

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

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May 31, 2013

**TO:** Budget and Finance Committee  
**FROM:** Budget and Legislative Analyst  
**SUBJECT:** June 5, 2013 Budget and Finance Committee Meeting

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**Items 1 and 2**  
**Files 12-1186 and 12-1187**

*(Continued from January 30, 2013)*

**Department:**  
Municipal Transportation Agency (SFMTA)

## EXECUTIVE SUMMARY

### Legislative Objective

- 12-1186: The proposed resolution would approve a 10-year Feeder agreement retroactively from July 1, 2010 through June 30, 2020 between the City, on behalf of the Municipal Transportation Agency (SFMTA), and Bay Area Rapid Transit (BART), in which BART partially reimburses SFMTA for the costs of passenger transfer trips between the San Francisco Municipal Railway (MUNI) and BART.
- 12-1187: The proposed resolution would approve the Fast Pass agreement between the City, on behalf of SFMTA, and BART, for a 4.5-year term retroactive to January 1, 2010 through June 30, 2014, in which SFMTA partially reimburses BART for BART trips in San Francisco taken by Adult Fast Pass users who purchase the Fast Pass from SFMTA with the option to take unlimited monthly rides on BART within San Francisco.

### Key Points

- A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). The Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and bring back both agreements jointly to the Board of Supervisors for approval.
- Under the proposed Feeder agreement (File 12-1186), BART pays SFMTA to offset a portion of SFMTA's costs to provide MUNI feeder services to BART stations located in San Francisco. The proposed Feeder agreement includes retroactive payments by BART to SFMTA of \$2,654,357 in FY 2010-11 and \$2,667,629 in FY 2011-12. From FY 2012-2013 through FY 2019-20, payments are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer Price Index (CPI), up to a maximum of 5 percent annually. Feeder ridership changes would be calculated using the number of MUNI feeder trips taken by passengers who then transfer to BART which were tracked on the Clipper Card for the two preceding years.
- Under the proposed Fast Pass agreement (File 12-1187), SFMTA pays BART \$1.19 for each BART trip in San Francisco using the Fast Pass with the option to take unlimited trips on BART within San Francisco, retroactively from January 1, 2010 through June 30, 2012, increasing to \$1.21 per BART trip retroactively from July 1, 2012 through June 30, 2014. In response to the Budget and Legislative Analyst's recommendation, BART and SFMTA revised the proposed annual reimbursement cap from \$14 million under the original proposal to \$10.5 million under the revised proposal.

### Fiscal Analysis

- 12-1186: Payments by BART to SFMTA for SFMTA providing feeder service to BART stations in San Francisco are estimated to total \$32,069,140 under the proposed 10-year Feeder agreement assuming a 2.88 annual increase in CPI and a 3 percent ridership increase, resulting in annual increases in payments of five percent due to the cap limiting increases in payments to five percent annually.

- 12-1187: SFMTA would be required to reimburse BART an estimated \$42,763,704 under the proposed Fast Pass agreement, less the \$8,690,297 which has previously been paid by SFMTA to BART for a net retroactive payment by SFMTA to BART of \$34,073,407.
- Based on the estimated payments from FY 2010-11 through FY 2013-14 for both the proposed Fast Pass, an estimated payment of \$37,498,332 by SFMTA to BART and the Feeder agreement, an estimated payment of \$11,054,057 by BART to SFMTA, SFMTA would pay approximately \$26,444,275 in total net payments to BART, the overlapping time period of the proposed Fast Pass and Feeder agreements.

### **Policy Considerations**

- 12-1186: The proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. However, there is no limit to the decrease in annual payments. Since FY 1998-99, the annual change in feeder ridership has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends a five percent floor on decreases in payments from BART to SFMTA to stabilize Feeder payments by BART to SFMTA.
- 12-1187: In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of the Fast Pass agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual reimbursement payment cap of \$10,500,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.
- 12-1187: Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing a Fast Pass with the option to take unlimited monthly rides on BART within San Francisco are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

### **Recommendations**

#### 12-1186

- Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than five percent on decreases in payments from BART to SFMTA.
- Approve the proposed resolution as amended.

#### 12-1187

- Approval of the proposed resolution is a policy decision for the Board of Supervisors because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing the Fast Pass with the Bart option are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement.

## MANDATE STATEMENT/ BACKGROUND

Note: The item was continued by the Budget and Finance Committee on January 30, 2013.

### Mandate Statement

12-1186: In accordance with Charter Section 9.118(a), City agreements, or amendments to such City agreements, with anticipated revenue of \$1,000,000 or more are subject to approval of the Board of Supervisors.

12-1187: In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000 or more, or amendments to such City agreements with anticipated expenditures of more than \$500,000, are subject to approval by the Board of Supervisors.

### Background

#### 12-1186: Feeder Agreement

Since 1987, Bay Area Rapid Transit (BART) and the San Francisco Municipal Transportation Agency (SFMTA) have entered into annual Feeder agreements, in which BART pays the SFMTA to offset a portion of SFMTA's costs to provide Municipal Railway (MUNI) services to BART stations located in San Francisco. The original methodology for calculating BART's Feeder agreement payment to the SFMTA was based on the difference between SFMTA's operating costs and fare revenues for each passenger trip resulting from a transfer between BART and MUNI, multiplied by the number of trips.

Since 1991, BART's Feeder agreement payments to the SFMTA have been adjusted annually by the percentage change in Sales Tax revenue allocated to BART<sup>1</sup> for the two years prior to the current year's Feeder agreement, irrespective of the actual number of transfer trips between BART and MUNI. Under that method, in August 2011 the Board of Supervisors approved a resolution retroactively authorizing the payment by BART to SFMTA of \$2,641,151 for FY 2009-10 based on a FY 2008-09 payment of \$2,904,092 minus \$262,941, the 9.1 percentage decrease in the Sales Tax allocation to BART in FY 2008-09 compared to FY 2007-08 (Resolution No. 348-11). However, the resolution "urge[d] the SFMTA and BART to renegotiate the methodology for the FY 2011 and FY 2012 Feeder agreements to provide a clear nexus between the actual number of transfers trips between BART and Muni and the related Feeder agreement payment by BART to the SFMTA."

#### 12-1187: Fast Pass Agreement

The Fast Pass agreement between BART and SFMTA allows Adult Fast Pass users who purchase the Fast Pass with the BART option<sup>2</sup> to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, with reimbursements for each trip to be made by the SFMTA to BART at a fixed reimbursement rate. According to Mr. Jason Lee, SFMTA Financial Services Manager, approximately 34.4 percent of Fast Passes sold in FY 2011-12 were Fast Passes with the BART option. The most recent Fast Pass agreement, with a two-year term from December 21, 2007 through December 31, 2009, provided that

<sup>1</sup> BART collects 0.5 percent Sales Tax from San Francisco, Alameda, and Contra Costa counties. Of this amount, BART retains 75 percent and the remaining 25 percent is split evenly between AC Transit and SFMTA.

<sup>2</sup> The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

SFMTA pay BART a fixed reimbursement rate of \$1.02 per trip.<sup>3</sup> SFMTA continued to pay BART at the same \$1.02 reimbursement rate until December, 2010. Since December, 2010, no payments by SFMTA to BART have been made because SFMTA did not have the contractual authority to continue payments.

A proposed resolution approving a new Fast Pass agreement with an 8.5-year term retroactive from January 1, 2010 through June 30, 2018 was considered by the Budget and Finance Committee on May 4, 2011 (File 11-0201). Key provisions of that new Fast Pass agreement included:

- Prior to July 1, 2012 - An increase in the reimbursement rate payable by SFMTA to BART from \$1.02 per trip to \$1.19 per trip retroactive to January 1, 2010 through June 30, 2012, resulting in a reimbursement rate discount of \$0.56 or 32 percent from the BART fare in San Francisco of \$1.75.
- Beginning on July 1, 2012 – An increase in the reimbursement rate payable by SFMTA to BART by the same amount as BART fare increases, rather than being tied to the rate of inflation. However, BART’s fare policy expired on July, 2012 and the structure of a new fare policy was not yet known;
- Annual reimbursement rate increases limited to ten percent; and
- No not-to-exceed amount capping SFMTA’s reimbursements to BART on an annual basis.

As a result, the Budget and Finance Committee tabled the proposed resolution and requested that SFMTA staff renegotiate the terms of this agreement along with the Feeder agreement discussed below and to bring back both renegotiated agreements jointly to the Board of Supervisors for approval.

## DETAILS OF PROPOSED LEGISLATION

12-1186: The proposed resolution would retroactively approve a 10-year Feeder agreement between the City, on behalf of SFMTA, and BART for payment by BART to SFMTA for transfer trips made on San Francisco Municipal Railway (MUNI) to BART stations located in San Francisco with a term retroactive from July 1, 2010 through June 30, 2020 (Fiscal Years 2010-11 through 2019-20). The proposed Feeder agreement’s key provisions include:

- FY 2010-11: Payment by BART to SFMTA of \$2,654,357 (an increase of 0.5 percent above the FY 2009-10 reimbursement amount of \$2,641,151);
- FY 2011-12: Payment by BART to SFMTA of \$2,667,629 (an increase of 0.5 percent above the FY 2010-11 reimbursement amount of \$2,654,357);
- FY 2012-13 through FY 2019-20: Payments by BART to SFMTA are adjusted annually based on the percentage change of ridership and the San Francisco Bay Area Consumer

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<sup>3</sup> From December 21, 2007 through June 30, 2009, the BART fare in San Francisco was \$1.50, or \$0.48 more than the SFMTA reimbursement of \$1.02 made to BART. From July 1, 2009 through December 31, 2009, when the prior agreement expired, the BART fare in San Francisco was \$1.75, or \$0.73 more than the SFMTA reimbursement to BART of \$1.02.

Price Index (CPI), up to a maximum of 5 percent annually<sup>4</sup>. Feeder ridership changes would be calculated by the number of MUNI feeder trips to BART tracked on the Clipper Card<sup>5</sup> for the two preceding years.

According to Ms. Sonali Bose, Chief Financial Officer for SFMTA, the proposed Feeder agreement is a negotiated agreement between SFMTA and BART which is entered into voluntarily. There is no State law or Memorandum of Understanding between SFMTA and BART obligating either agency to enter into the proposed Feeder agreement. According to Ms. Bose, BART does not currently have a comparable agreement with any other transit agency.

