CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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

March 15, 2019

TO: Budget and Finance Sub-Committee

FROM: Budget and Legislative Analyst

SUBJECT: March 20, 2019 Budget and Finance Sub-Committee Meeting

TABLE OF CONTENTS

Item 1 **File 19-0203** *(Continued from March 13, 2019)*	**Department:** Sheriff's Department (Sheriff)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the Sheriff's Department to enter into a third amendment to the existing contract with Leaders in Community Alternatives, Inc. to administer the Sheriff's Department's home detention and electronic monitoring program. The amendment would increase the total not to exceed amount by $465,000, from $2,000,000 to $2,456,000, and extend the term by three months for a total contract term of five years an three months, from May 1, 2014 through July 31, 2019.

Key Points

- In April 2014, the Board of Supervisors approved the contract between the Sheriff's Department and Leaders in Community Alternatives, Inc. to administer the Sheriff's Department's home detention and electronic monitoring program for an amount not to exceed $2,000,000 from May 1, 2014 through April 30, 2017. The Board approved two modifications to extend the contract through April 30, 2019.
- After a competitive bidding process in December 2018, the Sheriff's Department deemed sentinels the highest responsive respondent to administer the home detention and electronic monitoring program and entered into negotiations.
- As new contract negotiations with Sentinel were longer than anticipated, the Office of Contract Administration, along with the Sheriff's Department, determined that the negotiations and accompanying legislation would not be completed prior to the expiration of the current contract with Leaders in Community Alternatives, Inc. on April 30, 2019. The Sheriff's Department anticipates having a new contract with Sentinel executed by August 1, 2019, subject to Board of Supervisor's approval.

Fiscal Impact

- In January 2018, an appellate court decision resulted in the number of electronic monitoring participants increasing three-fold. In addition, Sheriff Hennessy and then later the Board of Supervisors waived all fees for sentenced participants. As a result, average monthly electronic monitoring contract costs increased from $20,000 per month to approximately $100,000 to $120,000 per month. These are General Fund costs.
- The City has paid Leaders in Community Alternatives, Inc. $1,599,322 from May 1, 2014 through December 31, 2018. The projected monitoring expense from January 1, 2019 through the end of the proposed extension is $865,678, for a total of $2,465,000.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

California Penal Code Section 1203.016 authorizes the Sheriff to administer a home detention program with electronic monitoring with the requirement that the Board of Supervisors annually review and approve the rules and regulations of the program and to review program administrator's certificate of current liability insurance as evidence of financial responsibility.

BACKGROUND

Since the early 2000s, the Sheriff's Department has funded a home detention and electronic monitoring program as an alternative to incarceration. In October 2013, the Sheriff's Department released a request for proposals to administer the program. The Sheriff's Department received three proposals: RMOMS, Sentinel, and Leaders in Community Alternatives, Inc. A panel composed of a Captain from the Sheriff's Department, and a representative from Juvenile Probation, Adult Probation and the Public Defender deemed Leaders in Community Alternatives, Inc. the highest scoring responsive proposer.

In April 2014, the Board of Supervisors approved the contract between the Sheriff's Department and Leaders in Community Alternatives, Inc. to administer the Sheriff's Department's home detention and electronic monitoring program for an amount not to exceed $2,000,000 from May 1, 2014 through April 30, 2017 (File 14-0308). The initial contract had two (2) one year options to extend through April 30, 2019.

In March 2017, the Board of Supervisors approved the first amendment to the contract to extend the term by one year through April 30, 2018 (File 17-0265). In April 2018, the Board of Supervisors approved the second amendment to the contract to extend the term by one year through April 30, 2019 (File 18-0285). There were no changes to the not to exceed amount.

In June 2018, the Board of Supervisors approved an ordinance amending the Administrative Code to abolish Criminal Justice Fees, including the Sheriff's Department's Work Alternative Program Fees and Electronic Monitoring (File 18-0132).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Sheriff's Department to enter into a third amendment to the existing contract with Leaders in Community Alternatives, Inc. to administer the Sheriff's Department's home detention and electronic monitoring program. The amendment would increase the total not to exceed amount by $465,000, from $2,000,000 to $2,456,000, and extend the term by three months for a total contract term of five years an three months, from May 1, 2014 through July 31, 2019.

The proposed resolution would also approve evidence of financial responsibility demonstrated by program administrator Leaders in Community Alternatives, Inc. for the 2019 calendar year.

Term Extension

In December 2018, the Sheriff's Department released a request for proposals to administer the home detention and electronic monitoring program. The Sheriff's Department received four proposals: Corrective Solution, Leaders in Community Alternatives, Inc., Sentinel and SCRAM of CA. A panel composed of one staff from the Sheriff's Department, and a representative from Juvenile Probation and Adult Probation deemed sentinel the highest responsive respondent and entered into negotiations.

