CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: November 15, 2023 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item 3 **File 23-1007**	**Department:** Mayor's Office of Housing & Community Development

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would amend the Business and Tax Regulations Code to broaden the exemption from increased transfer tax rates for rent-restricted affordable housing exceeding $5.0 million in value. The ordinance would also extend the exemption by 6.5 years through December 31, 2030 and apply the exemption retroactively to transfers occurring since January 1, 2017, or four years before the existing exemption start date.

Key Points

- Since 2008, San Francisco voters have approved increases in transfer tax rates for property transfers exceeding $5.0 million in value from 0.75 percent to between 2.25 percent and 6.0 percent, depending on the property. The Board of Supervisors has approved two exemptions for affordable housing from these increases in transfer tax rates, including an exemption for properties acquired via the Community Opportunity to Purchase Act and an exemption for rent-restricted affordable housing starting in January 2021. These exemptions expire June 30, 2024 and have resulted in $14.5 million in reduced transfer tax revenues to date.
- The proposed ordinance broadens the definition of affordable housing to include projects with at least 90 percent units rent restricted (rather than 100 percent), to allow affordable housing projects that have site manager units or units for other program use besides rent-restricted affordable housing to qualify.

Fiscal Impact

- Based on available data, we estimate between $30 million and $45 million in reduced General Fund revenues through 2030 due to the proposed ordinance, including: (a) at least $12 million in reduced revenues for property transactions that occurred between 2017 and 2021 largely based on eligible transactions known by the Office of the Assessor-Recorder; and (b) between $18 million and $33 million in reduced revenues for property transactions occurring between July 2024 and December 2030.

Policy Consideration

- The proposed ordinance would reduce transfer taxes paid by affordable housing operators, which would allow project sponsors to direct these funds to projects' ongoing operating expenses. Because the proposed ordinance would reduce General Fund revenues, we consider approval to be a policy matter for the Board of Supervisors.

Recommendation

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

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

BACKGROUND

Transfer Tax

Article 12C of the City's Business Tax and Regulations Code imposes a real property transfer tax on property acquisitions or leases of 35 years or more. The tax rate increases by the value of the property. Certain property transfers are exempt from this tax, including transfers of property between married couples, domestic partners, or parents and children, gifts and inheritances, or between individuals and their limited liability companies, limited partnerships, or trusts. The Board of Supervisors is authorized to exempt rent restricted affordable housing from transfer taxes on property values of $5 million or more.[1] According to the Controller's FY 2023-24 – FY 2024-25 Revenue Letter, real property transfer tax revenues are budgeted at $222.0 million in FY 2023-24 and $269.6 million in FY 2024-25, down from $390.5 million in FY 2022-23.

Administrative Code Section 10.60(c) requires the maintenance of Budget Stabilization Reserve, which is funded, in part, by depositing 75 percent of real property transfer tax collections in excess of a rolling five-year average collection, adjusted for rate increases during that period. According to the Controller's Revenue Letter, no deposits are expected in FY 2023-24 and FY 2024-25 as transfer taxes are expected to be below the prior five-year average.

Transfer Taxes Applied to Affordable Housing Projects

Transfer Taxes may apply to affordable housing projects under the following scenarios:

a) preservation projects (including small sites projects and properties acquired under the Community Opportunity to Purchase Act) when the property is purchased (for $5.0 million or more);
b) existing affordable multifamily projects that received Low-Income Housing Tax Credits, when the limited partner exits the partnership around Year 15 (Year 15 Exits) thus changing the ownership structure;
c) existing affordable multifamily projects that receive Low-Income Housing Tax Credits when the project is refinanced to allow for capital improvements requiring a new limited partnership (resyndication);
d) existing affordable multifamily projects that are sold to another non-profit operator when the existing operator can no longer operate the site because they are going out of business or for another reason;

[1] In November 2020, voters approved Proposition I, which increased the transfer tax on property transactions above $5 million. The tax became effective January 1, 2021.

e) HOPE SF accelerated conversion units, when the San Francisco Housing Authority rehabilitated and then sold remaining public housing units at HOPE SF sites (e.g., Sunnydale and Potrero) to a nonprofit affiliate (SFHA Housing Corp).

Exemptions for Affordable Housing

Since 2008, San Francisco voters have approved increases in transfer tax rates for property transfers exceeding $5.0 million in value from 0.75 percent to between 2.25 percent and 6.0 percent, depending on the property value. The Board of Supervisors has approved two exemptions for affordable housing from these increases in transfer tax rates. These exemptions expire June 30, 2024.