12-1187: The proposed resolution would approve a new 4.5-year Fast Pass agreement which allows Adult Fast Pass users who purchase the Fast Pass with the BART option<sup>6</sup> to take an unlimited number of monthly rides on BART within San Francisco city limits at no additional cost to the rider, between the City, on behalf of SFMTA, and BART, with a term retroactive to January 1, 2010 through June 30, 2014. Either SFMTA or BART may terminate the proposed Fast Pass agreement after giving the other party a 90-day written notice prior to the termination date. The proposed Fast Pass agreement's key provisions include:

- A \$1.19 reimbursement rate payable by SFMTA to BART would apply retroactively to January 1, 2010 and would be in effect until June 30, 2012. This \$1.19 rate represents a 16.7 percent increase over the current \$1.02 rate. This proposed \$1.19 reimbursement rate is based on BART's last 16.7 percent fare increase in San Francisco from \$1.50 to \$1.75 on July 1, 2009.
- A \$1.21 reimbursement rate payable by SFMTA to BART, an increase of 1.7 percent, based on BART's most recent July, 2012 fare increase of 1.4 percent, would commence retroactive to July 1, 2012 and remain in effect through June 30, 2014.<sup>7</sup> However, the BART fares for trips within San Francisco stayed the same at \$1.75 per trip other than trips between Market Street stations and the Balboa Park station, which increased by \$0.05 to \$1.80 per trip or 2.9 percent increase. Those trips comprise approximately 37 percent of trips taken by Fast Pass riders on BART.
- SFMTA and BART must begin negotiations by January 1, 2014 for a new Fast Pass agreement. If both parties cannot agree on the terms of a new agreement effective July 1, 2014, then the Fast Pass agreement shall continue on a month-to-month basis with a reimbursement rate adjustment based on BART's CPI formula effective on the date of a BART fare increase on or after July 1, 2014.
- There is an annual reimbursement payment cap of \$10,500,000 per fiscal year payable by SFMTA to BART. Based on actual ridership, the SFMTA would pay BART \$9,609,158 for FY 2010-11 Fast Pass trips.

<sup>4</sup> The formula in the proposed Feeder agreement states that: Annual Feeder payment = Previous Year's Feeder payment \*(((1 + Percentage Change in Ridership with 1 being 100 percent)\*(1+Percentage Change in CPI) -1). This formula incorrectly subtracts the previous year's feeder payment from the calculation.

<sup>5</sup> The Clipper Card is an all-in-one transit card for Bay Area transit systems, including BART and MUNI, that keeps track of passes, discount tickets, ride books and cash value that are loaded onto it, while applying all applicable fares, discounts and transfer rules.

<sup>6</sup> The Adult Fast Pass with the BART option costs, \$74, \$10 more than the \$64 MUNI-only Adult Fast Pass.

<sup>7</sup> \$1.19 x 1.014 percent = \$1.2067, rounded to \$1.21.

In the Budget and Legislative Analyst's report to the May 4, 2011 Budget and Finance Committee, the Budget and Legislative Analyst recommended that the Budget and Finance Committee request that SFMTA staff renegotiate the terms of this agreement, including (1) adjusting annual reimbursements by SFMTA to BART based on the rate of inflation rather than increases in BART fares, and (2) capping annual SFMTA's reimbursement increases to BART. As noted above, the proposed Fast Pass agreement includes an annual cap on reimbursements made by SFMTA to BART of \$10,500,000, as previously recommended by the Budget and Legislative Analyst, but continues to adjust annual reimbursements by SFMTA to BART based on the percentage increase in BART fares rather than the rate of inflation.

## FISCAL ANALYSIS

### 12-1186: BART Feeder Agreement Payments to SFMTA from FY 2010-11 through FY 2019-20 Are Estimated to be \$32,069,140

As shown below in Table 1 below, based on the formula included in the proposed Feeder agreement, the payments by BART to SFMTA are estimated to total \$32,069,140 over the ten-year term of the agreement. According to Mr. Lee, these estimates are based on two assumptions:

1. Ridership will increase at an average of 3 percent annually, based on recent BART ridership trends.
2. CPI annual adjustments will average 2.9 percent based on fluctuations in CPI between 2.5 and 3.25 percent.

Table 1 below summarizes payments both constrained by the 5 percent annual increase cap and unconstrained by any payment increase cap.

**Table 1: Estimated Payments by BART to SFMTA under Feeder Agreement**

	Estimated Payment to SFMTA by BART Without Cap	Estimated Payment to SFMTA by BART with 5% Cap	Difference
<b>FY 2010-11</b>	\$2,654,357	\$2,654,357	\$0
<b>FY 2011-12</b>	2,667,629	2,667,629	0
<b>FY 2012-13</b>	2,826,790	2,801,010	25,780
<b>FY 2013-14</b>	2,995,448	2,941,061	54,387
<b>FY 2014-15</b>	3,174,168	3,088,114	86,054
<b>FY 2015-16</b>	3,363,552	3,242,520	121,032
<b>FY 2016-17</b>	3,564,235	3,404,646	159,589
<b>FY 2017-18</b>	3,776,892	3,574,878	202,014
<b>FY 2018-19</b>	4,002,236	3,753,622	248,614
<b>FY 2019-20</b>	4,241,025	3,941,303	299,722
<b>Total</b>	<b>\$33,266,333</b>	<b>\$32,069,140</b>	<b>\$1,197,193</b>

Given an average CPI of 2.9 percent, an increase in ridership up to 2.1 percent (5 percent less 2.9 percent) would result in additional payments by BART to SFMTA under the proposed Feeder agreement. If ridership increases by more than 2.1 percent in any given year, SFMTA would not

be additionally reimbursed for that increase due to the five percent cap on annual payment increases. In addition, it is possible that ridership could decrease and the proposed Feeder agreement does not include a floor on decreases in annual payments.

Without the 5 percent annual cap on payment increases for the proposed Feeder agreement, payments would increase approximately 6 percent annually and result in a total of \$33,266,333 in payments by BART to SFMTA, an increase of approximately \$1,197,193 in payments over the term of the proposed Feeder agreement with the five percent cap in place (See Table 1 above). While the Budget and Legislative Analyst believes that the five percent cap is reasonable, the Budget and Legislative Analyst notes that there is currently no floor limiting how much the annual payments by BART to SFMTA could decrease over the 10-year term included in the proposed Feeder agreement.

### **12-1187: The Proposed Fast Pass Agreement Would Result in Total Estimated Payments by SFMTA to BART of \$42,763,704**

As shown in Table 2 below, SFMTA would pay BART an estimated \$42,763,704 under the proposed Fast Pass agreement from January 1, 2010 through June 30, 2014, less the \$8,690,297 which has already been paid by SFMTA to BART, or a net of \$34,073,407. If the proposed agreement is approved, SFMTA would be required to make an initial one-time retroactive payment of \$15,377,617 to BART (See Table 2 below)

**Table 2: Total Estimated Payments by SFMTA to BART from January 1, 2010 through June 30, 2014**

	<b>Trips</b>	<b>Amount Previously Paid by SFMTA to BART at \$1.02 Reimbursement Rate</b>	<b>Proposed Annual Reimbursement by SFMTA to BART</b>	<b>Amount SFMTA Would Owe BART Retroactively if Proposed Agreement is Approved</b>
<b>\$1.19 Per Trip Reimbursement Rate</b>				
<b>January 1, 2010 – June 30, 2010</b>	4,424,682	\$4,513,175	\$5,265,372	\$752,197
<b>July 1, 2010 – June 30, 2011</b>	8,074,923	4,177,122	9,609,158	5,432,036
<b>July 1, 2011 – June 30, 2012</b>	7,725,533	0	9,193,384	9,193,384
<b>Subtotal for Retroactive Payments</b>	<b>20,225,138</b>	<b>\$8,690,297</b>	<b>\$24,067,914</b>	<b>\$15,377,617</b>
<b>\$1.21 Per Trip Reimbursement Rate</b>				
<b>July 1, 2012 – June 30, 2013</b>	7,725,533	\$0	\$9,347,895	\$0
<b>July 1, 2013 – June 30, 2014</b>	7,725,533	0	9,347,895	0
<b>Subtotal for Estimated Payments</b>	<b>15,451,066</b>	<b>\$0</b>	<b>\$18,695,790</b>	<b>\$0</b>
<b>Total</b>	<b>35,676,204</b>	<b>\$8,690,297</b>	<b>\$42,763,704</b>	<b>\$15,377,617</b>



## **Two Agreements Result in Estimated Annual Net Payments of \$6,406,834 to \$6,954,801 by SFMTA to BART from FY 2010-11 through FY 2013-14**

As shown in Table 3 below, based on the estimated payments for both the proposed Fast Pass and Feeder agreements, SFMTA would pay an estimated \$26,444,275 in total net payments to BART from FY 2010-11 through FY 2013-14, the overlapping time period of the proposed Fast Pass and Feeder agreements.

**Table 3: Net Payments to BART from FY 2010-11 through FY 2013-14**

	<b>Estimated Payments by BART to SFMTA Under Proposed Feeder Agreement</b>	<b>Estimated Payments by SFMTA to BART Under Proposed Fast Pass Agreement</b>	<b>Net Payments by SFMTA to BART</b>
<b>FY 2010-11</b>	\$2,654,357	\$9,609,158	<b>\$6,954,801</b>
<b>FY 2011-12</b>	2,657,629	9,193,384	<b>6,535,755</b>
<b>FY 2012-13</b>	2,801,010	9,347,895	<b>6,546,885</b>
<b>FY 2013-14</b>	2,941,061	9,347,895	<b>6,406,834</b>
<b>Total</b>	<b>\$11,054,057</b>	<b>\$37,498,332</b>	<b>\$26,444,275</b>

### **POLICY CONSIDERATIONS**

#### **12-1186: The Proposed Feeder Agreement Only Includes a Cap on Increases in Payments but Does not Cap Decreases**

As previously noted, the proposed Feeder agreement limits increases in annual payments by BART to SFMTA to five percent. According to Mr. Lee, this five percent cap was agreed upon during negotiations<sup>8</sup>. However, there is no limit to the decrease in annual payments payable by BART to SFMTA. While Mr. Lee advises that electronically tracked feeder ridership is not available for previous years, the total number of San Francisco exits from San Francisco BART stations is available and would serve as an approximation for potential future changes in feeder ridership. Based on the available San Francisco BART exit data, ridership on MUNI could potentially fluctuate significantly from year to year. Since FY 1998-99, the annual change has ranged between a 6.8 percent decrease and a 13.4 percent increase. Therefore, the Budget and Legislative Analyst recommends revising the proposed resolution to require a five percent floor on decreases in payments to stabilize payments by BART to SFMTA under the proposed Feeder agreement.

#### **12-1187: SFMTA's Payment to BART under the Fast Pass Agreement is Less than SFMTA's Incremental Revenues from the Fast Pass**

Because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing the Fast Pass with the Bart option are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors.

<sup>8</sup> Mr. Lee advises that SFMTA originally proposed a cap of 6 to 7 percent annually.

**RECOMMENDATIONS**12-1186

1. Amend the proposed resolution to require that the proposed Feeder agreement be revised to include a floor of no more than five percent on decreases in payments from BART to SFMTA.
2. Approve the proposed resolution as amended

12-1187

1. Approval of the proposed resolution is a policy decision for the Board of Supervisors because SFMTA's FY 2011-12 incremental revenues of \$3,608,840 from the \$10 additional fee for purchasing the Fast Pass with the Bart option are \$5,584,544 less than SFMTA's FY 2011-12 payment to BART of \$9,193,384 under the Fast Pass agreement.

