

File No. 150293

Committee Item No. 1
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date April 8, 2015

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong Date April 3, 2015
Completed by: _____ Date _____

Item 1
File 15-0293

Department:
Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objective

- Requested release of \$5,800,000 from Pacific Rod & Gun Club (Club) Remediation Project to support the cleanup of contaminated soil at Lake Merced in FY 2014-15.

Key Points

- In 1934, the City and the Club entered into a lease for use of City property at Lake Merced for skeet and trap shooting and fly casting.
- On June 12, 2013, the San Francisco Bay Regional Water Quality Control Board issued an Order to both the Club and the PUC, requiring site investigations and corrective measures to clean up and remediate the area.
- In February, 2015, the Board of Supervisors approved a \$9,500,000 supplemental appropriation of PUC Water Enterprise revenues (File 14-1296) and placed the \$9,500,000 on Budget and Finance Committee reserve pending the receipt of bids and selection of the contractor to clean up and remediate Lake Merced.
- On February 5, 2015 the PUC received seven bids and has selected ERRG, Inc. as the lowest responsive bidder at \$9,210,715.

Fiscal Impact

- PUC's original estimated cost to clean up and remediate Lake Merced was \$22,005,000 and \$22,005,000 has been appropriated for this project from PUC's Water Enterprise revenues. Based on the ERRG, Inc. lowest responsive bid of \$9,210,715, the PUC is now estimating the cost of the Lake Merced project is \$18,270,940, which is \$3,734,060 or 17% less than originally estimated. However, the PUC's revised costs include \$5,552,226 or 60.3% additional contingency and escalation costs, which is excessive.
- Given the uncertainty of this project, a 32% increase on the \$9,210,715 construction contract or \$2,963,215 should be sufficient for such contingencies and escalation for this project, which is \$2,589,011 less than the requested amount.

Policy Consideration

- The activities of the Club resulted in the environmental damage and soil contamination on the City's Lake Merced property, such that the Club should be fully liable for the cost to clean up and remediate the City's property. The City filed a complaint against the Club for damages, nuisance and breach of contract on February 14, 2014, to attempt to recover the Lake Merced clean-up and replacement costs.

Recommendations

- Release \$3,210,989 of the \$5,800,000 requested on reserve for the clean-up and remediation of the Lake Merced site.
- Continue to reserve the balance of \$6,289,011 (\$9,500,000 placed on reserve less \$3,210,989 recommended to be released).

MANDATE STATEMENT & BACKGROUND**Mandate Statement**

In accordance with Section 3.3(e) of the City's Administrative Code, the committee of the Board of Supervisors that has jurisdiction over the budget (i.e., Budget and Finance Committee) may place requested expenditures on reserve until released by the Budget and Finance Committee of the Board of Supervisors.

Background

On January 1, 1934, the City and the Pacific Rod and Gun Club (Club), a nonprofit organization, entered into a month-to-month lease agreement for use of City property at Lake Merced for skeet and trap shooting and fly casting at a rental rate of \$10 per month. The Club constructed facilities and operated continuously at this site. In 2007, the Board of Supervisors approved a resolution urging the Public Utilities Commission (PUC) to manage the City's approximately 811 acre Lake Merced Tract and assume a greater role in the protection of water quality, as Lake Merced is an emergency back-up water supply for the City (Resolution No. 14-07). The Lake Merced Tract includes the Club's lease area. Currently, the Club is paying \$5,408 per month to the PUC, which deposits these revenues into the PUC's Water Department income account.

On June 12, 2013, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued an Order to both the Club and the PUC, as joint dischargers, requiring site investigations and a plan for corrective measures to address soil contamination, and requiring the Club and the PUC to clean up and remediate the site. In response, the PUC prepared a Remedial Action Plan to clean-up the site, which was approved by the RWQCB in November, 2014.

