/developer, the sales price, City leaseback provisions, percentage of affordable housing, and net sales revenues that the City would receive.
2. Except for excluding the sale of 30 Van Ness Avenue from the requirements of the City's Surplus Property Ordinance under Administrative Code Chapter 23A, which is a policy decision for the Board of Supervisors, approve the proposed ordinance as amended.