**Item 3**  
**File 13-0483**

**Department:**  
Public Utilities Commission

## EXECUTIVE SUMMARY

### Legislative Objectives

File 13-0483 is an ordinance (1) appropriating \$55,064,799 in Water Revenue Bond proceeds for the Public Utilities Commission's (PUC) Calaveras Dam project; and (2) de-appropriating and re-appropriating \$77,271,241 in surplus Water System Improvement Project (WSIP) funds.

### Key Points

- The Water System Improvement Program is a \$4.6 billion multi-year capital improvement program to upgrade the City and regional water system, consisting of 35 local projects located within San Francisco and 47 regional projects. The requested supplemental appropriation represents a 1.2% net increase compared to the original WSIP budget.

### Fiscal Impact

- The proposed ordinance would appropriate \$74,353,687 to the Calaveras Dam project, which replaces the existing dam on Alameda Creek in the Sunol Valley (Alameda County). The Calaveras Dam project budget has increased due to new landside hazards that were discovered in June 2012. The PUC also plans to re-allocate funds from other projects within the Sunol Valley Water System Improvement Projects budget to the Calaveras Dam project. The proposed ordinance would approve release of \$15,314,652 on Budget and Finance Committee Reserve, which was previously appropriated to the Alameda Creek Fishery Enhancement project and for which the spending plan has been reduced, to be re-allocated to the Calaveras Dam and other projects in the Sunol Valley Water System Improvement Projects budget.
- The proposed ordinance would re-appropriate \$57,677,851 to other WSIP projects due to increases in the project budgets, including:
  - The Crystal Springs/San Andreas Transmission Upgrade and Harry Tracy Water Treatment Plant projects on the Peninsula, which have site conditions that differ from the original projects' scope and claims by the construction contractor that PUC is currently trying to resolve;
  - The Regional Groundwater Storage project on the Peninsula, which has increased project costs due to instrumentation, security system and other costs;
  - The Habitat Reserve Program, which has increased costs to mitigate the environmental impact of WSIP construction projects;
  - The System Security Upgrades project, which has increased costs for cameras, network video recorders, and other security infrastructure; and
  - The Lake Merced Pump Station, which has modified construction requirements for the existing aging pump station building and unforeseen site conditions.
- The PUC expects the requested supplemental appropriation to fully fund the Calaveras Dam and other WSIP projects included in the proposed ordinance.

### Recommendation

- Approve the proposed ordinance.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

Charter Section 9.105 requires Board of Supervisors' approval of Annual Appropriation Ordinance amendments, after the Controller certifies the availability of funds.

### Background

The Public Utilities Commission (PUC) Water System Improvement Program (WSIP) is a \$4.6 billion multi-year capital improvement program to upgrade the City and regional water system, as shown in Table 1 below. The program consists of 35 local projects located within San Francisco and 47 regional projects.

**Table 1: WSIP Budget**

	<b>Approved Budget as of April 2013</b>
Local Capital Improvement Projects	\$339,220,116
Local Water Supply Projects	281,312,534
Regional Projects	3,548,251,039
Financing Costs	471,700,000
<b>Total WSIP Budget</b>	<b>\$4,640,483,689</b>

In 2002, San Francisco voters approved two propositions authorizing the PUC to issue revenue bonds to pay for the WSIP as follows:

- Proposition A authorized the PUC to issue up to \$1.63 billion in revenue bonds and other forms of financing to pay for the acquisition and construction of improvements to the City's water system. As of May 2013 PUC has previously issued \$1.35 billion and has remaining capacity to issue an additional \$280 million in Proposition A bonds, as shown in Table 2 below.
- Proposition E authorized the PUC to issue revenue bonds and other forms of financing for water and clean water facilities and services, subject to two-thirds vote of the Board of Supervisors<sup>1</sup>. The Board of Supervisors has authorized \$3.26 billion in Proposition E bonds. PUC has previously issued \$2.68 billion and has remaining capacity to issue an additional \$580 million in Proposition E bonds, as shown in Table 2 below.

The Board of Supervisors also authorized PUC to issue up to \$500 million in refunding bonds (Ordinance 151-12), of which PUC has issued \$24 million with a remaining capacity of \$476 million, as shown in Table 2 below.

<sup>1</sup> Proposition E did not specify the amount of revenue bonds that PUC can issue, but rather authorized the Board of Supervisors to set the amount of revenue bonds that PUC can issue upon approval of two-thirds of Board members.

**Table 2: Bond Authorization, Issuance, and Remaining Capacity**

	WSIP	Non-WSIP	Total	Refunding Bonds
<b>Proposition A Bonds</b>				
Authorization	\$1,611,480,000	\$16,520,000	\$1,628,000,000	\$0
Issued (Series 2006A to 2012B)	<u>1,331,815,000</u>	<u>16,520,000</u>	<u>1,348,335,000</u>	<u>0</u>
Remaining Capacity	279,665,000	0	279,665,000	0
<b>Proposition E</b>				
Authorization	2,957,556,317	302,974,840	3,260,531,157	0
Issued (Series 2010A to 2012A)	<u>2,560,035,000</u>	<u>119,515,000</u>	<u>2,679,550,000</u>	<u>0</u>
Remaining Capacity	397,521,317	183,459,840	580,981,157	0
<b>Total</b>				
Total Authorization	4,569,036,317	319,494,840	4,888,531,157	500,000,000
Total Issued	<u>3,891,850,000</u>	<u>136,035,000</u>	<u>4,027,885,000</u>	<u>24,040,000</u>
Total Remaining Capacity	\$677,186,317	\$183,459,840	\$860,646,157	\$475,960,000

**DETAILS OF PROPOSED LEGISLATION**

File 13-0483 is an ordinance (1) appropriating \$55,064,799 in Water Revenue Bond proceeds for the PUC's Calaveras Dam project; and (2) de-appropriating and re-appropriating \$77,271,241 to various WSIP projects, as shown in Table 3 below.

**Table 3: Requested Supplemental Appropriation**

<b>Calaveras Dam Project</b>	
<b>Source of Funds</b>	<b>Amount</b>
2002 Proposition E Water Revenue Bonds	\$55,064,799
<b>Use of Funds</b>	
Calaveras Dam	\$54,927,412
City Services Auditor	109,855
Revenue Bond Oversight Committee	<u>27,532</u>
Total Use of Funds	\$55,064,799
<b>Other WSIP Projects</b>	
<b>Source of Funds (De-Appropriation)</b>	<b>Amount</b>
Bay Division Water System Improvements	\$40,754,257
Local: Sutro Reservoir Seismic Upgrade & Local Pipelines/Valves	21,565,129
San Joaquin Pipeline	3,195,244
Program Management	<u>11,756,611</u>
Total Source of Funds	\$77,271,241
<b>Use of Funds</b>	
Calaveras Dam	\$19,426,275
Peninsula Water System Improvement Project	34,684,403
Regional Groundwater Storage	14,093,800
Habitat Reserve Program	6,711,792
System Security Upgrade	2,187,856
Lake Merced Pump Station	<u>167,115</u>
Total Use of Funds	\$77,271,241

### **De-appropriation of WSIP Project Funds**

The proposed ordinance de-appropriates funds of \$77,271,241 that are no longer needed for previously approved WSIP projects. The Commission approved reductions in the following budgets in April 2013:

#### \$40,754,257 - Bay Division Water System Improvements

- \$13,356,525 for Pipelines No. 3 and 4 adjacent to the Hayward fault in Alameda County, due to downward revision in project costs;
- \$20,708,439 for the tunnel that extends under the Bay between Newark in Alameda County and Ravenswood in San Mateo County due to downward revision in project costs; and
- \$6,689,293 for other Bay Division Water System Improvement projects that are either completed or the remaining project costs are less than the budget.

#### \$21,565,129 – Sutro Reservoir Seismic Upgrades and Local Pipelines and Valves

- \$20,099,144 for the Sutro Reservoir Seismic Upgrade project due to cost savings from lower than budgeted construction contract bids; and
- \$1,465,985 for local pipeline and valve improvements because the projects are completed and the remaining funds are not needed.

#### \$3,195,244 – San Joaquin Pipeline

The San Joaquin Pipeline budget is 91% complete with a revised project budget of \$348,691,063, which is \$3,195,244 less than the original budget of \$351,886,307.

#### \$11,756,611- Program Management

- \$11,754,629 in Program Management Services due to projected decreased spending for program management for the remainder of the WSIP;
- \$1,982 from the Program Reserve, which was created to accumulate savings from WSIP projects. Appropriation of \$1,982 will leave the reserve with a zero balance. According to Mr. Carlos Jacobo, PUC Budget Director, if WSIP projects are completed under budget, the PUC will deposit the savings into the reserve.

## **FISCAL IMPACT**

### **Calaveras Dam Project Appropriation**

The Calaveras Dam project replaces the existing dam on Alameda Creek in the Sunol Valley (Alameda County). The new dam is a seismically reliable, 210 foot high earth and rock dam, spillway, stilling basin and intake tower. Construction began in August 2011 and is expected to be completed in November 2017.

The Calaveras Dam project is part of the Sunol Valley Water System Improvement Project. The Calaveras Dam project budget has increased by \$88,798,019, from \$589,195,535 to \$677,993,554, due to landslide hazards that were identified in June 2012. As shown in Table 4, PUC has re-allocated funds within the Sunol Valley Water System Improvement Projects budget

to offset some of the increased costs of the Calaveras Dam project, and the proposed ordinance appropriates \$74,353,687 to fund the balance of Calaveras Dam project budget increase.

**Table 4: Sources of Funds for the Increase to the Calaveras Dam Project Budget**

	<b>Appropriation/ Re-allocation of Funds</b>
<b>Sources of Funds</b>	
Appropriation Revenue Bonds (File 13-0843)	\$54,927,412
Re-appropriation of WSIP Funds (File 13-0843)	<u>19,426,275</u>
<b>Total Sources of Funds</b>	<b>74,353,687</b>
<b>Uses of Funds</b>	
Calaveras Dam Project	\$88,798,019
Subtotal, Reallocation	<u>(14,444,332)</u>
<b>Total Uses of Funds</b>	<b>74,353,687</b>

*Requested Release of Reserves*

The proposed ordinance would approve the release of \$15,314,352 on reserve for the Alameda Creek Fishery Enhancement project, which is part of the Sunol Valley Water System Improvement Project. The Budget and Finance Committee reserved the \$15,314,352 for the Alameda Creek Fishery Enhancement Project pending review of updated expenditures plans. According to Mr. Jacobo, PUC has revised the Alameda Creek Fishery Enhancement Project expenditure plan, reducing the project budget so that the \$15,314,352 is no longer needed for the Alameda Creek Fishery Enhancement Project. PUC will re-allocate the \$15,314,352 within the Sunol Valley Water System Improvement Project, offset by other expenditures, resulting in net \$14,444,332 re-allocated within the Sunol Valley Water System Improvement Project to be used for the Calaveras Dam project.

According to Mr. Jacobo, the requested supplemental appropriation and re-allocation of other project funds to the Calaveras Dam project will fully fund the project.