In 2019, the Board of Supervisors exempted properties acquired under the Community Opportunity to Purchase Act, which provides non-profits with the right of first offer and refusal to purchase residential buildings with three or more units, from the increases in transfer tax rates (File 18-1212). This exemption applies to property transactions between May 2019 (when the Ordinance was passed) and June 30, 2024.

In 2021, the Board of Supervisors exempted rent-restricted affordable housing from the increases in transfer tax rates (File 21-0937). To qualify for the reduced transfer tax rates, properties must: (a) have affordability restrictions recorded for at least 55 years, and for a government agency to monitor such restrictions, and (b) either be vacant, used for commercial purposes prior to claiming eligibility, or have qualified for a welfare exemption under Section 214 of the California Revenue and Taxation Code, which reduces property taxes for properties used exclusively as rental housing to low-income households. This exemption applies to property transactions between January 2021 to June 2024.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Business and Tax Regulations Code to broaden the exemption from increased transfer tax rates for rent-restricted affordable housing exceeding $5.0 million in value. The ordinance would also extend the exemption by 6.5 years through December 31, 2030 and apply the exemption retroactively to transfers occurring since January 1, 2017, or four years before the existing exemption start date.

The proposed ordinance would broaden the exemption to allow affordable housing projects that have site manager units or units for other program use besides rent-restricted affordable housing to qualify for the exemption as long as at least 90 percent of residential units are used for rent-restricted affordable housing. Under the ordinance, rent-restricted housing is defined as either: (1) property transferred under the Community Opportunity to Purchase Act; or residential rental property that (2) either is vacant, has qualified for a welfare exemption under Section 214 of the California Revenue and Taxation Code for at least 90 percent of residential units, or was owned by one or more non-profit organizations prior to the time of transfer and is being transferred to one or more entities who intend to comply with the welfare exemption for at least 90 percent of residential units and certify to MOHCD than an application for the welfare exemption will be submitted to the County Assessor within nine months of the date of transfer. In addition, qualifying residential rental property must also have affordability restrictions recorded for at least 55 years, with at least 35 years remaining in the term from the date of transfer. Qualifying rent restricted housing must be restricted to households making up to 120 percent of area median income with all units in the building having an average maximum income of up to the "low-income threshold"[2] and must limit rent to amounts determined by the San Francisco Housing Authority for Section 8 voucher households or to no more than 30 percent of the household income.

Under the proposed ordinance, property transactions that occurred between January 1, 2017 and the effective date of the ordinance would be eligible for a refund pending submittal of a request for a refund by December 31, 2024. In addition, the ordinance would also waive all penalties and interest on transfer taxes imposed on transactions that qualify for the exemption retroactively, including penalties and interest applied to the portion of the tax not subject to the exemption. Eligible affordable housing operators that already paid these amounts would be eligible for a refund.

Exhibit 1 below shows the proposed transfer tax rates for eligible property transactions. Proposed rates for qualifying rent-restricted affordable housing reflect the existing rates under previously approved exemptions for affordable housing.

Exhibit 1: Proposed Transfer Tax Rates for Rent Restricted Affordable Housing

Property Consideration or Value	Rates for Qualifying Rent-Restricted Affordable Housing	Rates for Non-Exempt Properties	Difference
\$100 - <\$250,000	0.50%	0.50%	-
\$250,000 - <\$1,000,000	0.68%	0.68%	-
\$1,000,000 - <\$5,000,000	0.75%	0.75%	-
\$5,000,000 - <\$10,000,000	0.75%	2.25%	-1.50%
\$10,000,000 - <\$25,000,000	0.75%	5.50%	-4.75%
\$25,000,000 or more	0.75%	6.00%	-5.25%

Source: Proposed Ordinance

Value of Transfer Tax Exemptions to Date

According to information provided by the Office of the Assessor-Recorder and MOHCD, the existing exemptions have resulted in \$14.5 million in reduced transfer tax revenues. Projects that claimed the exemption paid a total of \$2.7 million in transfer taxes, which is 84 percent less than what they would have paid without the exemption (\$17.2 million). On average the exemption resulted in \$5.1 million in reduced transfer tax revenues per year over the period. Exhibit 2 below

[2] The "low income threshold" is defined as the greatest of the following: (a) 80% of MOHCD AMI; (b) 80% of the California Tax Credit Allocation Committee AMI for the County of San Francisco; (c) "lower income" according to the California Department of Housing and Community Development for the County of San Francisco; (d) "low income" according to the U.S. Department of Housing and Urban Development for the County of San Francisco; or (e) the maximum household income for a unit to receive the welfare exemption under the California Revenue and Taxation Code.

shows the reduction in transfer tax revenue by year for projects that claimed the exemption between January 2021 and September 2023.