According to Mr. Crispin Hollings, Deputy Director of the Sheriff's Department, contract negotiations between the City and Sentinel were longer than anticipated. The Office of Contract Administration, along with the Sheriff's Department, determined that the negotiations and accompanying legislation would not be completed prior to the expiration of the current contract with Leaders in Community Alternatives, Inc. on April 30, 2019. The Sheriff's Department anticipates having a new contract with Sentinel executed by August 1, 2019, subject to Board of Supervisor's approval.

FISCAL IMPACT

Until February 2018, the monthly average cost of the electronic monitoring contract was approximately $20,000.[1] In January 2018, an appellate court decision resulted in the number of electronic monitoring participants increasing three-fold, from approximately 100 participants per month to 300 per month. In addition, Sheriff Hennessy and then later the Board of Supervisors waived all fees for sentenced participants. As a result, average monthly electronic monitoring contract costs increased from $20,000 per month to approximately $100,000 to $120,000 per month. These are General Fund costs.

The City has paid Leaders in Community Alternatives, Inc. $1,599,322 from May 1, 2014 through December 31, 2018. The projected monitoring expense from January 1, 2019 through the end of the proposed extension is $865,678, for a total of $2,465,000.

RECOMMENDATION

Approve the proposed resolution

[1] This number represents the average monthly amount paid by the General Fund after fees were paid by participants.

Item 4 **File 19-0092**	**Department:** Mayor's Office

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would provide businesses with a 10 percent credit on their Homelessness Gross Receipts Tax liability for a given tax year if they irrevocably waive their right to a refund of their tax payments.
- The proposed ordinance would also allow businesses to make an irrevocable gift to the Our City, Our Home Fund and receive a credit on their Homelessness Gross Receipts Tax liability equal to 110 percent of their gift amount.

Key Points

- In November 2018, San Francisco voters approved Proposition C, which added the Homelessness Gross Receipts Tax Ordinance to the San Francisco Business and Tax Regulations Code and imposes the Homelessness Gross Receipts Tax, an additional gross receipts tax on certain businesses in the City.
- The validity of the Homelessness Gross Receipts Tax Ordinance is unclear. To validate the legality of the adoption and enforceability of Proposition C, the City filed a complaint for validation in January 2019.
- Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax. Despite the unresolved legal question, the City desires to appropriate and spend revenues from the Homelessness Gross Receipts Tax, but only if taxpayers irrevocably waive any right to a refund of those revenues.

Fiscal Impact

- The fiscal impact of the proposed ordinance will depend on the number of businesses that take advantage of the tax liability credit opportunity, and the Homeless Gross Receipts Tax liability of those businesses.
- The Controller’s Office estimates that the Homelessness Gross Receipts Tax will generate new tax revenue of approximately $250 to $300 million annually beginning in 2019.

Recommendation

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

MANDATE STATEMENT

Charter Section 2.105 states that the Board of Supervisors shall act only by written ordinance or resolution.

BACKGROUND

In November 2018, San Francisco voters approved Proposition C with approximately 61 percent of the vote. Proposition C added the Homelessness Gross Receipts Tax Ordinance to the San Francisco Business and Tax Regulations Code and imposes the Homelessness Gross Receipts Tax, which is an additional gross receipts tax on certain businesses in the City.[1] City Administrative Code Section 10.100-164 established the Our City, Our Home Fund to receive all taxes, penalties, interest, and fees collected from the Homelessness Gross Receipts Tax. The Controller's Office estimates that the Homelessness Gross Receipts Tax will generate new tax revenue of approximately $250 to $300 million annually beginning in 2019.

Revenues from the Homelessness Gross Receipts Tax are dedicated to defined homelessness services and efforts to prevent homelessness, including secure permanent housing for homeless people, mental health services specifically designed for homeless people, services for people who have recently become homeless or who are at risk of becoming homeless and short-term shelter and access to hygiene programs for homeless people.

The validity of the Homelessness Gross Receipts Tax Ordinance is unclear because of a legal question about whether the tax, which was adopted through a voter initiative, required a simple majority or a two-thirds majority to pass. If it required a two-thirds majority, Proposition C, which received only 61 percent of the vote, would not have passed. To validate the legality of the adoption and enforceability of Proposition C, the City filed a complaint for validation (San Francisco Superior Court Case No. CGC-19-573230) in January 2019.

Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax, which went into effect January 1, 2019. The first estimated payment is due April 30, 2019.

Despite the unresolved legal question, the City desires to appropriate and spend revenues from the Homelessness Gross Receipts Tax for homelessness services specified by Proposition C, but only if taxpayers irrevocably waive any right to a refund of those revenues based on (a) any argument that the Homelessness Gross Receipts Tax Ordinance required at least a two-thirds majority to pass, or (b) any lawsuit that invalidates the Homelessness Gross Receipts Tax Ordinance.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would provide businesses with a 10 percent credit on their Homelessness Gross Receipts Tax liability for a given tax year if they irrevocably waive their

[1] Businesses pay a rate between 0.175 percent and 0.69 percent of gross receipts above $50 million, depending on business type.

right to a refund of their tax payments. Businesses would quality for the 10 percent credit in a given tax year if they enter into a waiver agreement with the City between January 1 of the following tax year and the date when the business files its original annual tax return. (In other words, to receive the 10 percent credit for tax year 2019, businesses would need to enter into the waiver agreement between January 1, 2020 and the date in 2020 when the business files its 2019 original tax return.)