**Other WSIP Projects**

The requested supplemental appropriation would approve funding of \$57,677,851 for the following projects, for which the revised budgets were approved by the Commission in April 2013:

\$34,684,403 – Peninsula Water System Improvement Projects

The Crystal Springs and San Andreas Reservoirs and Harry Tracy Water Treatment Plant are located in San Mateo County. The Crystal Springs/San Andreas Transmission Upgrade and Harry Tracy Water Treatment Plant projects are part of the Peninsula Water System Improvement Projects to (a) improve the existing water treatment facility, transmission pipelines, and Crystal Springs and San Andreas Reservoirs' outlet structures; and (b) construct a new Crystal Springs Pump Station.

The requested supplemental appropriation increases the Peninsula Water System Improvement Projects budget by \$34,684,403 as shown in Table 5 below to fund increases in the project budgets for Peninsula Pipeline Seismic Upgrade, the Harry Tracy Water Treatment Plant Improvement, and the Crystal Springs/San Andreas Reservoir Transmission Upgrades.

**Table 5: April 2013 Peninsula Water System Improvement Project Budget Revision**

<b>Project</b>	<b>SFPUC June, 2011 Total Approved Budget</b>	<b>SFPUC April, 2013 Total Approved Budget</b>	<b>Change</b>	<b>Budget and Finance Committee Reserve</b>
LOWER CRYSTAL SPRINGS DAM IMPROVEMENTS	\$35,766,960	\$34,920,718	(\$846,242)	
NEW CRYSTAL SPRINGS BYPASS TUNNEL	86,444,995	81,462,828	(4,982,167)	
ADIT LEAK REPAIRS	2,787,322	2,787,322	0	
PULGAS BALANCING RESERVOIR REHAB	32,322,579	30,871,420	(1,451,159)	
CROSS CONNECTION CONTROLS	3,965,943	3,948,944	(16,999)	
HARRY TRACY WATER TREATMENT PLANT IMPROVEMENTS	299,992,717	306,336,452	6,343,735	
PENINSULA PIPELINE SEISMIC UPGRADE	30,616,959	42,093,629	11,476,670	10,242,545
CAPUCHINO VALVE LOT CAPACITY IMPROVEMENT	2,803,153	2,803,153	0	
CRYSTAL SPRINGS/SAN ANDREAS TRANSMISSION UPGRADE	164,722,000	193,623,446	28,901,446	
CRYSTAL SPRINGS PL #2 REPLACEMENT	57,469,321	57,195,477	(273,844)	
SAN ANDREAS #3 PIPELINE INSTALLATION (Partial in City)	29,910,051	27,500,388	(2,409,663)	
BADEN AND SAN PEDRO VALVE LOTS	27,110,368	25,052,994	(2,057,374)	
<b>PENINSULA WATER SYSTEM IMPROVEMENT PROJECTS</b>	<b>\$773,912,368</b>	<b>\$808,596,771</b>	<b>\$34,684,403</b>	<b>\$10,242,545</b>

#### *Crystal Springs/San Andreas Reservoir Transmission Upgrades*

According to the March 31, 2013 WSIP Regional Projects Quarterly Report, the Crystal Springs/San Andreas Transmission Upgrade project requires underwater work on existing structures in the Crystal Springs and San Andreas Reservoir in San Mateo County. The project is currently behind schedule by approximately seven months and the PUC is attempting to resolve with the construction contractor the reasons for the project delay. According to the report, project costs have increased due to increases (a) the need to stabilize the existing culvert connecting the Upper and Lower Crystal Spring Reservoirs, (b) claims submitted by the contractor claiming increased costs due to schedule changes, (c) increased regulatory costs, and (d) increased costs associated with unforeseen underwater conditions.

#### *Harry Tracy Water Treatment Plant Improvements*

According to the March 31, 2013 WSIP Regional Projects Quarterly Report, construction of Harry Tracy Water Treatment Plant improvements requires several scheduled shutdowns of the plant. The project was originally scheduled for completion in December 2014 but may be delayed until January 2015. PUC has entered into dispute resolution with the contractor to resolve the contractor's requested increases in overhead rates and cost markups. The project budget increases are due to potential project delays and increased costs for upgrades to plant structures.



*Peninsula Pipeline Upgrade*

The draft Environmental Impact Report (EIR) for the Peninsula Pipeline Seismic Upgrade project was published for public review in March 2013 and the final EIR is expected to be completed in November 2013. According to Mr. Jacobo, the increase in the budget for the Peninsula Pipeline Seismic Upgrade project is due to improved scope definition from the conceptual phase to the detailed design phase and additional site specific surveys.

The Board of Supervisors' Budget and Finance Committee previously reserved \$10,242,545 in the Peninsula Water System Improvement Projects budget for the Peninsula Pipeline Seismic Upgrade Project because these funds are designated for construction costs and are not needed until after certification of the Project EIR. According to Mr. Jacobo, the PUC is not requesting release of these reserved funds at this time because the Project EIR has not been certified.

*Funding of Peninsula Water System Improvement Projects*

According to Mr. Jacobo, PUC expects this supplemental appropriation to represent full funding for these projects.

\$14,093,800 – Regional Groundwater Storage Project

The Regional Groundwater Storage project is to develop a groundwater supply during dry years for regional customers on the Peninsula. According the March 31, 2013 WSIP Regional Projects Quarterly Report, the draft Environmental Impact Report (EIR) was completed in April 2013 and the final EIR is planned for November 2013. PUC expects to complete project design in August 2013 and advertise for construction bids in November 2013.

The Regional Groundwater Storage project is part of the San Francisco Regional Water System project, for which the budget increased by \$14,093,800, from \$194,089,200 to \$208,183,000. According to Mr. Jacobo, this budget increase is due to additional requirements for instrumentation and controls, and electrical and security systems.

*Budget and Finance Committee Reserve*

The Board of Supervisors' Budget and Finance Committee previously reserved \$33,490,259 in the San Francisco Regional Water System project budget for the Regional Groundwater Storage Project. According to Mr. Jacobo, the PUC is not requesting release of these reserved funds at this time because environmental review is still in progress and the funds are not needed until construction.

According to Mr. Jacobo, PUC expects this supplemental appropriation to represent full funding for the Regional Groundwater Storage project.

\$6,711,792 – Habitat Reserve Program

The Habitat Reserve Program is intended to mitigate the environmental impact of the WSIP construction projects. The program includes projects to preserve, enhance, restore, or create acres of tidal marsh, vernal pools, and woodland, savannah and grasslands. The program currently includes seven sites in Alameda County and 11 sites on the Peninsula.

The program budget has increased by \$6,711,792, from \$89,236,983 to \$95,948,775, of which (a) approximately \$6.2 million is required for State fire permit requirements, mitigation of the impact of WSIP construction in the Bay Division, Peninsula and Sunol Valley (Alameda

County), and other mitigation projects; and (b) approximately \$0.5 million is necessary to repair damage caused flash flooding in the San Antonio Creek in the Sunol Valley in December 2012.

\$2,187,856 – System Security Upgrade

The System Security Upgrade project includes identification, planning, design and construction of all necessary security components associated with WSIP facilities. Phase A includes design of security equipment, such as conduit routing incorporated into WSIP projects, which will be bid as part of WSIP construction projects. According to the March 31, 2013 WSIP Regional Projects Quarterly Report, Phase A design is nearly complete. Phase B includes design and completion of security of project security system components that will be purchased, installed and tested by a specialist in security integration.

According to Mr. Jacobo, the budget for the System Security Upgrade project has increased by \$2,187,856, from \$16,667,553 to \$18,855,409 because of design changes, schedule extensions, and purchase of equipment. PUC expects this supplemental appropriation to represent full funding for the System Security Upgrade project.

\$167,115 – Lake Merced Pump Station

The Lake Merced Pump Station, which rebuilds the existing pump station, is part of the San Francisco Local Pump Station/Tank project. The Lake Merced Pump Station project budget has increased by \$1,043,700, from \$47,292,400 to \$48,336,100 to address construction modifications required at the aging pump station building and unforeseen site conditions, including discovery of contaminated soils. This increase has been offset by decreases in other subprojects with the San Francisco Local Pump Station/Tank project, for a net increase of \$167,115, as shown in Table 6 below.

**Table 6: April 2013 San Francisco Local Pump Station/Tank Project Budget Revision**

<b>Project</b>	<b>SFPUC June, 2011 Total Approved Budget</b>	<b>SFPUC April , 2013 Total Approved Budget</b>	<b>Change</b>
CROCKER AMAZON PUMP STATION UPGRADE	\$4,126,498	\$4,126,498	\$0
LAKE MERCED PUMP STATION UPGRADE	47,292,400	48,336,100	1,043,700
LA GRANDE TANK REHAB/SEISMIC UPGRADE	6,987,728	6,987,728	0
FOREST HILL TANK REHAB/SEISMIC UPGRADE	2,936,199	2,936,199	0
FOREST HILL PUMP STATION UPGRADE	7,583,000	7,546,000	(37,000)
FOREST KNOLLS PUMP STATION UPGRADE	6,245,000	6,197,184	(47,816)
LINCOLN PARK PUMP STATION UPGRADE	4,345,215	4,345,215	0
MCLAREN PARK PUMP STATION UPGRADE	29,210,000	29,210,000	0
MOUNT DAVIDSON PUMP STATION UPGRADE	4,578,500	4,327,966	(250,534)
PALO ALTO PUMP STATION UPGRADE	6,254,000	6,126,731	(127,269)
SKY VIEW/AQUA VISTA PUMP ST UPGRADES	4,751,094	4,751,094	0
SUMMIT PUMP STATION UPGRADE	6,546,113	6,546,113	0
MCLAREN #1 TANK REHAB/SEISMIC UPGRADE	4,659,910	4,659,741	(169)
POTRERO HEIGHTS TANK REHAB/UPGRADE	1,084,863	1,084,863	0
FOREST KNOLLS TANK REHAB/UPGRADE	3,575,000	3,546,789	(28,211)
LINCOLN PARK TANK REHAB/SEISMIC UPGRADE	2,690,656	2,690,656	0
MCLAREN #2 TANK REHAB/SEISMIC UPGRADE	4,458,201	4,458,201	0
MOUNT DAVIDSON TANK REHAB/UPGRADE	2,829,000	2,568,414	(260,586)
LE GRANDE PUMP STATION UPGRADE	5,225,000	5,170,000	(55,000)
POTRERO HEIGHTS PUMP STATION UPGRADE	605,670	605,670	0
VISTA FRANCISCO PUMP STATION UPGRADE	5,212,600	5,142,600	(70,000)
<b>SAN FRANCISCO LOCAL PUMP STATION/TANKS</b>	<b>\$161,196,647</b>	<b>\$161,363,762</b>	<b>\$167,115</b>

## RECOMMENDATION

Approve the proposed ordinance.