Exhibit 2: Tax Savings for Projects Claiming Affordable Housing Exemption, January 2021 through September 2023

Property Transaction Year	Regular Tax Tier Transfer Tax Amount for Projects Claiming Exemption	Affordable Housing Qualifying Transfer Tax Amount for Projects Claiming Exemption	Reduction in Transfer Tax Revenues for Projects Claiming Exemption
2021	$3,263,958	$467,355	$2,796,603
2022	11,435,433	1,780,125	9,655,308
2023 (9 months)*	2,509,643	425,423	2,084,220
Total	**$17,209,033**	**$2,672,903**	**$14,536,130**

Source: Office of the Assessor-Recorder
*2023 Transactions through September 2023

FISCAL IMPACT

Projected General Fund Revenue Losses

To project the fiscal impact of the proposed ordinance, we reviewed information provided by MOHCD on preservation projects exceeding $5.0 million and Year 15 Exits with property transaction dates between January 2017 and October 2023 and Year 15 Exits projected to occur between October 2023 and December 2030. We also reviewed data from the Office of the Assessor-Recorder on affordable housing exemptions claimed to date for transactions that occurred since January 2021 and demands for transfer tax payments from affordable housing operators between January 2017 and December 2020. Based on the available data, we estimate between $30 million and $45 million in reduced transfer tax revenues through 2030 from affordable housing property transactions due to the proposed ordinance, as summarized below.

For projects that have already paid the higher transfer tax amount, a portion of transfer taxes will be refunded to the project owner. In the case of projects that were funded by MOHCD and paid the higher transfer tax amount, the portion of refunded transfer taxes may be repaid to the City, as the City's Promissory Notes for its gap loan agreements require that excess proceeds (that is, development funding remaining after payment of actual project costs) originally funded by the City be returned to MOHCD. For MOHCD projects that have yet to close their acquisition or pay any transfer tax, the projects and MOHCD will benefit from reduced transfer tax amounts. Other property transactions not included in the MOHCD pipeline may also qualify for the proposed reduction in transfer taxes, which would result in a General Fund revenue loss.

Fiscal Impact of 2017-2020 Exemptions: At Least $12 million

We estimate that applying the exemption and broadening it retroactively to January 2017, which is four years before the existing exemption start date, would result in reduced transfer tax revenues of at least $12 million for property transactions occurring between January 2017 to

December 2020, including up to $1.2 million in reduced transfer tax revenues from preservation projects and at least $10.8 million in reduced tax and related penalties and interest revenues for non-preservation projects (or previously existing multifamily affordable housing) based on demands for transfer tax payments from affordable housing operators and additional transactions known to the Office of the Assessor-Recorder staff. However, there may be projects that are exempt from higher transfer taxes under the proposed ordinance but not yet known to the Assessor and therefore excluded from our analysis. Our estimate assumes that these projects will all be eligible for the exemption under the proposed ordinance. It also assumes that the project sponsors will either claim the exemption if they have not yet paid taxes or will request a refund if they have already paid taxes.

Fiscal Impact of Extending Exemptions From June 2024 – December 2030: $18 - $33 million

We estimate that extending and broadening the exemption to December 2030, which is 6.5 years after the existing exemption expiration date, would result in reduced transfer tax revenues of between $18 and $33 million based on exemptions claimed since 2021.[3] Because these figures are based on existing affordable housing exemptions and the proposed ordinance broadens the definition of affordable housing to include projects with at least 90 percent units rent restricted (rather than 100 percent), our $18 million and $33 million figures may be underestimates. This assumes a similar level of property transactions or ownership changes for affordable housing projects in the future as what has occurred since 2017.

POLICY CONSIDERATION

The proposed ordinance would reduce transfer taxes paid by affordable housing operators, which would allow project sponsors to direct these funds to projects' ongoing operating expenses. According to MOHCD staff, existing affordable housing projects do not have sufficient cash flow to pay the transfer tax, and payment of transfer tax for Year 15 Exits are not assumed in the permanent finance proformas for tax credit projects. Refunded taxes returned to MOHCD may result in applying these funds to future affordable housing projects. Because the proposed ordinance would reduce General Fund revenues, we consider approval to be a policy matter for the Board of Supervisors.