In FY 2013-14 and FY 2014-15, the PUC appropriated \$12,505,000 from PUC's Water Enterprise revenues to clean up and remediate the site. Based on the PUC's updated estimated total cost of \$22,005,000 to fully cleanup the contaminated soil and replace with clean soil at Lake Merced, on February 24, 2015 the Board of Supervisors approved a supplemental appropriation ordinance for \$9,500,000 of additional PUC Water Enterprise revenues for the balance of funds needed to clean up and remediate the site (File 14-1296). However, as the PUC had not yet received bids or selected a contractor to conduct the work, the entire \$9,500,000 of additional PUC Water Enterprise funds was placed on Budget and Finance Committee reserve pending the receipt of the bids and selection of the contractor to clean up and remediate the contaminated soil at Lake Merced.

DETAILS OF PROPOSED LEGISLATION

This is a request from the PUC for the Budget and Finance Committee to release \$5,800,000 of the previously reserved \$9,500,000 of PUC Water Enterprise revenues for the Pacific Rod & Gun Club Remediation Project at Lake Merced.

The construction contract for the cleanup and removal of the contaminated soil and the replacement with clean soil on the site was advertised on December 24, 2014, and the PUC received seven bids on February 5, 2015, as summarized in Table 1 below.

Table 1: Bids Received for Lake Merced Clean Up

Company	Bid Price
ERRG, Inc.	\$9,210,715
Gordon N Ball/Yerba Buena JV	9,858,575
Proven	11,732,055
Granite Rock	12,608,959
Ghilotti Brothers	13,551,663
Evans Brothers	15,439,325
Pacific States Env.	16,966,805

The PUC has selected ERRG, Inc. as the lowest responsive bidder at \$9,210,715.

The City initially issued a 90-day notice of termination to the Club, such that the existing lease would terminate in mid-March, 2015. However, on December 15, 2014, the PUC authorized the General Manager to grant a lease extension to the Club through April 8, 2015, to facilitate the Club in vacating the property. ERRG, Inc. is projected to commence work in mid-April, 2015, after the Club vacates the site.

The cleanup and remediation work is estimated to take up to 15 months to complete, or by the summer of 2016. Following the clean-up of the site, the PUC plans to determine potential reuses of the Lake Merced property based on an open public process, through the issuance of a Request for Proposal.

FISCAL IMPACT

As noted above, the PUC's total original estimated cost to clean up the contaminated soil and replacement with clean soil at the Lake Merced site is \$22,005,000. To date, as summarized in Table 2 below, a total of \$22,005,000 of PUC Water Enterprise revenues have been appropriated by the Board of Supervisors, including the \$9,500,000 which was recently placed on reserve. The PUC's Water Enterprise revenues are funded from both retail and wholesale water customers.

Table 2: Total PUC Water Enterprise Appropriations

Approval Dates	Appropriations
FY 2013-14 Budget	\$1,400,000
FY 2014-15 Budget	11,105,000
February, 2015 Supplemental Appropriation (subject of this request)	9,500,000
Total PUC Water Enterprise Appropriation	\$22,005,000

As shown in Table 3 below, based on the ERRG, Inc. lowest responsive bid of \$9,210,715, the PUC is now estimating the cost of the Lake Merced clean up and remediation project will total \$18,270,940. This current PUC estimated total Lake Merced project cost of \$18,270,940 is \$3,734,060 or 17% less than the \$22,005,000 PUC original estimate.

Table 3: Estimated Total Project Costs

SFPUC Staff Support	\$746,000	
Contingency (10%)	<u>74,600</u>	
Subtotal		\$820,600
Professional Services		
Planning, Design, Environmental Review and Permits	1,500,000	
Support During Remediation/Construction	1,262,000	
Contingency (10%)	<u>126,200</u>	
Subtotal		2,888,200
Construction		
Construction Contract with ERRG, Inc.	9,210,715	
Construction Contingency (20%)	1,842,143	
Design Contingency (20%)	1,842,143	
Federal Wetland Exclusion ¹ Contingency (10%)	<u>921,072</u>	
Subtotal Construction	13,816,073	
Cost Escalation to Mid-Point of Construction (5.4%)	<u>746,068</u>	
Total Estimated Construction Costs		14,562,140
Total Estimated Project Costs		\$18,270,940

As shown in Table 3 above, the PUC included a 5.4% cost escalation on total construction costs and included 10% to 20% contingencies for PUC staff support, professional services, design, construction and Federal Wetland Exclusion that together total \$5,552,226. The additional \$5,552,226 represents an additional 60.3% of the base \$9,210,715 construction contract bid. While recognizing that environmental cleanup and remediation of this site may result in unanticipated contamination and costs, factoring an additional \$5,552,226 or 60% is excessive.