<b>Item 4</b> <b>Files 13-0404</b>	<b>Department:</b> Public Utilities Commission (PUC)
<b>EXECUTIVE SUMMARY</b>	
<b>Legislative Objectives</b>	
<ul style="list-style-type: none"> <li>• The proposed resolution would authorize the General Manager of the Public Utilities Commission (PUC) to execute agreements with (a) CDM Smith/ATS, a joint venture, (b) ICF+Avila, a joint venture, (c) Shaw Environmental and Infrastructure, Inc., and (d) URS Corporation, for Specialized and Technical Services for Natural Resources and Watershed Management and Monitoring, with each agreement for a not-to-exceed \$5,000,000 and for a term not-to-exceed 14 years, pursuant to Charter Section 9.118(b).</li> </ul>	
<b>Key Points</b>	
<ul style="list-style-type: none"> <li>• Currently Water Enterprise staff is assisted by approximately \$500,000 of professional environmental monitoring and management services annually. With the conclusion of the Water System Improvement Program (WSIP), such professional services will need to increase to approximately \$1.5 million to \$1.8 million annually, which is required for a minimum of ten years from the completion of mitigation for each WSIP project.</li> <li>• On February 8, 2013, the PUC issued a Request for Proposal (RFP), to which six firms responded and four firms were determined to be highly qualified.</li> </ul>	
<b>Fiscal Impacts</b>	
<ul style="list-style-type: none"> <li>• Under the proposed resolution, the PUC would enter into four separate agreements, each for a not-to-exceed \$5,000,000, or a total of up to \$20,000,000. The subject agreements would commence in July 2013 and extend through June 2027, or up to 14 years.</li> <li>• Outside professional monitoring and management requirements are projected to increase to approximately \$1.5 million to \$1.8 million annually for the first seven years, from approximately 2013 through 2020 or a total of approximately \$10.5 million to \$12.6 million. After the initial seven years, the monitoring and management requirements will vary, depending on the site, the completion date of the WSIP-specific projects and the level of efforts required.</li> <li>• Approximately \$1 million of the work will be completed during the WSIP implementation period through 2016, with WSIP capital bond project funds. The remaining approximately \$19 million will be funded with Water Enterprise operating funds, which would be included in the PUC's annual budgets, subject to appropriation approval by the Board of Supervisors. All WSIP capital debt financing and the Water Enterprise operating costs are funded from revenues received from PUC's water sales to wholesale and retail water customers.</li> </ul>	
<b>Recommendation</b>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

Charter Section 9.118(b) requires that the Board of Supervisors approve any agreement which extends for a term of more than ten years or in which City's expenditures exceed \$10,000,000.

Administrative Code Section 21.03 provides that the Purchaser shall purchase all commodities and services required by City departments. Administrative Code Section 21.5(b) provides that commodities or services available only from a sole source shall be procured in accordance with specified Purchaser regulations.

### Background

The Public Utilities Commission's (PUC's) Water Enterprise Division is primarily responsible for providing clean water through a complex series of reservoirs, tunnels, pipelines and treatment systems to 2.6 million residential, commercial and industrial customers in the Bay Area. As part of this responsibility, the PUC is responsible for managing the PUC's watershed and right-of-way lands and monitoring the related natural resources and water quality. There are various State and Federal environmental regulatory permit requirements related to managing and monitoring these PUC's watershed and rights-of-way lands.

According to Mr. Tim Ramirez, Division Manager for Natural Resources and Lands Management at the PUC, currently PUC's Water Enterprise staff is assisted by as-needed outside consultants who provide approximately \$500,000 of professional environmental monitoring and management services annually. However, Mr. Ramirez advises that with the conclusion of the Water System Improvement Program (WSIP) in July of 2016<sup>1</sup>, such monitoring and management professional services will increase by approximately \$1.0 million to \$1.3 million annually or a total of approximately \$1.5 million to \$1.8 million annually. In accordance with approved California Environmental Quality Act (CEQA) and related permit requirements, such monitoring and management services must extend for a minimum of ten years from the completion of each WSIP project. Mr. Ramirez therefore advises that the PUC requires specialized scientific and technical expertise to supplement PUC staff with:

- Monitoring the performance of mitigation sites for the Water System Improvement Program (WSIP);
- Planning and implementation of oversight of fisheries mitigation related to the WSIP;
- Watershed resources planning, regulatory compliance support and management services;
- Water quality monitoring and specialized hydrological services;
- Planning and implementation of the Watershed Environmental Improvement Program projects;

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<sup>1</sup> Although the WSIP will officially end in July of 2016, selected individual projects, such as the completion of the Calaveras Dam will continue through 2018.

- Planning and providing oversight for the Alameda Watershed Habitat Conservation Plan;
- Planning and providing oversight for the Alameda and Peninsula Watershed Management Plans;
- Community benefits commitment<sup>2</sup>; and
- Data management and analytical services.

On February 8, 2013, the PUC issued a Request for Proposals (RFP) for specialized natural resources management and monitoring technical services for the Water Enterprise Division. In response, the PUC received six proposals. According to Mr. Ramirez, the City's Contract Monitoring Division in the Office of the City Administrator evaluated the written responses and determined that the four highest ranking firms were: (a) CDM Smith/ATS, a joint venture, (b) ICF+Avila, a joint venture, (c) Shaw Environmental and Infrastructure, Inc., and (d) URS Corporation. The Contract Monitoring Division established a 13% Local Business Enterprise (LBE) subconsultant participation goal on this project, and also determined that each of the four highest ranking firms committed to a LBE subconsultant participation of at least 13%.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the General Manager of the Public Utilities Commission (PUC) to execute agreements with (a) CDM Smith/ATS, a joint venture, (b) ICF+Avila, a joint venture, (c) Shaw Environmental and Infrastructure, Inc., and (d) URS Corporation, for Specialized and Technical Services for Natural Resources and Watershed Management and Monitoring, with each agreement for a not-to-exceed \$5,000,000 and for a term not-to-exceed 14 years, pursuant to Charter Section 9.118(b).

The subject agreements would commence in July 2013 and extend through June 2027, or up to 14 years. According to Mr. Ramirez, each of the four firms will be expected to perform a wide range of monitoring, planning and management responsibilities over the term of the agreements, at various WSIP mitigation sites. Mr. Ramirez advises that the specific activities assigned to each contractor will be identified through task orders that would be negotiated over the term of the contract, such that the PUC would retain the right to negotiate specific terms and conditions with each firm, at the PUC's discretion. Mr. Ramirez further advises that any of the proposed contracts can be terminated for cause, if there are problems with any of the subject contractors in performing and completing their specific tasks.

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<sup>2</sup> On January 11, 2011, the Public Utilities Commission (PUC) established a Community Benefits Policy that commits the PUC to developing an inclusive and comprehensive partnership with communities in all of the PUC service areas to ensure that volunteer efforts and public benefits are shared across all communities (PUC Resolution 11-0008). All PUC contracts include a community benefits commitment from each contractor, including the four subject agreements.

## FISCAL IMPACTS

Under the proposed resolution, the PUC would enter into four separate agreements, each for a not-to-exceed \$5,000,000, or a total of up to \$20,000,000. As noted above, currently the PUC is expending approximately \$500,000 annually for professional services to assist in monitoring and managing the necessary environmental work. Average hourly rates currently range from \$85 to \$165. However, with the completion of the WSIP, such monitoring and management requirements are projected to increase to approximately \$1.5 million to \$1.8 million annually for the first seven years, from approximately 2013 through 2020 or a total cost of approximately \$10.5 million to \$12.6 million through 2020.

After the initial seven years, Mr. Ramirez notes that the actual monitoring and management requirements will vary, depending on the site, the completion date of the WSIP-specific projects and the level of efforts required. Mr. Ramirez acknowledges that, as of the writing of this report, the total not-to-exceed \$20 million for the four contracts over a 14-year period is an estimate and cannot be specifically calculated per year or contract. Since the commencement of monitoring responsibilities under the subject agreements would be staggered over several years, Mr. Ramirez acknowledges that the larger effort years are not fully known at this time.

According to Mr. Ramirez, approximately \$1 million of the work will be completed during the WSIP implementation period through 2016, such that this work will be completed with WSIP capital bond project funds. The remaining approximately \$19 million will be funded with Water Enterprise operating funds, which would be included in the PUC's annual budgets, subject to appropriation approval by the Board of Supervisors. According to Mr. Carlos Jacobo of the PUC, the total not-to-exceed \$20 million expenditures over the next 14 years would be included in the calculations for determining future water rates. All of the WSIP capital debt financing and the Water Enterprise operating costs are funded from revenues received by the PUC from water sales to wholesale and retail water customers.

## RECOMMENDATION

Approve the proposed resolution.

**Item 5**  
**File 13-0487**

**Department:**  
Real Estate Division, Department of Administrative Services

## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed resolution would authorize the Director of Property to execute a new five year lease of up to 20,000 square feet, including the entire 4<sup>th</sup> floor and a portion of the 2<sup>nd</sup> floor at 1145 Market Street between the City as tenant, on behalf of the San Francisco Law Library and 1145 Market Street LP, as landlord, from July 1, 2013 through June 30, 2018.

### Key Points

- Pursuant to State Law, the 1870 Act, the City and County of San Francisco must provide a Law Library for public use. Charter Section 8.103 is consistent with the 1870 Act and states that the City must provide “suitable” and “sufficient” accommodations for the Law Library.
- The Law Library is currently located in the War Memorial Veterans Building and must vacate immediately to allow seismic renovations to begin on July 1, 2013. The Real Estate Division has located a property at 1145 Market Street for the Law Library’s relocation.
- Pursuant to the proposed resolution, the lease terms that are being negotiated between the City and 1145 Market Street LP are as follows: (1) 13,155 net square feet (sf) initially, increasing to a total of 20,000 net sf; (2) initial rent of \$42,754 per month or \$39.00 per square foot per year; (3) one five-year term with one five-year option to renew; (4) 4% annual increase in base rent; (5) tenant improvement allowance of \$25 per square foot; and (6) any other terms and conditions the Director finds necessary to execute the lease.

### Fiscal Impacts

- The proposed lease includes a tenant improvement allowance of up to \$25 per square foot, or total of \$500,000 to be paid by the landlord for up to 20,000 sf of leased space. In addition, to physically relocate the Law Library and provide additional furnishings and capital improvements the City is estimated to expend an additional one-time \$520,000.
- Under the proposed resolution, the City would pay \$561,015 in rent in FY 2013-14 based on the initial \$39.00 per square foot per year rate, increased by 4% per year, for up to 20,000 square feet, \$6,000 annually for utilities and \$10,357 for operating expenses, for a total of \$577,372 in FY 2013-14. Together, the one-time cost of \$520,000 in tenant improvements and relocation, and the first year \$577,372 in rent, utilities and operating expenses totals \$1,097,372 in FY 2013-14. The total estimated five-year General Fund lease and related costs are \$4,630,006.
- The Law Library’s rent, utility and operating expenses totaling \$577,372 in FY 2013-14 under the proposed lease are \$386,941, or 203% more than the FY 2012-13 occupancy fee paid by the Law Library to the War Memorial of \$190,431.