RECOMMENDATION

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

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[3] The lower estimate ($18 million) assumes annual revenue losses of $2.7 million over the 6.5-year period which is consistent with 2021 and 2023 annualized revenues. The higher estimate ($33 million) assumes annual revenue losses of $5.1 million over the 6.5-year period based on average annualized revenue losses in between 2021 and 2023, which includes 2022, which had the highest revenue losses of any year ($9.6 million).

Item 4 File 23-1009	Department: Recreation and Parks Department

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the Recreation and Park Department (REC) to accept and expend a grant from the federal National Park Service, with the California Department of Parks and Recreation as the pass-through agency, in the amount of up to $3,900,000. The grant requires REC match the federal funds at a 1:1 ratio during the approximately three-year grant period, from October 1, 2023 through June 30, 2026.

Key Points

- The Buchanan Street Mall is a park located in the Western Addition neighborhood of San Francisco. Planning for the park renovation project began in January 2015. The proposed grant funding would be used to finance the project's Phase 3, which consists of renovating two out of the five park blocks. The renovation would include constructing a gathering area with barbecues, picnic tables, a full-size basketball court, a new lawn, communal garden, new lighting, landscaping, irrigation, and paving and resurfacing a new walking promenade. Construction services would be put out to bid, and completion is expected by July 2025.
- According to the draft contract, the City is to permanently maintain the entire five blocks comprising Buchanan Street Mall Park as public open space in perpetuity. As a condition for the grant, the California Department of Parks and Recreation requires that the City record a Declaration of Restriction with the Assessor-Recorder to ensure the use of the property will remain public open space.

Fiscal Impact

- Phase 3 of the Renovation Project is funded in part (approximately 49 percent) by the anticipated $3.9 million grant from the National Park Service. Matching funds totaling $3,993,253 include $1,020,000 from a $3.9 million San Francisco Public Utilities Commission grant for the Project, $2,243,253 from Market-Octavia Development Impact Fees, and $730,000 from a $4.8 million non-competitive grant from the California State Department of Parks and Recreation. The City will initially finance grant-eligible costs with $3.9 million in General Funds and recover the monies through the grant reimbursement process.
- REC has applied for another National Park Service grant for renovation work on the remaining three blocks of the Buchanan Street Mall Park. The total project budget is approximately $33 million.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

Grant Program

The Outdoor Recreation Legacy Partnership Program (ORLP) is a nationally competitive grant program that was established by Congress in 2014 and is administered by the National Park Service. The goal of the program is to support outdoor recreation projects in urban areas, particularly in underserved communities, that create new outdoor recreation spaces or improve existing parks. As of October 2023, ORLP has announced six rounds of competitive funding.

Funded Project

In June 2022, the San Francisco Recreation and Park Department applied for ORLP funding Round 5 for the Buchanan Street Mall Renovation Project. In September 2023, the Department was notified that the Project had been successfully selected for ORLP funding. San Francisco's Buchanan Street Mall Project was one of 27 ORLP selected projects nationwide to receive funding in Round 5.

The Buchanan Street Mall is a linear park located in the Western Addition Neighborhood of San Francisco. The park is segmented by four cross streets, creating five separate open spaces. According to the Department, the park serves as open space for the nearly 400 adjacent residential units which have limited or no access to private outdoor space. Planning for the Buchanan Street Mall Renovation Project began in January 2015. The Project aims to revitalize the linear park, including improving safety, lighting, sewer and water infrastructure, urban greening, and beautification. As of October 2023, the estimated completion date for the project is July 2025, and the total estimated budget is approximately $33,000,000.

Under the property, there are water and sewer pipes that are under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC). The Recreation and Park Department is collaborating with the SFPUC to incorporate green infrastructure throughout the park and in the right of way at intersections, and the SFPUC is providing grant funding for the Project.

Recreation and Park Commission Approval

On December 16, 2021, pursuant to Resolution No. 2112-007, the Recreation and Park Commission unanimously authorized the Recreation and Park Department to enter into a grant agreement with the California State Department of Parks and Recreation for the administration of $3,900,000 in ORLP grant funding, subject to approval by resolution of the Board of Supervisors.[1]

[1] According to REC staff, State grants often require the Department's governing body (i.e., Recreation and Parks Commission) approve the grant agreement terms prior to the actual grant application approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Recreation and Park Department to accept and expend a grant from the federal National Park Service, with the California Department of Parks and Recreation as the pass-through agency, in the amount of up to $3,900,000. The grant requires that the City match the federal funds at an equal dollar-for-dollar basis during the grant period. Pending approval from the Board of Supervisors, the grant performance period is October 1, 2023 through June 30, 2026, with pre-award costs up to $367,560 incurred on or after September 1, 2022 also eligible for reimbursement. The funding would be used to finance the third phase of the Buchanan Street Mall Renovation Project.

