

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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March 17, 2023

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst



SUBJECT: March 22, 2023 Budget and Finance Committee Meeting

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| <p>Item 1 File 22-1182</p> | <p>Department: City Attorney's Office (CAT)</p> |
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the Second Amendment to the litigation consulting services contract between the City Attorney’s Office and Jefferies LLC, extending the term by approximately four years and five months through September 17, 2027, and increasing the not-to-exceed amount by \$5,501,000, for a total not to exceed \$15,500,000.

Key Points

- The City has expressed interest in using the San Francisco Public Utilities Commission (SFPUC) to acquire Pacific Gas & Electric Company (PG&E) power assets. In January 2020, the Board of Supervisors conditionally authorized the issuance of \$3 billion in SFPUC Power Enterprise revenue bonds to finance the cost of acquiring PG&E power assets.
- After issuing a Request for Proposals (RFP) seeking a buy-side advisor to provide strategic financial and transactional advice to the City in its efforts to acquire PG&E power assets, the City Attorney’s Office executed a contract with Jefferies for a term of three years and four months, from May 17, 2019 through September 17, 2022, and an amount not to exceed \$9,999,000. Nearly the entire contract is redacted, and the City Attorney’s Office declined to provide an unredacted version to the Budget and Legislative Analyst for review, citing attorney-client privilege.

Fiscal Impact

- The proposed Second Amendment would increase the not-to-exceed amount of the contract of the contract by \$5,501,000, for a total not to exceed \$15,500,000. The City Attorney’s Office declined to provide additional budgetary information to the Budget and Legislative Analyst, such as billing rates and expenditures to date, citing attorney-client privilege. The contract is funded by SFPUC power revenues.

Recommendations

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.
- Obtain additional information about the contract from the City Attorney’s Office in closed session, through a confidential memorandum, or in confidential individual briefings, including: (a) How potential bidders were selected to receive the RFP; (b) The evaluation criteria used to evaluate bidders and the scores against those criteria for each proposal; (c) The name, title, and affiliation of each member of the RFP evaluation panel; (d) A budget detailing the proposed \$15,500,000 spending; (e) Documentation of contract deliverables provided; (f) Documentation of contractor performance evaluations or an assessment of how performance is evaluated; and (g) Analysis of contractor billing rates and an assessment of whether they are market rate.

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

City Charter Section 16.101 states that it is City policy to purchase utilities when the Board of Supervisors deems doing so is in the public interest or necessity. In April 2019, the Board of Supervisors approved a resolution determining that it is in the public interest and necessity to change the electric service provided in San Francisco, and requesting a report from the San Francisco Public Utilities Commission (SFPUC) on options for improving electric service, including the purchase of Pacific Gas & Electric Company (PG&E) assets (File 19-0367). In September 2019, the Board of Supervisors approved a resolution in support of Mayor London Breed's September 2019 letter to PG&E proposing to purchase its power assets for \$2.5 billion (File 19-0938). In January 2020, the Board of Supervisors conditionally authorized the issuance of \$3 billion in SFPUC Power Enterprise revenue bonds to finance the cost of acquiring PG&E power assets (File 20-0029) – though the final acquisition and debt issuance are still subject to Board of Supervisors' approval.

According to Theresa Mueller, Deputy City Attorney, the City Attorney's Office issued a Request for Proposals (RFP) in January 2019 seeking a buy-side advisor to provide strategic financial and transactional advice to the City in its efforts to acquire PG&E power assets.¹ The City Attorney's Office and SFPUC evaluated the responses and in May 2019, the City Attorney's Office executed a contract with Jefferies, LLC for a term of three years and four months, from May 17, 2019 through September 17, 2022, and an amount not to exceed \$9,999,000, or \$1,000 below the threshold for Board of Supervisors' approval. In September 2022, the City Attorney's Office executed the First Amendment to the contract, extending the term by approximately six months through May 31, 2023, with no change to the not-to-exceed amount. The City Attorney's Office declined to provide the RFP document or any additional information about the selection process to the Budget and Legislative Analyst, citing attorney-client privilege under the California Government Code Sections 6254(k) and 6276.04, as well as California Code of Civil Procedure Sections 2018.020 and 2018.030.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Second Amendment to the litigation consulting services contract between the City Attorney's Office and Jefferies, extending the term by approximately four years and five months through September 17, 2027, and increasing the not-to-exceed amount by \$5,501,000, for a total not to exceed \$15,500,000.