City construction projects typically include up to a total 20% contingency. In fact, when the PUC requested the \$9,500,000 supplemental appropriation in February 2015, the PUC included a higher 18% design and construction contingency and a 5.4% cost escalation in their original estimates because they acknowledged the uncertainty of this project. Given the uncertainty on this site, the Budget and Legislative Analyst recommends a total \$2,963,215 or approximately 32% contingency of the \$9,210,715 construction contract which should be sufficient for all contingencies and escalation for this project and which is \$2,589,011 less than the estimated project costs shown in Table 3 above.

Therefore, as shown in Table 4 below, the PUC requested amount of \$5,800,000 to be released should be reduced by \$2,589,011 to \$3,210,989.

¹ Federal Wetland Exclusion contingency relates to the delay in the PUC's permit approval which may result in a less efficient removal of the most contaminated material from the wetlands area.

Table 4: Recommendation Summary

PUC Requested Funds to be Released from Reserve	\$5,800,000
Contingency and Cost Escalation not needed at this time	<u>2,589,011</u>
Budget and Legislative Analyst Recommended Amount to be Released	\$3,210,989

POLICY CONSIDERATION

The original lease with the Pacific Rod and Gun Club at Lake Merced specified “the lessee shall hold the City free and harmless from all claims of damage arising directly or indirectly out of its use of said land during the term of this lease”. As noted in the 2013 RWQCB Order, the major soil contamination of the City’s Lake Merced property was caused by the lessee, the Gun Club, from the historical use of lead shot and clay pigeons from skeet and trap shooting activities, which resulted in deposits of lead, arsenic and polyaromatic hydrocarbons on the Lake Merced property. Because the activities of the Club clearly resulted in the environmental damage and soil contamination on the City’s Lake Merced property, the Club should be fully liable for the total cost to clean up and remediate the City’s property.

Ms. Noreen Ambrose of the City Attorney’s Office advises that the City filed a complaint against the Club for damages, nuisance and breach of contract on February 14, 2014, to attempt to recover the costs for the clean-up and replacement of the contaminated soil. Ms. Ambrose notes that this complaint is currently pending. Ms. Ambrose reports that the Club is currently cooperating with the City Attorney’s Office to search for potential historic insurance policies that the Club purchased that may permit some recovery of insurance proceeds to contribute to the funding of the cleanup. All efforts should be employed by the City to recover payment from the Club to offset the City’s costs for the cleanup and replacement of the soil at Lake Merced.

RECOMMENDATIONS

1. Release \$3,210,989 of the \$5,800,000 requested on reserve for the clean-up and remediation of the Lake Merced site.
2. Continue to reserve the balance of \$6,289,011 (\$9,500,000 placed on reserve less \$3,210,989 recommended to be released).



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*B+F Chair,
B+F Clerk*

March 17, 2015

Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Subject: SFPUC – Pacific Rod & Gun Club Mitigation Project
Release of Reserve - \$5,800,000.

I would like to request your assistance to have calendared the release of reserve \$5,800,000 from the Pacific Rod & Gun Club Remediation Project.

On February 24, 2015, the Board of Supervisors approved a supplemental appropriation request in the amount of \$9,500,000 for the cleanup of contaminated soil at Lake Merced. These funds were put on the Budget and Finance Committee reserve pending the receipt of the bids and the selection of the contractor to complete the work related to the soil cleanup.

The release of the \$5,800,000 from the \$9,500,000 reserved funding is needed to award the contract and start the construction work at the Pacific Rod and Gun Club site at Lake Merced.

Sincerely,

Harlan L. Kelly, Jr.
General Manager

Edwin M. Lee
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Vince Courtney
Commissioner

Anson Moran
Commissioner

Ike Kwon
Commissioner

Harlan L. Kelly, Jr.
General Manager