### Policy Consideration

- The Law Library filed a Writ of Mandate against the City which was denied by the Superior Court on April 18, 2013. However, the Law Library has filed a request for preliminary injunction against the City and indicated that the Law Library is willing to agree to the 1145 Market space as a temporary location, but only if certain conditions are met.

### Recommendation

- Given the pending litigation and the conditions proposed by the Law Library, approval of the proposed resolution is a policy decision for the Board of Supervisors.



## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

In accordance with Administrative Code Section 23.27, leases with a term of more than one year or rent of more than \$5,000, in which the City is the tenant are subject to Board of Supervisors approval by resolution.

Pursuant to Charter Section 8.103, the City is required to provide suitable and sufficient quarters for the Law Library that is accessible to judges and officers of the court. Section 8.103 also requires the City to fund salaries for at least three positions in the Law Library budget.

### Background

Pursuant to California State Law, specifically the 1870 Act, the City and County of San Francisco must provide a Law Library for public use. The 1870 Act established the Law Library as a legal entity, separate from the City and County, and requires the Board of Supervisors to appropriate General Fund monies for:

*“fuel, lights and stationary and all necessary conveniences and care, rooms convenient and accessible to the Courts, sufficient for the use and accommodation of said law library and those who have occasion for its use.”*

San Francisco Charter Section 8.103 is consistent with the 1870 Act and states that the City must provide “suitable” and “sufficient” accommodations for the Law Library as well as free access to the legal community and the general public. The Charter also requires the City to pay for the salaries of three positions in the Law Library budget including the: 1) Librarian, 2) Assistant Librarian, and 3) Bookbinder.

In the FY 2012-13 budget, as previously approved by the Board of Supervisors, the Board of Supervisors appropriated \$738,179 of General Fund monies for the Law Library budget, of which \$486,840 was to pay for salaries and fringe benefits for the three positions noted above and the remaining balance of \$251,339 was to pay for rent, insurance, telephone and information systems, and general supplies needed by the Law Library. The Law Library receives additional funding for their programming and operating expenses from Superior Court filing fees.

### *The Law Library's Occupancy at the War Memorial Veteran's Building*

The Law Library was originally located in City Hall. When City Hall closed for seismic renovations in 1995, the Law Library, the Mayor's office, the Board of Supervisors, and the Chief Administrative Officer were relocated to the War Memorial Veterans Building until the renovations were complete. On September 27, 1994, the City's Director of Property executed a Memorandum of Understanding (MOU) between the City and the War Memorial Board of Trustees for the exclusive use of 59,961 square feet of space on the third and fourth floors of the War Memorial Veterans Building at 401 Van Ness Avenue, of which the Law Library was

initially allocated 8,559 net square feet of space for the Law Library operations.<sup>1</sup> The initial term of the MOU was for three years and three months, commencing October 1, 1994 and expiring December 31, 1997 with the option to extend for two additional six-month terms. The City exercised the two, six-month extensions for space at the War Memorial Veterans Building and also executed two additional extensions.<sup>2</sup>

Under the MOU between the City and the War Memorial Board of Trustees, the City paid the War Memorial an occupancy fee, which was calculated by dividing the total estimated cost of personnel, utilities and services for the third and fourth floors by the total rentable square footage of the two floors. The occupancy rate increased each year based on increases in costs of utilities and services. Table 1 below shows the occupancy fee schedule for the Law Library from FY 2008-2009 through FY 2012-13. Such occupancy fees were paid from the City's General Fund and appropriated to the Law Library by the Board of Supervisors during the annual budget. As shown in Table 1 below, in FY 2009-10, the Library was allocated an additional 4,257 net square feet, increasing the net square footage from 8,559 to 12,816.

**Table 1: Law Library Occupancy Fee Schedule from FY 2008-09 through FY 2012-13**

<b>Fiscal Year</b>	<b>Rate Per Gross Square Foot</b>	<b>Net Square Feet</b>	<b>Gross Square Feet<sup>1</sup></b>	<b>Occupancy Fee</b>
FY 2008-09	\$12.19	8,559	10,208	\$124,436
FY 2009-10	\$12.19	12,816	14,310	\$174,439
FY 2010-11	\$12.92	12,816	14,310	\$184,885
FY 2011-12	\$13.31	12,816	14,310	\$190,431
FY 2012-13	\$13.31	12,816	14,310	\$190,431

<sup>1</sup> According to Ms. Murray, the City pays rent based on the Law Library's gross square feet which includes the Law Library's net square feet and their pro-rated share of the 4<sup>th</sup> floor common space.

According to Ms. Elizabeth Murray, Managing Director of the San Francisco War Memorial and Performing Arts Center, the use of space for City departments in the War Memorial Veterans Building, including the 8,559 net square feet of space for the Law Library, was intended to be temporary. Moreover, it was understood that the Law Library would move out once the War Memorial was closed for seismic renovations. On September 15, 2011, the War Memorial provided the City with a notice of termination of the MOU effective February 28, 2013 in order to seismically retrofit and renovate the War Memorial Veterans Building. The renovations are scheduled to begin July 1, 2013. Ms. Murray advises that the renovations can initially proceed around the Law Library, assuming the Law Library vacates by mid-August, 2013.

<sup>1</sup> The MOU provided office space on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the War Memorial Veterans Building for City Hall tenants displaced by the reconstruction of City Hall after the Loma Prieta earthquake, including the Clerk of the Board, Board of Supervisors, and Mayor's Office. Subsequently, other City tenants, including the Municipal Railway (Muni), Treasurer/Tax Collector's Office, Mayor's Office of Disability and the Department of the Environment occupied space on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the War Memorial Veterans Building.

<sup>2</sup> The first extension was for three years from January 1, 1999 through December 31, 2001. The second extension began January 1, 2002 and continues until the War Memorial Veterans Building closes for seismic retrofitting or until the space is otherwise required by the War Memorial Board of Trustees.

On April 2, 2013, the Board of Supervisors approved a resolution (File 13-0227; Resolution No. 97-13) which:

- (1) Found that no greater than 20,000 square feet of net rentable space was suitable and sufficient for the Law Library;
- (2) Authorized the Director of Property to enter into a lease, which was being negotiated at the time, between the City and Van Ness Post Center, LLC, for no more than 20,000 net square feet on the ground floor and first floor at 1200 Van Ness Avenue for the Law Library, subject to final approval by the Board of Supervisors;
- (3) Found that the proposed relocation of the Law Library was in conformance with the City's General Plan and priority policies of the Planning Code Section 101.1;
- (4) In the event that the lease agreement with Van Ness Post Center, LLC was not executed, authorized the Director of Property to negotiate a lease for alternative space consisting of similar size, rent, and terms, subject to final approval by the Board of Supervisors; and
- (5) Authorized the Director of Property to enter into any needed additions or modifications to the proposed lease that would not increase the obligations or liabilities of the City.

According to Mr. John Updike, the Director of Property, the lease at 1200 Van Ness Avenue could not be executed for the Law Library because the landlord was able to negotiate higher rents and fewer tenant improvements with another tenant for the space. As a result, Mr. Updike advises that in accordance with the previously approved resolution, the Real Estate Division has now negotiated a lease for alternative space for the Law Library.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Director of Property to execute a new five year lease, with one five year option, for up to 20,000 square feet, including the entire 4<sup>th</sup> floor and a portion of the 2<sup>nd</sup> floor at 1145 Market Street between the City as tenant, on behalf of the San Francisco Law Library and 1145 Market Street Limited Partnership (LP), as landlord, from July 1, 2013 through June 30, 2018.

In accordance with the proposed resolution, the Director of Property has negotiated a non-binding Letter of Intent (LOI), which, according to Mr. Updike would be the basis for the provisions of a final lease to be negotiated for the Law Library. Given the need to expedite the move of the Law Library out of the War Memorial, Mr. Updike advises that he has not yet completed negotiations for a new lease for the Law Library. Under the proposed resolution, the Board of Supervisors would authorize the Director of Property to execute the subject lease and enter into any amendments or modifications to that lease that the Director of Property determines, in consultation with the City Attorney, are in the best interests of the City and do not materially increase the obligation or liabilities of the City nor materially decrease the benefits to the City. In addition, the proposed resolution reaffirms and authorizes all actions taken by the Board of Supervisors, the Director of Property and the City Attorney related to Resolution 97-13, discussed above.

The major provisions of the Letter of Intent and the related proposed 1145 Market Street lease are shown in Table 2 below.

**Table 2: Proposed Lease Terms for 1145 Market Street**

<b>Terms</b>	<b>Description</b>
Square feet	Initially 13,155 net square feet (sf) comprising entire 4 <sup>th</sup> floor; Additional 6,845 sf on 2 <sup>nd</sup> floor, for up to 20,000 total sf
Base Rent	Initially \$42,754 per month (\$39.00 per sf or \$3.25 per sf per month for the first year)
Annual Base Rent Increase	4%
Term	Five-year term, from July 1, 2013 through June 30, 2018
Options to Extend Term	One five-year option at 95% of then Fair Market Value
Other City Expenses	City pays electricity, and prorata share of operating expenses
Tenant Improvements	Tenant improvement allowance of up to \$25 per square foot, with amortization at 7% for additional tenant improvements
Early Termination Provision	Permits early termination by City with 180 day written notice and repayment of landlord's unamortized costs
Purchase Right	City will have a one-time first right to purchase 1145 Market Street
Other Terms and Conditions	The Director of Property would be authorized to enter into other needed terms to execute the lease, following consultation with the City Attorney that does not increase the obligation or liability of the City.

The proposed lease would initially include 13,155 net square feet on the 4<sup>th</sup> floor of 1145 Market Street, which was previously occupied by the City's PUC. In addition, the Letter of Intent provides for the City to increase this leased space by 6,845 net square feet on the 2<sup>nd</sup> floor for total leased space at 1145 Market Street of up to 20,000 net square feet on January 1, 2014.

The City's Health Service System (HSS) currently leases the entire 2<sup>nd</sup> floor at 1145 Market Street. HSS is proposing to enter into a new lease at 1145 Market Street to relocate from the 2<sup>nd</sup> floor to the ground floor no later than December 1, 2013 (Item 6, File 13-0466 on the Budget and Finance Committee's June 5, 2013 agenda), such that the 2<sup>nd</sup> floor space would become available for use by the Law Library after January 1, 2014. The proposed lease at 1145 Market Street for the Law Library would be contingent upon the approval and execution of the proposed lease at 1145 Market Street for HSS.

## **FISCAL IMPACTS**

### *Tenant Improvements and Relocation Cost*

According to Mr. Updike, the tenant improvements that would be made at 1145 Market Street to accommodate the Law Library include:

- 1) constructing a new Reserve Book Room, including stacks for books;
- 2) installing fiber network and computer stations;
- 3) installing counter space and work areas;
- 4) constructing a large conference room; and
- 5) installing shelves throughout for books, including structural floor supports.