Use of Funds

Phase 3 of the Buchanan Street Mall Renovation Project consists of renovating two out of five parcels, 0.694 acres, including the Golden Gate Avenue to McAllister Street and the Fulton Street to Grove Street blocks of the park. The renovation would include constructing a gathering area with barbecues, picnic tables, a full-size basketball court, a new lawn, communal garden, new lighting, landscaping, irrigation, and paving and resurfacing a new walking promenade. Phase 3 is expected to be completed by July 2025. Construction services will be put out to bid.

The grant agreement between the City's Department of Recreation and Park and California Department of Parks and Recreation (as pass-through agency) is still being finalized, but according to the Department, the contract will be back dated to October 1, 2023.

Restriction on Property Use

According to the draft contract, the City is to permanently maintain the entire five blocks comprising Buchanan Street Mall Park as public open space in perpetuity. As a condition for the grant, the California Department of Parks and Recreation requires that the City record a Declaration of Restriction with the Assessor-Recorder to ensure the use of the property will remain public open space.

FISCAL IMPACT

The total cost of the Buchanan Mall Project Phase 3 is $7,893,253, as shown in Exhibit 1 below. No indirect costs are included in the grant budget because they are not allowed by the granting agency. Phase 3 of the Project is funded in part (approximately 49 percent) by the anticipated $3,900,000 grant from the federal Outdoor Recreation Legacy Partnership Program (ORLP). Matching funds totaling $3,993,253 include $1,020,000 from a $3.9 million San Francisco Public Utilities Commission grant for the Project, $2,243,253 from Market-Octavia Development Impact Fees, and $730,000 from a $4.8 million non-competitive grant from the California State Department of Parks and Recreation specifically for the Buchanan Street Mall Project. The City will initially finance grant-eligible costs with $3,900,000 in General Funds, and recover the monies through the grant reimbursement process.

The Outdoor Recreation Legacy Partnership Program (ORLP) grant source is the federal National Park Service, with California Department of Parks and Recreation as the pass-through agency.

Exhibit 1. Buchanan Street Mall Renovation Project – Phase 3, October 2023

Sources	Grant	Match	Total
Proposed Grant	$3,900,000		$3,900,000
SFPUC Green Infrastructure Grant		1,020,000	1,020,000
Market-Octavia Development Fees		2,243,253	2,243,253
Specified Grant-Sen. Scott Wiener		730,000	730,000
Total Sources	**$3,900,000**	**$3,993,253**	**$7,893,253**
Expenditures			
Construction & Project Management	57,000	439,250	496,250
Project Inspection Fees		65,000	65,000
Architectural & Engineering Fees	300,000	400,000	700,000
Site Work	190,668		190,668
Demolition & Removal	146,198		146,198
Construction Labor	1,891,385	2,076,615	3,968,000
Equipment & Materials	1,314,748	430,883	1,745,631
Contingency (8.0%)		581,505	581,505
Total Expenditures	**$3,900,000**	**$3,993,253**	**$7,893,253**

Source: Recreation and Park Department Grant Application
Note: Discrepancies in totals due to rounding.

According to the Recreation and Park Department, the department has applied for Round 6 of the Outdoor Recreation Legacy Partnership Fund for renovation work on the other three blocks of the Buchanan Street Mall Park.

RECOMMENDATION

Approve the proposed resolution.

Item 6 File 23-1111	Department: Port

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a new lease between the San Francisco Port Commission, as landlord, and Recology San Francisco, as tenant. The lease is for approximately 448,688 square feet of premises at Pier 96 in San Francisco, commencing upon approval of this resolution and extending until September 30, 2029 with no options to extend.

Key Points

- Recology (previously West Coast Recycling, Inc.) has operated a recycling facility at Pier 96 through a lease with the Port since August 1, 1998. The lease was amended five times, and the term expired on July 31, 2023. The lease has been in holdover status during negotiations of new lease terms.
- The previous lease was a maritime lease until 2005, when the Port stopped handling container traffic at this location. The proposed new lease would be a non-maritime lease, removing the Maritime Deficiency Fee under the previous lease. Under the proposed lease, Recology would pay for a seismic study and facility conditions assessment at a not-to-exceed cost of $1,000,000.