The proposed ordinance would also allow businesses to make an irrevocable gift to the Our City, Our Home Fund and receive a credit on their Homelessness Gross Receipts Tax liability equal to 110 percent of their gift amount. If the amount of the credit is greater than the business's liability in a given tax year, the unused portion of the credit may be carried forward and applied to the business's Homelessness Gross Receipts Tax liability in future tax years.

The credit would be effective for tax year 2019 and each subsequent tax year until tax year 2024 or the tax year in which San Francisco Superior Court Case No. CGC-19-573230 is resolved, whichever is earlier.

FISCAL IMPACT

The fiscal impact of the proposed ordinance will depend on the number of businesses that take advantage of the tax liability credit opportunity, and the Homeless Gross Receipts Tax liability of those businesses.

If 100 percent of businesses take advantage of the tax credit (either by waiving their right to a refund or making a gift to the Our City, Our Home Fund) each year, the City will credit an estimated $30 million per year, or 10 percent of the Controller's revenue estimations of $300 million per year, of Homelessness Gross Receipts Tax revenue back to businesses. Under this scenario, the City will have access to the remaining $270 million of tax revenue per year. If not all businesses take advantage of the credit opportunity, the amount that the City credits back to businesses will be less than $30 million, and the amount of revenue the City has access to, pending resolution of the legal question, will be less than $270 million.[2]

POLICY CONSIDERATION

If it is determined at a future date that Proposition C is not valid or enforceable, the proposed ordinance will have allowed the City to appropriate some amount of revenue from the Homelessness Gross Receipts Tax that would otherwise have been returned to taxpaying businesses. If it is determined that Proposition C is valid and enforceable, under the proposed ordinance the City will have credited back to businesses up to ten percent of total Homelessness Gross Receipts Tax revenues that could have been spent on services.

[2] For example, if the businesses that enter into the waiver agreement with the City represent 20 percent of total Homelessness Gross Receipts Tax revenue, the credit issued by the City will total $6 million ($300 million in revenues x 20 percent of revenue x 10 percent credit) and the City will have access to $54 million in revenue ($300 million x 20 percent of revenue, less the $6 million in credit).

Regardless of the outcome of the question of Proposition C's validity, the proposed ordinance may benefit the City by allowing earlier access to revenues from the Homelessness Gross Receipts Tax, pending a resolution of the legal question.

RECOMMENDATION

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

Item 6 **File 19-0205**	**Department:** Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Amendment No. 4 to the construction management contract between San Francisco Public Utilities Commission (SFPUC) and Black and Veatch Corporation, extending the contract by 10 months, for a total contract term of nine years and eight months, from August 1, 2010 through March 29, 2020, and increasing the contract not-to-exceed amount by $3,800,000, for a total not to exceed $71,800,000.

Key Points

- SFPUC's Calaveras Dam Replacement Project consists of building a new earth and rock fill dam immediately downstream from the existing dam at the Calaveras Reservoir. The new dam would provide seismic safety and restore the original reservoir capacity of 31 billion gallons, providing water to 2.7 million SFPUC customers.
- In February 2010, SFPUC conducted a Request for Proposals (RFP) to select a contractor for construction management services and Black and Veatch Corporation was selected. In July 2010, the Board of Supervisors approved a contract for a term of five years and six months and an amount not to exceed $38,000,000. At the time, the total project budget was approximately $416 million. However, unforeseen sub-surface conditions required significant design revisions and additional construction work, increasing the total project budget to approximately $718 million. In March 2015, the Board of Supervisors approved a contract amendment that extended the contract through May 2019 and increased the not-to-exceed amount to $68,000,000.
- Since the 2015 contract amendment, the project has incurred additional cost increases and delays due to slope stability issues and landslides. The project budget is now approximately $823 million, nearly doubling the original budget of $416 million. The contract amendment authorized by the proposed resolution would allow adequate time for Black and Veatch to close out the project, as well as staff resources for the Fish Passage Facility Project, which is a sub-project to the Calaveras Dam Replacement Project.

Fiscal Impact

- The proposed resolution would increase the contract budget by $3,800,000, for a total not to exceed $71,800,000. Sufficient funding is available in the SFPUC Water Enterprise FY 2018-20 two-year capital budget.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

The San Francisco Public Utilities Commission's (SFPUC) Calaveras Dam Replacement Project consists of building a new earth and rock fill dam immediately downstream from the existing dam, at the Calaveras Reservoir on the border of Alameda and Santa Clara Counties, southeast of Fremont. The new dam, designed for seismic safety, would have a height of 220 feet, a crest length of 1,210 feet, a base thickness of 1,180 feet, and a crest thickness of 80 feet. The replacement dam would restore the original reservoir capacity of 31 billion gallons, providing water storage to 2.7 million SFPUC customers in the Bay Area. As of November 2018, the project is over 95 percent complete.