¹ According to Deputy City Attorney Mueller, the City Attorney's Office compiled a list of qualified firms and confidentially sent them the RFP.

Nearly the entire contract is redacted, and the City Attorney's Office declined to provide an unredacted version to the Budget and Legislative Analyst for review, citing attorney-client privilege. According to Deputy City Attorney Mueller, the contract is for legal consulting services related to the PG&E bankruptcy and potential SFPUC purchase of power assets. The Budget and Legislative Analyst is unable to evaluate the contract and therefore recommends that members of the Board of Supervisors seek additional information from the City Attorney's Office in closed session, through a confidential memorandum, or in confidential individual briefings, including:

- How potential bidders were selected to receive the RFP;
- The evaluation criteria used to evaluate bidders and the scores against those criteria for each proposal;
- The name, title, and affiliation of each member of the RFP evaluation panel;
- A budget detailing the proposed \$15,500,000 spending;
- Documentation of contract deliverables provided;
- Documentation of contractor performance evaluations or an assessment of how performance is evaluated; and
- Analysis of contractor billing rates and an assessment of whether they are market rate.

FISCAL IMPACT

The proposed Second Amendment would increase the not-to-exceed amount of the contract of the contract by \$5,501,000, for a total not to exceed \$15,500,000. The City Attorney's Office declined to provide additional budgetary information to the Budget and Legislative Analyst, such as billing rates and expenditures to date, citing attorney-client privilege. The contract is funded by SFPUC power revenues.

RECOMMENDATIONS

1. Approval of the proposed resolution is a policy matter for the Board of Supervisors.
2. Obtain additional information about the contract from the City Attorney's Office in closed session, through a confidential memorandum, or in confidential individual briefings, including: (a) How potential bidders were selected to receive the RFP; (b) The evaluation criteria used to evaluate bidders and the scores against those criteria for each proposal; (c) The name, title, and affiliation of each member of the RFP evaluation panel; (d) A budget detailing the proposed \$15,500,000 spending; (e) Documentation of contract deliverables provided; (f) Documentation of contractor performance evaluations or an assessment of how performance is evaluated; and (g) Analysis of contractor billing rates and an assessment of whether they are market rate.