The proposed lease includes a tenant improvement allowance of up to \$25 per square foot, or total of up to \$328,875 for the initial 13,155 sf and \$171,125 for the additional 6,845 sf., or a total of \$500,000 to be paid by the landlord. If the tenant improvement costs exceed this tenant improvement allowance, the proposed lease provides that the City can amortize the additional costs over the term of the five-year lease at a 7% annual interest rate, to be paid to the landlord. According to Mr. Updike, he cannot estimate the total costs of the proposed tenant improvements at this time.

Mr. Updike advises that in addition to the \$500,000 of tenant improvements to be paid by the landlord at 1145 Market Street, Mr. Updike estimates the cost to physically relocate the Library at \$200,000<sup>3</sup> and additional furnishings and tenant improvement costs of \$320,000 for the City, or City one-time expenses totaling \$520,000, for a total one-time expense of approximately \$1,020,000 as shown in Table 3 below.

**Table 3: Tenant Improvement and Relocation One-Time Costs**

<b>Landlord Costs:</b>	
Tenant Improvement Allowance (\$25/sq. ft.)	\$500,000
<b>City Costs:</b>	
Relocation	\$200,000
Furnishings and additional tenant improvements	320,000
<b>Subtotal City Costs:</b>	<b>\$520,000</b>
<b>Total Estimated One-Time Costs</b>	<b>\$1,020,000</b>

The Board of Supervisors appropriated \$1,000,000 of General Funds in the Department of Public Works FY 2013-14 budget, and placed on Budget and Finance Committee reserve, in anticipation of the Law Library's relocation. Mr. Updike advises that, if the proposed lease is approved, he will seek release of \$520,000 on reserve to cover the costs of tenant improvements, furnishings and relocation in the near future.

#### *Annual Rent and Related Payments*

Although the proposed resolution states that the City, on behalf of the Law Library, would commence the subject lease effective July 1, 2013, Mr. Updike advises that in order to complete the necessary tenant improvements at 1145 Market Street and then relocate the Law Library, it is likely that the subject lease may not commence until approximately September 1, 2013. However, Mr. Updike requests that the proposed resolution not be amended to change the commencement date in order to provide maximum flexibility for relocating the Law Library out of the War Memorial if the tenant improvements can be completed sooner than anticipated. Ms. Murray advises that after June 30, 2013, the War Memorial will not charge the Law Library for rent in July or August, 2013.

Assuming a September 1, 2013 commencement date, the City would pay approximately \$561,015 in rent in FY 2013-14 based on \$39.00 per square foot per year (\$3.25 per square foot per month) for (a) 13,155 square feet for an initial four months from September 1, 2013 through

<sup>3</sup> Mr. Updike advises that relocation costs will include the move under the subject lease at 1145 Market Street, as well as relocation to Brooks Hall for temporary storage for the Law Library's books.

December 31, 2013, and (b) 20,000 square feet for the second six months of FY 2013-14. In addition, the City would pay approximately \$6,000 annually for utilities and \$10,357 for the Law Library's prorata share of operating expenses for a total cost of approximately \$577,372 in FY 2013-14. The City would also pay a one-time cost of approximately \$520,000 in tenant improvement and relocation costs, as shown in Table 3 above, subject to the Budget and Finance Committee's release of these funds on reserve, for a total of \$1,097,372 in FY 2013-14 for the Law Library's leased space at 1145 Market Street. As shown in Table 4 below, total estimated lease and related costs for the initial five-year term of the lease would be \$4,630,006, which would all be General Fund expenditures, subject to appropriation approval by the Board of Supervisors.

**Table 4: Estimated Rent, Utilities, and Relocation and Tenant Improvement Costs**

	<b>FY 2013-14<sup>1</sup></b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>Total</b>
Rent	\$561,015	\$811,200	\$843,648	\$877,394	\$912,490	\$4,005,747
Utilities <sup>2</sup>	6,000	6,180	6,365	6,556	6,753	31,854
Prorata Expenses <sup>3</sup>	<u>10,357</u>	<u>14,832</u>	<u>15,276</u>	<u>15,734</u>	<u>16,206</u>	<u>72,405</u>
Subtotal	\$577,372	832,212	865,289	899,684	935,449	\$4,110,006
Relocation/ Tenant Improvements	520,000					520,000
<b>Total</b>	<b>\$1,097,372</b>	<b>\$832,212</b>	<b>\$865,289</b>	<b>\$899,684</b>	<b>\$935,449</b>	<b>\$4,630,006</b>

<sup>1</sup> Assumes no rent payments to the War Memorial in July or August of 2013, commencement of lease payments to 1145 Market Street for 13,155 sf on September 1, 2013 and an additional 6,845 sf on January 1, 2014 at \$39 per sf per year, increasing 4% annually.

<sup>2</sup> Assumes utilities are paid at rate of approximately \$500 per month, increasing 3% annually.

<sup>3</sup> Assumes prorata expenses are paid at rate of approximately \$0.72 per sf annually, increasing 3% annually.

The Law Library's rent and utility costs of \$577,372 in FY 2013-14 under the proposed lease are \$386,941, or approximately 203% more than the FY 2012-13 occupancy fee paid for the Law Library to the War Memorial of \$190,431 (see Table 1 above). Furthermore, as shown in Table 4 above, the annual rent will increase by 4% per year and utility and operating expenses are projected to increase by 3% per year over the five-year term of the lease. Therefore, the Board of Supervisors will need to appropriate increasing amounts of General Fund monies in the Law Library's annual budgets to pay for the increasing additional rent, utility and operating expenses if the proposed new lease is approved.

According to Mr. Updike, the proposed lease at \$39 per square foot in the first year, with annual 4% increases, and \$25 per square foot tenant improvement allowance, represents the fair market rent for the subject premises based on comparable leases surveyed by the Real Estate Division.

#### *Termination of Lease*

As noted above, under the proposed Law Library lease at 1145 Market Street, the City may terminate the subject lease after January 1, 2014, with 180-day advanced written notice to the landlord, if the City cannot accommodate any requirement by Court order or if the requirement for a Law Library for the City is eliminated by law. However, if the City terminates the subject lease, the City would be required to pay the landlord's unamortized costs, which include tenant improvements, hard costs, soft costs, leasing commissions, legal fees, etc. Mr. Updike advises that he cannot estimate the total potential cost to the City to terminate the subject lease.

## POLICY CONSIDERATION

As noted above, the Board of Supervisors recently approved a resolution (File 13-0227; Resolution No. 97-13) which found that no greater than 20,000 square feet of net rentable space was suitable and sufficient for the Law Library. The proposed resolution reaffirms and authorizes all actions taken by the Board of Supervisors, the Director of Property and the City Attorney related to Resolution 97-13.

The Law Library currently occupies 12,816 net square feet at the War Memorial Veterans Building. The proposed lease at 1145 Market Street would provide a total of up to 20,000 net square feet for the Law Library, including approximately 13,155 net square feet on the fourth floor and 6,845 net square feet of additional leased space on the second floor. The 20,000 net square feet is an increase of approximately 7,184 net square feet or 56% more than the Law Library's existing space of 12,816 net square feet.

According to Mr. Updike, a report prepared for the Director of Real Estate on March 20, 2013 by a consultant, Charles R. Dyer Consulting, determined that 20,000 net square feet is "suitable and sufficient" for the Law Library based on certain conditions, including (1) equipping customer workspace with internet access, and (2) installing compacting shelving.<sup>4</sup>

### Pending Litigation

On February 5, 2013, the Law Library filed a Writ of Mandate against the City and the City Administrator alleging that "at least 30,000 gross square feet is required for any space to be at least minimally adequate" for the Law Library. According to Ms. Christine Van Aken of the City Attorney's Office, on April 18, 2013, the Superior Court denied the Writ of Mandate filed by the Law Library against the City.

In addition, Ms. Van Aken advises that the Law Library is seeking a preliminary injunction to prohibit the City from moving the Law Library from the War Memorial building until a suitable space is located, which is currently scheduled to be heard by the Superior Court on June 6, 2013. Ms. Van Aken further advises that on May 24, 2013, the Law Library indicated that "the Law Library is willing to agree to the 1145 Market space as a temporary location, but only because it is temporary and only in light of the pending construction project (at the War Memorial) and the need for the Library to move quickly into a new location". However, the Law Library outlined several conditions, including that the (a) City completes layout designs and plans for tenant improvements at 1145 Market Street; (b) the lease period at 1145 Market Street is no more than one year, before the City identifies a permanent space for the Law Library and moves the Law Library into that permanent space; (c) the Law Library's hours of operation are extended; and (d) the City provides additional off-site shelving space.

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<sup>4</sup> Compacting shelving is shelving installed on tracks, so that the shelves can be installed without aisles between the shelves but can be moved on the tracks for access.

**RECOMMENDATION**

Given the pending litigation and the conditions proposed by the Law Library, approval of the proposed resolution is a policy decision for the Board of Supervisors.



**Item 6**  
**File 13-0466**

**Departments:**  
Health Service System (HSS) and  
Real Estate Division (RED)

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed resolution would authorize a new ten-year lease for 19,560 square feet, including a portion on the 1<sup>st</sup> floor and the entire 3<sup>rd</sup> floor, 1145 Market Street between the City as tenant, on behalf of the Health Service System and 1145 Market Street Limited Partnership (LP), as landlord from approximately September 1, 2013 through August 31, 2023.

### Key Points

- The Health Service System (HSS) currently has leased office space on the 2<sup>nd</sup> floor of 1145 Market Street. Beginning on April 1, 2012, HSS choose not to exercise the five-year option to extend the exiting lease but entered into a month-to-month hold over lease, while HSS considered alternatives for a new lease that would contain both staff space and an expanded member benefit area.
- The proposed lease of 19,560 square feet consists of (1) 6,867 square feet for the Member Service Benefit Area, which is increase of 4,561 square feet or 248% in Member Service Benefit Area and (2) 12,693 square feet staff space, which is an increase of 1,884 square feet or 17% in staff space

### Fiscal Impacts

- Under the proposed new lease, the landlord will pay for tenant improvements, up to \$1,036,680 or approximately \$53 per square foot, for the total 19,560 square feet.
- Under the proposed new lease, the rent for the first two months of \$123,880 is abated; as such, HSS would pay approximately \$619,400 (\$743,280 less \$123,880) in rent for the first year of the lease. Total estimated first year costs of \$643,263 include (a) \$619,400 in rent, (b) \$9,780 for electricity, and (c) \$4,083 for pro-rata share of operating expenses.
- The estimated \$643,263 in first year costs of the lease will be paid by approximately 50% General Fund monies and 50% work order recoveries from enterprise departments, SFUSD (School District) and CCD (Community College District) has been included in the FY 2013-14 and FY 2014-15 proposed budgets.

### Policy Consideration

- Under the proposed lease, total square footage increases 44% compared to the current lease. The 1<sup>st</sup> floor space of 6,405 is intended for a new Wellness Center as well increased space for the Employee Assistance Program and a large conference/meeting room. Although HSS has requested the increased Wellness Center space as part of a City-wide program to increase wellness activities for employees, implementation of a City-wide wellness program is preliminary. Also, HSS is requesting new positions in the Mayor's proposed FY 2013-14 budget for implementation of the Wellness Center, but as the writing of this report, the Mayor's budget has not been submitted to the Board of Supervisors.