In February 2010, SFPUC conducted a Request for Proposals (RFP) to select a contractor for construction management services for the Calaveras project. Black and Veatch Corporation was determined to be the highest scoring responsive and responsible proposer. In July 2010, the Board of Supervisors approved a contract with Black and Veatch for a term of five years and six months, from August 2010 through January 2016, and an amount not to exceed $38,000,000 (File 10-0855, Resolution 327-10). At that time, the estimated total Calaveras Dam project budget was approximately $416 million. In July 2011, the SFPUC Commission approved Amendment No. 1 to the contract, extending the contract by six months, although the amendment was never executed. In February 2015, the SFPUC Commission approved Amendment No. 2 to the contact, increasing the not-to-exceed amount to $38,500,000 and affirming the six-month extension that had been approved in Amendment No. 1, to avoid disruption while a larger and longer term extension was under review by the Board of Supervisors. In March 2015, the Board of Supervisors approved Amendment No. 3 to the contract, extending the contract by two years and 10 months through May 2019, and increasing the not-to-exceed amount to $68,000,000 (File 15-0214, Resolution 104-15). Due to unanticipated sub-surface conditions regarding seismic faults and ancient landslides, requiring significant design revisions and additional construction work, the project budget had increased to approximately $718 million, a 73 percent increase.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Amendment No. 4 to the contract between SFPUC and Black and Veatch, extending the contract by 10 months, for a total contract length of nine years and eight months, from August 1, 2010 through March 29, 2020, and increasing the not-to-exceed amount by $3,800,000, for a total not to exceed $71,800,000. Amendment No. 4 was approved by the SFPUC Commission on February 12, 2019.

Since Amendment No. 3 was executed in 2015, the Calaveras Dam Replacement Project has undergone cost increases and delays due to slope stability issues and a landslide triggered by severe and unusual rain events. Due to these delays, the project budget increased to approximately $823 million, nearly doubling the original budget of $416 million. The 10-month extension would allow construction management services to continue while construction is completed and allow adequate time to close out the project. Additionally, the amendment would provide staff augmentation to support construction management of the Fish Passage Facility Project, which is a sub-project to the Calaveras project.

FISCAL IMPACT

The budget of $3,800,000 for construction management services to complete and closeout the Calaveras Dam project and support the Fish Passage Facility Project is shown in Table 1 below.

Table 1: Project Budget for Amendment No. 4 by Task

Provide Construction Management (CM) of Construction Contract	$1,944,943
Public Outreach	55,200
Quality Control Oversight	385,000
Contract Administration	197,200
Project Controls / Documentation	102,510
Environmental Oversight	188,220
Naturally Occurring Asbestos (NOA) Compliance	116,950
Alameda Creek Diversion Dam Fish Ladder Quality Assurance Support	309,400
Expenses	500,577
Total	**$3,800,000**

The contract between SFPUC and Black and Veatch provides for 14 percent Local Business Enterprise subcontractors; the subcontractors are shown in Table 2 below.

Table 2: Project Budget for Amendment No. 4 by Subcontractor

Contractor	**Amount**
Black & Veatch – Prime	$1,180,135
Aeolus, Inc.	16,480
BioMaAS	188,242
Hatch Mott McDonald	856,677
Kleinfelder	748,265
Shaw Environmental & Infrastructure Group	62,219
Steve Lombardi	62,805
Thier PR	184,599
Labor Subtotal	*$3,299,423*
Other Direct Costs and Fees	$500,577
Total	**$3,800,000**

According to Ms. Susan Hou, SFPUC Project Manager, sufficient funding is available in the SFPUC Water Enterprise FY 2018-20 two-year capital budget. Ms. Hou states that SFPUC does not anticipate any further contract amendments.

POLICY CONSIDERATION

As noted above, the Calaveras Dam Replacement Project budget increased from the original amount of $416 million in 2010 to $718 million in 2015 due to unanticipated sub-surface conditions regarding seismic faults and ancient landslides, requiring significant design revisions and additional construction work. Between 2015 and 2017, the Calaveras Dam Replacement Project budget increased from $718 million to $823 million due to slope stability issues and a landslide triggered by severe and unusual rain events in 2017. According to Ms. Hou, the slope stability issues that occurred after 2015 were unrelated to the ancient landslides previously encountered on the project; rather, the severe and unusual rain events in 2017 triggered a slide on Calaveras Road which was the primary construction access to the site, partially delaying project construction until repairs could be made to the road. Now that all major earthwork is complete, the SFPUC does not anticipate further unforeseen differing side conditions to delay the project. Final construction completion is expected in May 2019.