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| <p>Item 3 Files 23-0163 <i>(Continued from March 15, 2023 meeting)</i></p> | <p>Departments: Recreation and Park Department Mayor’s Office of Housing and Community Development</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p>Legislative Objectives</p> | |
| <ul style="list-style-type: none"> • The proposed ordinance de-appropriates \$1,724,908 from the Recreation and Park Department and appropriates \$1,724,908 to the Mayor’s Office of Housing and Community Development for uses permitted in the 706 Mission Street Fund in FY 2022-2023. | |
| <p>Key Points</p> | |
| <ul style="list-style-type: none"> • In 2013, the Office of Community Investment and Infrastructure (OCII) and 706 Mission Street Co, LLC entered into a purchase and sale agreement for property located at 706 Mission Street. The agreement required the developer to make payments to OCII to be used only for cultural operations, general maintenance and operations, and capital expenditures of open spaces in the South of Market area and Yerba Buena Gardens. • In February 2022, a Government Audit and Oversight Committee hearing was held to receive updates on the developer payments and present on the use of funds. The Recreation and Park Department provided an update on the transfer of \$1,800,268 in one-time open space fee payment funds that was allocated to the Gene Friend Recreation Center Capital Project, which is located in the South of Market area. • In December 2022, the Board of Supervisors passed an ordinance amending the Administrative Code to establish the 706 Mission Fund, which authorized the Recreation and Park Department and the Mayor’s Office of Housing and Community Development to expend monies from the Fund for specified purposes after receiving recommendations from the SOMA Community Stabilization Fund Community Advisory Committee. | |
| <p>Fiscal Impact</p> | |
| <ul style="list-style-type: none"> • The proposed ordinance de-appropriates \$1,724,908 from the Recreation and Park Department’s Gene Friend Recreation Center Capital Project. According to Recreation and Parks staff, as of this writing, only \$1,674,056 is available for de-appropriation due to the payment of design contractor invoices between October 2022 and February 2023. • If the proposed ordinance is passed, the appropriated funds will be used for public benefits within the South of Market Area. Because a SOMA Community Stabilization Fund Community Advisory Committee hearing has not occurred yet, the Mayor’s Office of Housing and Community Development intends to expend funds only after this has been held. | |
| <p>Policy Consideration</p> | |
| <ul style="list-style-type: none"> • The Recreation and Park Department has not identified an alternative funding source to backfill the \$1.7 million funding that is the subject of the proposed appropriation and may remove a planned multi-purpose room from the project’s scope of work. | |
| <p>Recommendation</p> | |
| <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy matter for the Board of Supervisors. | |

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriations Ordinance, after the Controller certifies the availability of funds, are subject to Board of Supervisors approval by ordinance.

BACKGROUND

In 2013, the Office of Community Investment and Infrastructure¹ (OCII) and 706 Mission Street Co, LLC entered into a purchase and sale agreement for property located at 706 Mission Street, to develop the site for mixed-use market rate housing and a museum. The Mexican Museum, a nonprofit organization, was named as a third-party beneficiary as part of the agreement. The agreement required the developer to make payments (Open Space Fee and Developer Payment²) to OCII to be used only for cultural operations, general maintenance and operations, and capital expenditures of open spaces in the South of Market area and Yerba Buena Gardens. The agreement also required the developer to make a transfer payment³ to OCII to fund public benefits within the South of Market area, including homeless prevention rent subsidies, affordable housing, housing/eviction counseling, nonprofit and small business rental assistance and services to senior and youth.

On February 17, 2022, a hearing was held at a Government Audit and Oversight Committee meeting to receive updates on the developer payments and funding streams required by the 706 Mission purchase and sale agreement and to present on the use of funds, Request for Proposal timelines and fund balances (File 21-0973). The Recreation and Park Department provided an update on the transfer of \$1,800,268 in one-time open space fee payment funds that was allocated and encumbered for the Gene Friend Recreation Center Capital Project, which is a capital improvement project for a recreation center located in the South of Market area (270 Sixth St.) and owned by the Recreation and Park Department. According to the department, this use meets the open spaces requirement of the agreement because it is defined as “other public

¹ Previously known as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

² According to the agreement, the Open Space Fee will be paid on an annual basis, in the following amounts: (1) at the initial rate of \$1.50 per square foot of the Project’s above-grade net leasable building area devoted to commercial uses, exclusive of the Cultural Component, subject to annual increases based on the annual Consumer Price Index for the San Francisco-Oakland-San Jose Metropolitan Statistical Area (“CPI”) not to exceed 5% per annum, and (2) at the initial rate of \$1.25 per square foot of the Project’s above-grade net residential saleable area, subject to annual increases based on the annual CPI not to exceed 3% per annum (collectively, the “Open Space Fee Payment”). The Open Space Fee Payment will be based on building square footage at completion, and each payment shall include a brief report to show how the payment amount was calculated. In addition to the Open Space Fee, the Developer will pay to the Successor Agency a one-time payment for open space uses (the “Developer Payment”) before issuance of the first construction document (as defined in Section 107A.13.1 of the City Building Code) for the Project. The Developer Payment shall be calculated based on the gross square footage of each of the following uses that are developed as part of the Project: (i) residential at \$2.50/gsf, (ii) institutional/cultural/medical at \$5.00/gsf, and (iii) retail at \$5.00/gsf. The Developer Payment shall be used for the Permitted Uses only within the SOMA Open Spaces.