Fiscal Impact

- Over the first five years of the six-year term of the proposed lease, rent to be paid by Recology to the Port is approximately $28.7 million. This figure includes an annual base rent increase of 3 percent, per contract terms but is only an estimate because the base rent in the sixth year of the lease will be determined by a new fair market rent assessment, completed on or by July 3, 2028. Lease revenues in the amount of 6.5 percent will go towards the Port's Southern Waterfront Community Benefits and Beautification Fund.

Policy Consideration

- Like the 1998 lease it is replacing, the proposed new lease on Port land with Recology was not competitively procured. San Francisco Administrative Code Section 23.33 states that any leases generated more than $2,500 per month in revenue should be awarded competitively, unless such procedures are impractical or impossible. According to the Port, a competitive solicitation for the original lease with Recology in 1998 was impractical and remains impractical today because the Port is uncertain whether site soil conditions could support more development. The Port has determined that the best use of the premises is to allow Recology to continue its recycling activities at the site while paying fair market rent and complete a seismic study and facility conditions assessment that will inform future uses to the site.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter 9.118(c) states that any lease, 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

The Port of San Francisco ("Port") is a public enterprise department that fosters maritime activity and public use of 7.5 miles of San Francisco waterfront. The Port is self-supporting and generates revenue from renting its real estate property. Port staff adjust rental rates annually, and the FY 2023-24 rates will remain mostly the same as in FY 2022-23 (Port Commission Resolution No. 23-36).

Recology San Francisco (previously West Coast Recycling, Inc.) has operated a recycling facility at Pier 96 through a lease (L-12540) with the Port Commission since August 1, 1998. The original lease was not competitively procured. According to the Port, in 1998, the Port Commission determined that West Coast Recycling was the only feasible operator of a recycling sorting, loading, and maritime transshipment center in San Francisco, and therefore a competitive solicitation was impractical.[1]

Amendment History

The original lease between the Port and West Coast Recycling, Inc. was amended five times. In June 1998, the first amendment to the lease defined the lease term and rent commencement date. In December 1998, the second amendment to the lease (Commission Resolution 99-20) extended the lease term from five years to 25 years, for a total term from August 1, 1998 through July 31, 2023, as well as introduced a Maritime Deficiency Fee provision that requires the tenant to pay if it failed to meet the minimum level of container shipments. In July 2001, the third amendment to the lease adjusted the premises and base rent. In June 2002, the fourth amendment to the lease (Commission Resolution 02-21) increased the lease premises by approximately 32,097 square feet, among other provisions. In August 2009, the fifth to and restatement of the lease amendment (Commission Resolution 09-41) revised the Maritime Deficiency Fee provision, since the Port stopped handling container traffic at this location in 2005. The lease term expired on July 31, 2023.

Lease Holdover

The lease has been in holdover status since July 31, 2023. According to Port staff, the reason for the extended holdover status is due ongoing negotiations with the tenant. They were unable to agree on the terms of a new lease prior to the old lease expiring on July 31, 2023.

[1] Port policy, and City Admin Code Section 23, permits the Port to enter into leases without competitive bid when competitive bid is impractical or impossible.

Port Commission Approves New Lease

On October 10, 2023, the San Francisco Port Commission adopted a resolution (Commission Resolution No. 23-42) approving the new proposed lease between Recology San Francisco and the Port. This lease is now being considered by the Board of Supervisors for approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease agreement (L-17035) for a term of approximately six years with no options to extend between the San Francisco Port Commission as landlord, and Recology San Francisco as tenant. The lease is for approximately 448,688 square feet of premises at Pier 96 in San Francisco. The new lease agreement would commence upon approval of this resolution and extend for six years until September 30, 2029. The initial monthly base rent would be $369,500 ($0.82 per square foot), for a total annual base rent of $4,434,000 ($9.88 per square foot). The new lease would be a non-maritime lease, removing the Maritime Deficiency Fee under the previous lease. Exhibit 1 below summarizes the terms and conditions of the lease provisions.

Exhibit 1. Summary of Proposed Lease

	Proposed Lease
Premises	448,688 square feet at Pier 96, San Francisco
Base Rent (annual)	$4,434,000 ($9.88 per square foot)
Utilities, Maintenance and Repair	Tenant solely responsible
Term	Approx. six years, ending September 30, 2029
Options to extend	None
Base Rent Adjustment Amount	3% increase per year through Sept. 2028. Rent adjusted to fair market rent in year six of the lease.
Seismic Study & Facility Conditions Assessment	Tenant will pay for Seismic Study within first two years of lease term and a Facilities Condition Assessment before end of year five.
Security Deposit	$739,000 (twice the amount monthly rent)

Source: Lease Agreement

Note: Lease term commences upon approval of the proposed resolution.