RECOMMENDATION

Approve the proposed resolution.

Item 7 File 18-1226	Department: Treasure Island Development Authority (TIDA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a lease between Treasure Island Development Authority (TIDA) and Treasure Island Sailing Center Foundation for the development and management of Treasure Island Sailing Center, for a term of 66 years and initial minimum annual base rent of $10,000.
- The proposed resolution would also make findings under the California Environmental Quality Act (CEQA), adopt a mitigation monitoring and reporting program, and confirm the Planning Department's determination that no additional environmental impacts that were not previously identified would occur from the lease.

Key Points

- Treasure Island Sailing Center Foundation has operated the sailing center at Clipper Cove since 1999. Treasure Island Sailing Center's focus is on providing sailing instruction to youth, particularly underprivileged San Francisco youth. Treasure Island Sailing Center Foundation now wishes to expand the sailing center to better serve its mission.
- The proposed resolution would approve a lease between TIDA and Treasure Island Sailing Center Foundation for the development and management of the sailing center, for a term of 66 years and initial annual base rent of $10,000. Treasure Island Sailing Center Foundation would build a new facility of approximately 15,000 square feet. It would pay the greater of the base rent or percentage rent based on gross revenues.
- The initial annual base rent of $10,000 was affirmed by an appraisal in October 2018, due to the limitations

Fiscal Impact

- Over the 66-year term of the lease, Treasure Island Sailing Center Foundation would pay at least $1,347,487 in base rent. The base rent is adjusted annually based on the Consumer Price Index, with an annual increase minimum of 2 percent and maximum of 4 percent.

Recommendations

- Amend the proposed resolution to require an annual written report to the Board of Supervisors in June each year on the status of the Foundation's fundraising and construction of the improvements.
- Approve the proposed resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of $1 million or more is subject to Board of Supervisors approval.

BACKGROUND

Since 1999, Treasure Island Sailing Center Foundation (Foundation), a nonprofit organization, has operated the sailing center at Clipper Cove. The current sailing center comprises approximately 15,000 square feet of surface area, two small buildings, approximately 2,500 square feet of water area, and approximately 15,000 square feet of paved surface. Treasure Island Sailing Center Foundation's focus is on providing sailing instruction to youth, with a particular emphasis on underprivileged San Francisco youth. The sailing center hosts programs with the Boys and Girls Club of San Francisco, the Life Learning Academy, One Treasure Island, Treasure Island Gymnasium/YMCA, and the Girl Scouts of America, as well as hosting U.C. Berkeley's sailing team and other collegiate regattas. According to Mr. Richard Rovetti, Treasure Island Development Authority (TIDA) Deputy Director of Real Estate, Treasure Island Sailing Center Foundation was first awarded its operating permit without undergoing a competitive solicitation process due to the non-profit nature of the operation.

The TIDA and Planning Department prepared two Environmental Impact Reports (EIRs) regarding the proposed transfer of Treasure Island and Yerba Buena Island from the United States Navy to the City and County of San Francisco. The 2006 EIR included a program-level analysis of the transfer of the former base to the City, with a project-level analysis of the expansion of the marina. The 2011 EIR analyzed the master development of Treasure Island, including landside services and improvements for the marina. The Planning Department found that TIDA's plan for a new sailing center facility would not create additional environmental impacts beyond those identified in the EIRs.

TIDA negotiated a 66-year lease for the development and management of the sailing center with Treasure Island Sailing Center Foundation. In October 2017, the TIDA Board of Directors approved the lease. An appraisal from October 2018 affirms $10,000 per year as fair market rent of the property in as-is condition. According to Mr. Rovetti, the appraisal was conducted one year after the TIDA Board of Directors approved the lease because of the Foundation's non-profit status and limited revenue generation. The appraisal was conducted in conjunction with the Treasure Island Marina appraisal (File 18-1225).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the lease between TIDA and Treasure Island Sailing Center Foundation for the development and management of Treasure Island Sailing Center, for a term of 66 years and initial annual base rent of $10,000. Under the agreement, Treasure Island Sailing Center Foundation would build a new facility building of approximately 15,000 square feet. Construction would be required to begin within two years of the Rent

Commencement Date, or TIDA may terminate the lease. TIDA would be responsible for dredging to maintain a minimum four-foot depth in Clipper Cove.

Treasure Island Sailing Center Foundation would pay the greater of the minimum base rent, as adjusted annually based on the Consumer Price Index (CPI), or percentage rent based on gross revenues. The key provisions of the proposed lease are shown in Table 1 below.