³ According to the agreement, subject to any applicable requirements of the California Department of Real Estate and California Civil Code section 1098, the sale of residential condominium units in the project is subjected to a transfer payment made to OCII for public benefits within the South of Market area.

open spaces owned by the City in the adjacent South of Market area.” The proposed ordinance (and subject of this report) addresses this initial one-time payment to the Recreation Center.

Establishment of 706 Mission Fund

In December 2022, the Board of Supervisors passed an ordinance amending the Administrative Code to establish the 706 Mission Fund to receive funds provided to the City under the 2013 purchase and sale agreement regarding the property at 706 Mission Street; to authorize the Recreation and Park Department and the Mayor’s Office of Housing and Community Development to expend monies from the Fund for specified purposes after receiving recommendations from the SOMA Community Stabilization Fund Community Advisory Committee; and to require the Recreation and Park Department and the Mayor’s Office of Housing and Community Development to prepare reports regarding expenditures from the Fund (File 22-1125). The ordinance established two separate subsidiary funds as part of the 706 Mission Fund: (1) 706 Mission Open Space Fund to be used by the Recreation and Park Department for open spaces in the South of Market area, and (2) 706 Mission Community Development Fund to be used by the Mayor’s Office of Housing and Community Development for public benefits in the South of Market area. As part of the ordinance, the departments are prohibited from spending money in the funds until the SOMA Community Stabilization Fund Community Advisory Committee has held at least one hearing to make recommendations on the spending. The departments are also required to submit annual reports summarizing fund expenditures. In addition, the ordinance requires the SOMA Community Stabilization Fund Community Advisory Committee to hold quarterly hearings in calendar years 2023, 2024 and 2025 to provide recommendations to the Recreation and Park Department on expenditures of monies in the 706 Mission Open Space Fund and to monitor the department’s expenditures from that fund.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance de-appropriates \$1,724,908 from the Recreation and Park Department and appropriates \$1,724,908 to the Mayor’s Office of Housing and Community Development for uses permitted in the 706 Mission Street Fund in FY 2022-2023.⁴

Gene Friend Recreation Center Project

The proposed ordinance de-appropriates \$1,724,908 from the Recreation and Park Department’s Gene Friend Recreation Center Capital Project. According to the department, the center is located in the South of Market area and is slated for a large-scale capital improvement project beginning in Fall 2023.⁵

The center will be expanded to include a dual court gym, multi-purpose rooms and related outdoor amenities such as a playground, half basketball court and landscaping. According to the department, the project’s current total cost is approximately \$59.3 million, as shown in Exhibit 1 below. The department states that approximately \$1.75 million has been spent so far on the

⁴ The ordinance includes an interim transfer from REC to ADM and then to MOHCD.

⁵ The department anticipates that the general contractor will be bidding out the first trade packages in Spring 2023 and starting demolition, remediation, and then new construction late Summer 2023/early Fall 2023.

project, with approximately \$4.3 million transferred to other departments or encumbered. The Recreation and Park Department awarded a \$39 million construction contract to Swinerton in August 2022.