- Because the Controller's Office has not yet begun the strategic planning process for the proposed City-wide wellness program and the Board of Supervisors has not yet approved the HSS FY 2013-14 budget, the Board of Supervisors should consider alternatives to approving the proposed increase in space for HSS. As an alternative, if the Board of Supervisors does not want to enter into a lease agreement for the proposed Wellness Center prior to approving the HSS FY 2013-14 budget or completion by the Controller of the strategic plan for a Citywide wellness program, the Board of Supervisors could request the Director of Real Estate to find alternative or interim uses for the first floor, including locating other City departments in that space instead of HSS.

#### **Recommendations**

- Amend the proposed resolution to request the Director of Real Estate to find alternative or interim uses for the first floor space currently designated for the Wellness Center, including locating other City departments in that space instead of HSS.
- Approve the proposed resolution, as amended.

## MANDATE STATEMENT / BACKGROUND

### Mandate Statement

Under Administrative Code Section 23.27, leases with a term of more than one year or rent of more than \$5,000 per month, in which the City is the tenant, are subject to the Board of Supervisors approval, by resolution.

### Background

The Health Service System (HSS) currently has leased office space on the 2<sup>nd</sup> floor of 1145 Market Street. HSS initially occupied the 2<sup>nd</sup> and 7<sup>th</sup> floor space at 1145 Market Street in 1997, when HSS was a division of the City's Department of Human Resources. On July 1, 2005, the Health Service System (HSS) separated from the Department of Human Resources and became a City department.

In May 2007, the Board of Supervisors retroactively approved the second amendment to the lease for HSS for the 2<sup>nd</sup> floor of 1145 Market Street, extending the lease five years through March 31, 2012. The amended lease included one additional five-year option to extend that includes an adjusted rent of 95% of the prevailing market rent.

According to Mr. Charlie Dunn, Real Estate Division (RED), beginning on April 1, 2012, HSS chose not to exercise the five-year option to extend the existing lease but entered into a month-to-month hold over lease while HSS considered alternatives for a new lease that would contain both office space for staff and an expanded area for HSS members. HSS requested space for both a member benefits area, in which HSS staff advise members on their benefits, and a wellness center for health fitness classes and other activities for City employees. Under the existing lease, remodeling the existing space was judged to be too disruptive to other tenants and to ongoing HSS operations. According to Mr. Dunn, multiple sites were considered for the HSS Member Service Benefit Area and office space.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a new ten-year lease between the City and the 1145 Market Street Limited Partnership (LP)<sup>1</sup> for the Health Service System. Under the proposed lease, the HSS would lease the entire 3<sup>rd</sup> floor of 1145 Market Street and a portion of the 1<sup>st</sup> floor of 1145 Market Street for use as staff space, and a Member Service Benefit Area and Wellness Center. Terms of the proposed lease are shown in Table 1 below.

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<sup>1</sup> Formerly the Sangiacomo Family Trust.

**Table 1: Summary of Proposed HSS Ten-Year Lease at 1145 Market Street**

Term	10 years (Approximately September 1, 2013 through August 31, 2023)
Square feet (approximate)	19,560 square feet <ul style="list-style-type: none"> <li>• 6,405 on the 1<sup>st</sup> floor</li> <li>• 13,155 for the entire 3<sup>rd</sup> floor</li> </ul>
Average rent per square foot per year	Approximately \$38.00
Total annual rent	Approximately \$743,280 (monthly rent of \$61,940)
Rent Abatement	First two months of rent, approximately, \$123,880
Annual rent increases over the 10 year lease	3%
Utilities and services	The lease is fully serviced except for the separately metered utilities and prorata share of operating expenses paid by the City.
Tenant Improvements	Tenant improvements paid by landlord of up to \$53 per square foot, or total of up to \$1,036,680.
Early Termination Provision	Permits early termination by City after 7 ½ years by repayment of landlord's unamortized costs.
Purchase Right	City will have a one-time first right to purchase 1145 Market Street.

*Tenant Improvements*

Under the proposed lease, the landlord will pay for tenant improvements, up to \$1,036,680 or approximately \$53 per square foot, for the total 19,560 square feet. According to Mr. Dunn, tenant improvements will include the following: the placement of walls, doors, LEED (Leadership in Energy and Environmental Design) improvements and carpet; as well as, new electrical and a HVAC distribution system pursuant to HSS specifications. Mr. Dunn states that the proposed new space on the 1<sup>st</sup> and 3<sup>rd</sup> floors will be built out by the landlord (up to the allowance) per HSS specifications and then HSS will move in to finished space, insuring continuity of operations.

*Member Service Benefit Area and Wellness Center*

The proposed lease provides for increased space compared to the existing lease, as shown in Table 2 below.

**Table 2: Comparison of Square Footage Under Current and Proposed Lease**

	Current Lease	Proposed Lease	Increase	Percent
<u>Square Footage by Location</u>				
1st Floor	0	6,405		
2nd Floor	13,576	0		
3rd Floor	0	13,155		
<b>Total Square Footage by Location</b>	<b>13,576</b>	<b>19,560</b>	<b>5,984</b>	<b>44%</b>
<u>Square Footage by Use</u>				
Office Space	10,809	12,693	1,884	17%
Member Service Benefit Area/ Wellness Center	2,767	6,867	4,100	148%
<b>Total Square Footage by Use</b>	<b>13,576</b>	<b>19,560</b>	<b>5,984</b>	<b>44%</b>

According to Ms. Lisa Ghotbi, HSS Chief Operating Office the HSS Member Service Benefit Area and Wellness Center area is a public space for HSS members. Of the 6,867 square feet for the Member Service Benefit Center, 4,643 square feet are on the 1<sup>st</sup> floor and will be used for wellness activities and benefit seminars, including space for HSS's annual open enrollment process. According to Ms. Ghotbi, because the current space on the second floor is insufficient for HSS's annual open enrollment, HSS often has to limit the number of visitors to ensure compliance with City fire standards. Relocating HSS's annual open enrollment process to the 1<sup>st</sup> floor will allow a better and safer flow of visitors. Additionally, Ms. Ghotbi reports that the first floor location will be used for (a) group new hire enrollment sessions, (b) group retirement sessions, (c) Wellness Center movement classes, and (d) health seminars, biometric screening and health coaching. HSS will also locate three employees on the 1<sup>st</sup> floor for the Employee Assistance Program and Wellness Coordinator.

*Conformance to Federal Health Insurance Portability and Accountability Act (HIPAA)*

According to Ms. Ghotbi, in the HSS's current Member Service Benefit Area under the existing lease on the 2<sup>nd</sup> floor, it is difficult to maintain compliance with the Health Insurance Portability and Accountability Act (HIPAA) (federal law protecting personal health information) in that the space is not conducive to private conversations. Ms. Ghotbi reports that the proposed 2,224 square foot Member Service Benefit Area on the 3rd floor includes three interview rooms that would be HIPAA compliant and will provide space for HSS 1:1 member consultations regarding benefits, as well as a waiting area for members.

*Leased Space per HSS Employee*

The proposed lease increases office space for HSS's 47 current employees by 1,884 square feet, an increase of 17% as shown in Table 2 above. The average square feet per employee will increase from 230 to 270 square feet, which, according to Mr. Dunn, is within the City's standards for space of 200 to 275 square feet per employee.

## FISCAL IMPACT

The annual base rent of \$38.00 per square foot of the proposed lease is a 12% increase from the existing annual base rent of \$34.00 per square foot. According to Mr. Dunn, the annual base rent of \$38.00 per square foot in the first year represents 95% of the fair market rent based on comparable leases surveyed by the Real Estate Division.

Under the proposed new lease for HSS, the rent for the first two months of \$123,880 is abated resulting in first-year rent of \$619,400 (\$743,280 less \$123,880) in rent for the first year of the lease. As shown in Table 3 below, total first year costs to HSS under the proposed new lease are \$643,263.

**Table 3: Total First Year Costs for the HSS Lease at 1145 Market Street**

Rent – \$38.00 per square foot for 19,560 sf	\$743,280
Two-Month Rent Abatement	(123,880)
<b>Rent Subtotal</b>	<b>\$619,400</b>
Electricity – \$0.50 per square foot	\$9,780
Estimated Operating Expenses and Taxes – \$0.72 per square foot	14,083
<b>Total First Year Costs</b>	<b>\$643,263</b>

According to Ms. Ghotbi, the estimated \$643,263 for rent, electricity, and operating expenses in for the first year of the lease (September 1, 2013 through August 31, 2014) will be paid by approximately 50% General Fund monies and 50% work order recoveries from enterprise departments, SFUSD (School District) and CCD (Community College District), and has been included in the FY 2013-14 and FY 2014-15 proposed budgets.

## POLICY CONSIDERATION

### **The proposed lease provides for a new Wellness Center, although strategic planning for the City-wide wellness program has not begun**

As shown in Table 2 above, the proposed lease results in a total square footage increase of 44% compared to the current lease. According to Mr. Updike, approximately 2,400 square feet of the 6,405 square feet on the 1<sup>st</sup> floor are allocated to the Employee Assistance Program and a large conference/meeting room. The remainder of the space, approximately 4,005 square feet, is to be used as a Wellness Center and Member Benefit Area for open enrollment and other member activities. Although HSS has requested the increased Wellness Center space as part of a City-wide program to increase wellness activities for employees, implementation of a City-wide wellness program is preliminary. According to Ms. Natasha Mihal of the Controller's Office, the Controller's Office will begin a strategic planning effort in the summer of 2013 with a possible strategic plan to be completed in the fall of 2013. Also, HSS is requesting new positions in the Mayor's proposed FY 2013-14 budget for implementation of the Wellness Center, but as the writing of this report, the Mayor's budget has not been submitted to the Board of Supervisors.

Because the Controller's Office has not yet begun the strategic planning process for the proposed City-wide wellness program and the Board of Supervisors has not yet approved the HSS FY 2013-14 budget, the Board of Supervisors should consider alternatives to approving the proposed increase in space for HSS.

According to Mr. John Updike, Director of Real Estate, the proposed lease has been packaged strategically in concert with the property owner to include leased space for the Law Library (File 13-0227) as well as HSS, and therefore cannot be amended without risking the negotiated agreement for both spaces. As an alternative, if the Board of Supervisors does not want to enter into a lease agreement for the proposed Wellness Center prior to approving the HSS FY 2013-14 budget or completion by the Controller of the strategic plan for a Citywide wellness program, the

Board of Supervisors could request the Director of Real Estate to find alternative or interim uses for the first floor, including locating other City departments in that space instead of HSS.

## **RECOMMENDATIONS**

1. Amend the proposed resolution to request the Director of Real Estate to find alternative or interim uses for the first floor space currently designated for the Wellness Center, including locating other City departments in that space instead of HSS.
2. Approve the proposed resolution as amended.