Table 1: Key Provisions of Sailing Center Lease

Premises	Approximately 78,408 square feet of shore space and 46,150 square feet of water space
Term	66 years
Initial Base Rent	$10,000
Rent Adjustment	Annually based on CPI, with minimum annual increase of 2% and maximum annual increase of 4%
Percentage Rent (of Gross Revenues)	5% on net revenues from special events, 10% on rentals, dry storage fees, and other revenues
Rent Credit	None
Security Deposit	$10,000, adjusted annually to the annual minimum base rent

The initial annual base rent is $10,000, or approximately $0.13 per square foot per month for the shore space. According to Mr. Rovetti, the relatively low rental rate is due to the non-profit nature of the sailing center's operation. An appraisal conducted by Clifford Advisory LLC in October 2018 affirmed the $10,000 initial annual base rent as fair market rent due to the limitations on land use of the premises and cash flow of the sailing center.

Lease Disposition and Development Agreement

The Treasure Island Sailing Center Foundation will lease the property "as-is", and under the terms of the proposed lease, will construct improvements to the property in no more than 15 years. These improvements include perimeter fencing, temporary surfacing and landscaping, waterside improvements (ramps, hoists, floats), a primary facility, and other improvements. According to the proposed lease, the primary facility is to be between 8,000 and 30,000 square feet, and include meeting space, classrooms, and kitchen, shower, and toilet facilities. The proposed lease contains a schedule for construction by the Foundation of the various improvements; the tenant as up to 14 years to construct the primary facility.

The proposed lease does not specify the minimum investment to be made by the Foundation, but requires the Foundation to submit the budget for improvements to TIDA for approval, and specifies other terms and conditions for financing and constructing the improvements. According to Mr. Rovetti, the Foundation is required to start construction within two years, or TIDA may terminate the lease. Improvements to the site are estimated at approximately $2-4 million, mostly on the water side of the premises. According to Mr. Rovetti, funding for the improvements is dependent on the Foundation's fundraising, which is most likely to come from donations and grants.

According to Mr. Robert Beck, TIDA Director, the 66-year term of the lease is due to the amortization of the tenant's initial capital investment. However, since the premises are subject to the California Tidelands Trust, the lease term cannot exceed 66 years.

Environmental Findings

The proposed resolution would also make findings under the California Environmental Quality Act (CEQA), adopt a mitigation monitoring and reporting program, and confirm the Planning Department's determination that no additional environmental impacts that were not previously identified would occur from the lease.

FISCAL IMPACT

Over the 66-year term of the lease, TIDA would receive at least $1,347,487 in minimum base rent. The base rent would be adjusted annually based on the CPI, with a minimum annual increase of two percent and a maximum annual increase of four percent. The minimum annual base rent starts at $10,000 and would increase to at least $36,225 by the final year, accounting for two percent annual increases. According to Mr. Rovetti, TIDA expects to receive percentage rent, which would exceed the base rent.

POLICY CONSIDERATION

Under the proposed lease, TIDA may terminate the lease if the Foundation has not started construction of the improvements to the property within two years. While the Foundation incurs all costs to construct the improvements, the financing of these costs depends on the Foundation's fundraising abilities. The lease requires the Foundation to TIDA demonstrate sufficient funding prior to beginning construction of the improvements.

The Foundation must begin construction of the improvements within two years and has up to 15 years to complete construction of all improvements. As noted above, TIDA estimates the improvements to cost between $2 million and $4 million.

According to Mr. Beck, the Foundation is a non-profit and will be launching a fundraising program to pay for the improvements required on the site; the Foundation has a strong relationship with US Sailing and a track record of successful fundraising for programs and initiatives. According to Mr. Beck, the Foundation intends to proceed in parallel with their fundraising efforts and the Bay Conservation and Development Corporation permitting process for its waterside improvements. Mr. Beck states that having an executed long-term lease will assist the Foundation in both of these efforts as it will be able to demonstrate to potential donors that it has site control beyond the month-to-month terms of its current lease.

Because TIDA has determined that the Sailing Center is an important facility, and that the improvements identified in the lease are necessary to the Sailing Center, the proposed resolution should be amended to require an annual written report to the Board of Supervisors in June each year on the status of the Foundation's fundraising and construction of the improvements.

RECOMMENDATIONS

1. Amend the proposed resolution to require an annual written report to the Board of Supervisors in June each year on the status of the Foundation's fundraising and construction of the improvements.
2. Approve the proposed resolution as amended.

Item 8 File 18-1225	Department: Treasure Island Development Authority (TIDA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a lease between Treasure Island Development Authority (TIDA) and Treasure Island Enterprises, LLC for the development and management of Treasure Island Marina, for a term of 66 years and initial minimum annual base rent of $90,000.
- The proposed resolution would also make findings under the California Environmental Quality Act (CEQA), adopt a mitigation monitoring and reporting program for the marina project, and confirm the Planning Department's determination that no additional environmental impacts that were not previously identified would occur from the lease.