Exhibit 1: Gene Friend Recreation Center Capital Project Budget

| Sources | Amount |
|---|---------------------|
| 2020 Health and Recovery Bond – Neighborhood Parks | \$30,000,000 |
| The Trust for Public Land In-Kind Grant | 520,500 |
| Downtown Park Fund | 1,000,000 |
| Impact Fees (Eastern Neighborhood) | 2,800,300 |
| Impact Fees (SOMA Neighborhood) | 14,238,000 |
| 706 Mission Open Space Fund (Special Revenue) | 1,800,268 |
| Impact Fees (11 th and Natoma) | 5,500,000 |
| 2020 Health and Recovery Bond – Sustainability | 2,000,000 |
| 2020 Health and Recovery Bond – Named Project Contingency | 1,461,732 |
| Total Sources | \$59,320,800 |

Source: Recreation and Park Department

FISCAL IMPACT

The appropriation and de-appropriation sources and uses budget is shown in Exhibit 2 below.

Exhibit 2: Sources and Uses of Proposed Appropriation

| Sources De-Appropriation | Total |
|---|--------------------|
| Gene Friend Recreation Center Capital Project Budget | \$1,724,908 |
| Total Sources | \$1,724,908 |
| Uses Re-Appropriation | |
| 706 Mission Open Space Fund/Mayor's Office of Housing and Community Development | \$1,724,908 |
| Total Uses | \$1,724,908 |

Source: Appropriation Ordinance

According to Recreation and Parks staff, as of this writing, only \$1,674,056 is available for de-appropriation due to the payment of design contractor invoices between October 2022 and February 2023.⁶

⁶ The department states that approximately \$1.8 million has been encumbered as partial funding for a design contract with a Joint Venture between Mark Cavagnero Associates and Kuth Ranieri Architects for the Gene Friend project. Funding for that contract includes the 706 developer payment, 2020 general obligation bond proceeds, and developer fees.

According to the Mayor's Office of Housing and Community Development, if the proposed ordinance is passed, the appropriated funds will be used for public benefits within the South of Market Area, including affordable housing, rent subsidies to prevent homelessness, housing/eviction counseling, rental assistance to small business and nonprofits organizations, and services to youth and seniors. The department states that a proposed budget and timeline have not been developed yet for the use of the funds. As previously mentioned, as part of the ordinance passed in December 2022 (File 22-1125), the departments are prohibited from spending money in the funds until the SOMA Community Stabilization Fund Community Advisory Committee has held at least one hearing to make recommendations on the spending. The department states that there has been no hearing since the legislation was passed in December 2022. Because a hearing has not occurred yet, the department intends to expend funds only after this has been held. The department plans to work with the SOMA Community Advisory Committee to set up a hearing date and finalize a process for the community hearing.

Annual Reports

As previously mentioned, the ordinance passed in December 2022 required the Mayor's Office of Housing and Community Development and the Recreation and Park Department to submit annual reports summarizing fund expenditures. Both departments have not yet issued a report for the 706 Mission Fund because the first report is due September 30, 2023.

POLICY CONSIDERATION

Impact on Gene Friend Recreation Center Capital Project

According to the Recreation and Park Department, if the funds are de-appropriated and not backfilled, the department will remove a planned multi-purpose room from the project's scope of work. The department states that the budget shortfall would require additional design costs for redesign work and possibly contractor costs for extended overhead due to project delay⁷. The department estimates the project will be delayed at least three months due to value engineering to address the budget change and because permit drawings that have been submitted will likely need to be updated and resubmitted and the final Arts Commission Civic Design Review presentations will need to be postponed or revisited.

According to the department, the project has been scoped with the anticipated \$1,800,268 as a confirmed source of funding. If the funds are de-appropriated, the department states that it has not identified an alternative source of funding as of this writing. In addition, the department states that, if necessary, they intend to participate in the SOMA Community Stabilization Fund Community Advisory Committee hearing to request the funds be returned to the Gene Friend Recreation Center Capital Project budget.

⁷ The department states that because a contractor is already on board, via the Construction Manager/General Contractor (CM/GC) contract approved by the Recreation and Park Commission in August 2022, delays of such nature make it likely that the department would be required to compensate the Contractor for extended overhead.

RECOMMENDATION

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