Site Usage

The 448,688 square feet of premises at Pier 96 are comprised of approximately 196,369 square feet of shed, docks and outbuilding, and loading dock space; approximately 223,559 square feet of paved land and yard space; and approximately 28,760 square feet of paved land which runs lengthwise between the building and the water called "stringer space."[2]

[2] Currently, the Port has an MOU with the San Francisco Public Utilities Commission (SFPUC) to lease the roof above the stringer space for solar panels. The solar panels are no longer functioning. SFPUC is planning to remove the solar

The proposed lease allows for a continuation of the existing use of the property as a recycling center and public buy-back facility. Recology's residential and commercial curbside recycling programs deliver paper, cardboard, fiber, plastic, metals, glass, and wood to Pier 96. The recycled materials are sorted and shipped to domestic and international buyers. The site is not used for processing food waste or construction and demolition waste. The property is no longer an industrial maritime facility and is not used for shipping containerized cargo. The property is also used for Recology employee parking and general administrative functions.

Utilities, Maintenance & Repair

Under the agreement the tenant, Recology, will pay for the utilities separately from the rent. The tenant is also responsible for all maintenance and repair to the premises. The site's condition has been fully disclosed and assessed by third-party specialists. According to the proposed lease the tenant is aware, for example, that a September 2006 survey found that the roof of the northeast wharf substructure built around 1963 contains asbestos, and that there is severe seawall failure on the Northeast Sea Wall. In the event that a capital repair (major repair or replacement) is necessary, the tenant and landlord will meet to discuss a solution.

Fair Market Rent Determination

The property was appraised in May 2023 by an independent third party that determined that the best use of the property is its continued special purpose use as a recycling center. The appraiser analyzed prevailing market rental activity for large industrial properties and determined that the proposed lease rent revenues of $369,500 per month is consistent with fair market rental value of similarly situated industrial properties. The estimated fair market ren amount includes an annual 3 percent escalation consistent with the terms of the prevailing market conditions.

Seismic Study and Facility Conditions Assessment

The recycling plant was built in 1972 and renovated in 1998. Under the proposed lease agreement, within the first two years of the new lease term, Recology is required to provide an American Society of Civil Engineers 41-17 Seismic Evaluation and Retrofit Strategy Report. The Seismic Assessment will provide the Port with details of the facilities' seismic deficiencies, possible retrofit strategies, and the cost estimate for those retrofits. The proposed lease agreement also requires the tenant to procure before the fifth year of the lease term a Facility Condition Assessment. The Assessment will summarize the current condition of the load-resisting structures on the premises, and foundation elements.

The studies are meant to inform possible future use of the site after the proposed new lease expires on September 30, 2029. The Port estimates that the cost of procuring both studies is $1,000,000. Under the proposed lease, Recology would pay for the studies at a not-to-exceed cost of $1,000,000.

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panels and the roof covering the stringer space will be included in the proposed lease between the Port and Recology.

Security Deposit

The security deposit from the prior lease will be applied toward the security deposit required under the new lease. The lease provisions require that the security deposit should at all times be equal to two times the applicable monthly base rent.

FISCAL IMPACT

As shown in Exhibit 2 below, over the first five years of the six-year term of the proposed lease, rent to be paid by Recology San Francisco to the Port is approximately $23,540,688. This figure includes an annual base rent increase of 3 percent, per contract terms. The base rent in the sixth year of the lease will be determined by a new fair market rent assessment, completed on or by July 3, 2028, per the terms of the lease agreement. If rents continue to escalate in the sixth year by three percent, then the total rent paid to the Port would be $28,680,930.

Exhibit 2. Annual Rents Paid by Recology

	Monthly Base Rent	Annual Rent
Year 1	$369,500	$4,434,000
Year 2	$380,585	$4,567,020
Year 3	$392,002	$4,704,024
Year 4	$403,762	$4,845,144
Year 5	$415,875	$4,990,500
Subtotal		**$23,540,688**
Year 6	Fair Market Rent, TBD	Fair Market Rent, TBD

Source: Proposed Lease. Totals may not add due to rounding.

According to the Port, the current holdover monthly rental rate is $369,500.