Key Points

- Treasure Island Enterprises has operated the 110-slip Treasure Island Marina through an interim sublease since 2000. Through the process of transferring Treasure Island from the United States Navy to the City and County of San Francisco, TIDA and the City Planning Department have prepared two Environmental Impact Reports (EIRs) analyzing the expansion of the Marina to 400 slips and master development of Treasure Island. Due to modernization of marina design and federal and state regulatory requirements, Treasure Island Enterprises reduced the scale of the marina design to 313 slips.
- In June 2018, the Board of Supervisors approved a resolution responding to the marina expansion proposal and reaffirming San Francisco's commitment to public recreation, preservation of public open space, and social equity. After discussions with stakeholders, Treasure Island Enterprises further reduced the marina to 220 slips.
- The proposed resolution would approve a lease between TIDA and Treasure Island Enterprises for the development and management of the marina, for a term of 66 years and initial annual base rent of $90,000. Treasure Island Enterprises would pay the greater of base rent or percentage rent based on gross revenues.

Fiscal Impact

- Over the 66-year term of the lease, Treasure Island Enterprises would pay at least $12,127,381 in base rent. The base rent is adjusted annually based on the Consumer Price Index, with an annual increase minimum of two percent and maximum of four percent.
- Treasure Island Enterprises would receive a rent credit up to $5,995,000 on percentage rent (exceeding the base rent) for dredging expenses and previous deposits.

Recommendations

- Amend the proposed resolution to require an annual written report to the Board of Supervisors in June each year on the status of the marina project financing, construction of the improvements, leasing of boating slips, and operational revenues and expenses.
- Approve the proposed resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of $1 million or more is subject to Board of Supervisors approval.

BACKGROUND

In 1998, the Treasure Island Development Authority (TIDA) issued a Request for Proposals (RFP) for the proposed development and operation of Treasure Island Marina. Treasure Island Enterprises, LLC was deemed the highest scoring responsive and responsible proposer among three finalists. In June 1999, the TIDA Board of Directors approved an Exclusive Negotiating Agreement (ENA) with Treasure Island Enterprises. The ENA has been amended eight times. Treasure Island Enterprises has operated the 110-slip marina since 2000 in an interim sublease and currently pays $90,000 per year in base rent. According to Mr. Richard Rovetti, TIDA Commercial Property Manager, the sublease did not require Board of Supervisors approval because it was on a month-to-month basis.

The TIDA and Planning Department prepared two Environmental Impact Reports (EIRs) regarding the proposed transfer of Treasure Island and Yerba Buena Island from the United States Navy to the City and County of San Francisco. The 2006 EIR included a program-level analysis of the transfer of the former base to the City, with a project-level analysis of the expansion of the marina. The 2011 EIR analyzed the master development of Treasure Island, including landside services and improvements for the marina. Both documents envisioned a 400-slip marina with a waterside length of approximately 1,700 lineal feet. After certifications of the EIRs, Treasure Island Enterprises proposed changes to the marina, reducing the slip count to 313 and waterside length to approximately 882 feet, due to modernization of marina design and federal and state regulatory requirements.

In June 2018, the Board of Supervisors approved a resolution responding to the marina expansion proposal and reaffirming San Francisco’s commitment to public recreation, public education, environmental protection, preservation of public open space, and social equity (File 18-0331, Resolution 173-18). Following discussions with stakeholders, Treasure Island Enterprises decided to further reduce the marina to 220 slips. In July 2018, the TIDA Board of Directors approved the marina lease with Treasure Island Enterprises.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the lease between TIDA and Treasure Island Enterprises for the development and management of Treasure Island Marina, for a term of 66 years and initial annual base rent of $90,000. Under the agreement, Treasure Island Enterprises would develop the marina, a project cost currently estimated at approximately $19.5 million. Construction would be required to begin by December 31, 2022, with completion within eight years after construction begins. The marina would be built in no more than three phases, with approximately 90-120 slips built in each phase over approximately 16 months. Treasure Island

Enterprises would pay the greater of the minimum base rent, as adjusted annually based on the Consumer Price Index (CPI), or percentage rent based on gross revenues. After construction is complete, Treasure Island Enterprises would receive a rent credit on percentage rent (in excess of minimum base rent) of $200,000 for deposits it has paid to TIDA and for dredging expenses, up to $5,995,000 total. The key provisions of the lease are shown in Table 1 below.

Table 1: Key Provisions of Marina Lease

Premises	Approximately 724 lineal feet by 718 lineal feet of dock area in Clipper Cove, approximately 220 slips
Term	66 years, beginning with construction no later than December 31, 2022
Initial Base Rent	$90,000 per year ($7,500 per month)
Rent Adjustment	Annually based on CPI, minimum annual increase of 2%, maximum annual increase of 4%
Percentage Rent (of Gross Revenues)	Slip rent, dry storage, live aboard fees: 5% for Years 1-3, 10 % for Years 4-5, 15% for Years 6+; Food service: 3.5%; Other revenues: 5%
Rent Credit	$200,000 for previous deposits and actual cost of dredging expenses, up to a total credit of $5,995,000 (credit on percentage rent in excess of base rent)
Security Deposit	$15,000, adjusted annually to two times the monthly minimum base rent

According to Mr. Robert Beck, TIDA Director, the 66-year term of the lease is due to the amortization of the tenant's initial capital investment. However, since the premises are subject to the California Tidelands Trust, the lease term cannot exceed 66 years.

The proposed resolution would also make findings under the California Environmental Quality Act (CEQA), adopt a mitigation monitoring and reporting program for the marina project, and confirm the Planning Department's determination that no additional environmental impacts that were not previously identified would occur from the lease.

FISCAL IMPACT

According to Mr. Rovetti, the base rent of $90,000 in the first year of the lease is fair market rent based on an October 30, 2018 commercial leasing valuation appraisal conducted by Clifford Advisory, LLC. Over the 66-year term of the lease, TIDA will receive at least $12,127,381 in minimum base rent based on an annual CPI increase in the base rent of 2 percent. According to Mr. Rovetti, TIDA expects to receive percentage rent, which would exceed the base rent.

Financial Capacity to Develop New Marina

As noted above, Treasure Island Enterprises would develop the marina at an estimated cost of $19,457,677. According to Mr. Rovetti, Treasure Island Enterprises would finance the marina through a combination of private equity capital, grant proceeds from a Boating Infrastructure Grant (BIG)[1], loan proceeds from the State of California Division of Boating and Waterways

[1] The Boating Infrastructure Grant is a U.S. Fish and Wildlife program administered by the California Division of Boating and Waterways.

(DBW), and preferred mezzanine debt[2] or similar financing. The initial sources of capital will be sourced through the BIG grant totaling $1.9 million as well as from private equity capital, totaling approximately $1 million, and preferred mezzanine debt or similar financing totaling approximately $2.6 million as needed to fill any financing gaps, totaling approximately $5.5 million. Once the initial capital is sourced from those sources, the Division of Boating and Waterways loan proceeds totaling $4.2 million will be used to fund additional marina development costs. Additional tranches of preferred mezzanine debt or other conventional construction financing or additional private equity capital, totaling in the aggregate approximately $5.7 million as may be needed will be used to fund the completion of the construction of the new 200-slip marina.

Rent Credits

According to the proposed lease, TIDA would apply rent credits of up to $5,995,000 total to percentage rent that exceeds the minimum base rent. These rent credits equal (1) the sum of the deposits paid by Treasure Island Enterprises to TIDA for the RFP deposit, the transaction cost deposit, and extension cost deposit under the Exclusive Negotiating Agreement, totaling $200,000, and (2) the actual costs of dredging, estimated at $4,725,000. Total deposit and estimated dredging costs are $4,925,000, or $1,070,000 less than rent credits of $5,995,000. According to Mr. Rovetti, total rent credits of $5,995,000 exceed total deposit and estimated dredging costs by $1,070,000 because the pro-forma provided by Treasure Island Enterprises uses a low-end estimate for dredging costs. The pro-forma estimates dredging costs at $35 per cubic yard, but TIDA staff believes that the actual cost could be as high as $45-50 per cubic yard. The estimated volume of 135,000 cubic yards dredged is uncertain as well. TIDA used an estimated cost of approximately $43 per cubic foot, which equals $5,995,000 for approximately 139,400 cubic yards, to allow for a buffer in case actual dredging costs exceed $4,725,000.

Board of Supervisors Resolution

The Board of Supervisors resolution responding to the proposed Treasure Island Marina (File 18-0331) (a) found that the footprint of the proposed marina is consistent with the Reuse Plan for Treasure Island; (b) resolved that the proposed marina project should not harm the existing environment and be evaluated by environmental regulatory agencies; and (c) called for further financial analysis of the project.

The proposed resolution makes findings under the CEQA, adopts a mitigation monitoring and reporting program for the marina project, and confirms the Planning Department's determination that no additional environmental impacts that were not previously identified would occur from the lease. As noted above, two EIRs regarding the proposed transfer of Treasure Island and Yerba Buena Island from the Navy to the City, including the impact of a proposed marina, were previously certified. The Planning Department in a letter from July 2017 stated that no additional environmental impacts would occur as a result of project implementation and no additional environmental analysis would be required under CEQA.

[2] "Preferred mezzanine debt" is a form of subordinate debt, in which the lender has a claim on the facility's assets.

Because the Board of Supervisors has previously found that a marina on Treasure Island is consistent with the Reuse Plan, the Budget and Legislative Analyst recommends approval of the proposed resolution. To ensure that the Board of Supervisors has sufficient information on the financing and completion of the marina project, the proposed resolution should be amended to require an annual written report to the Board of Supervisors in June each year on the status of the marina financing, construction of the improvements, leasing of boating slips, and operational revenues and expenses.

RECOMMENDATIONS

1. Amend the proposed resolution to require an annual written report to the Board of Supervisors in June each year on the status of the marina project financing, construction of the improvements, leasing of boating slips, and operational revenues and expenses.
2. Approve the proposed resolution as amended.