Southern Waterfront Beautification Set Aside Benefit Fund

In accordance with the Port's Policy for Southern Waterfront Community Benefits and Beautification, and the FY 2023-24 Monthly Rental Rate Schedule, 6.5 percent of lease revenues will go towards the Port's Southern Waterfront Community Benefits and Beautification Fund. Over the first five years of the lease term, this equates to approximately $1,530,144. The funds will be applied to any or all of the Port's Southern Waterfront beautification projects, including open space, wetlands restoration, pier removal, public art, historic preservation, or other projects.

POLICY CONSIDERATION

Like the 1998 lease it is replacing, the proposed new lease on Port land with Recology was not competitively procured. San Francisco Administrative Code Section 23.33 states that any leases that are expected to produce more than $2,500 per month in revenue be awarded in accordance with Competitive Bidding Procedures, unless such procedures are impractical or impossible.

According to the Port, a competitive solicitation for the original lease with Recology in 1998 was impractical and remains impractical today because the Port is uncertain whether site soil conditions could support more development. In addition, the original lease included maritime use (shipping recycling out), which does not require competitive bidding under Port policy, but, as noted above, maritime operations ceased at this site in 2005. Now that the lease has expired, the Port has determined that the best use of the premises is to allow Recology to continue its recycling activities at the site while paying fair market rent and complete a seismic study and facility conditions assessment that will inform future uses to the site.

According to the Port, Recology has consistently been in compliance with all terms and conditions of the lease during its tenancy over the past 25 years. Recology is considered to be a "tenant in good standing," which is required before the Port may consider entering into a new lease or amendment with an existing tenant, according to the Port's Tenant in Good Standing Policy (Commission Resolution No. 09-49).

RECOMMENDATION

Approve the proposed resolution.

Item 7 File 23-1112	Department: Port of San Francisco

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a new lease agreement (L-17093) for a term of approximately three years with three one-year options to extend between the San Francisco Port Commission ("Port") as landlord, and Anderson Enterprises, Inc. as tenant. The lease is for approximately 118,353 square feet of premises at the Pier 68/70 Shipyard in San Francisco. The initial annual base rent of $800,424 ($6.76 per square foot).

Key Points

- The proposed lease allows for a continuation of the existing use of the property for Andersons' vehicle storage, vehicle detailing, vehicle preparation and pre-delivery inspections for its San Francisco-based car dealerships. No outdoors vehicle washing, fueling, or major maintenance is permitted under the lease because any discharge could pollute the Bay.
- The previous lease expired on October 31, 2023 and is currently in holdover status. The proposed new lease is now presented before the Board of Supervisors for approval since the new lease's initial three-year term would generate over $1 million in rent revenue.
- The leased premises at Pier 68/70 in San Francisco are comprised of 116,343 square feet of paved land and 2,010 square feet of shed space. The new lease reduces the size of the paved land area by 12,592 square feet to accommodate a future Port construction project.

Fiscal Impact

- The proposed lease relies on Port Commission-approved FY 2023-24 parameter terms to determine the base rental rate. The proposed lease is on the lower end of the range for parameter rents for paved open land, at $0.55 per square foot per month, and in the middle of the parameter rent range for sheds, at $1.35 per square foot per month.
- Over the first three years of the initial lease term of the proposed lease, rent to be paid by Anderson to the Port is approximately $2,487,924. If each of the three one-year lease extension options is exercised, total rental income would be approximately $5,236,068.

Policy Consideration

- It is Port policy not to competitively bid leases for unimproved land. Rents for such leases are based on parameter rents established by the Port.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter 9.118(c) states that any lease, 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

On December 31, 2018, the Port of San Francisco ("Port") and Anderson Enterprises, Inc. signed a one-year lease agreement (L-16471) for approximately 128,935 square feet of paved land and approximately 2,010 square feet of shed space located at the Pier 68/70 shipyard in San Francisco. The original lease term was from December 1, 2018 through November 30, 2019, for a total monthly base rent of $55,467 ($0.46 per square foot), or annual base rent of $665,611 ($5.53 per square foot). The premises are used for vehicle storage, detailing and vehicle preparation. The lease was not competitively procured because, according to the Port, a competitive bid was impractical.[1] The tenant was considered to be in compliance with the lease obligations and in "good standing", and as such, in accordance with the Port's Tenant in Good Standing Policy (Commission Resolution No. 09-49), the lease was amended with term extensions three times. The lease expired on October 31, 2023, and is currently in holdover status. The proposed new lease is now presented before the Board of Supervisors for approval since the new lease's initial three-year term would generate over $1 million in rent revenue.

Port Commission Approves New Lease

On October 10, 2023, the San Francisco Port Commission adopted a resolution (Commission Resolution No. 23-43) approving the new proposed lease between the Port and Anderson Enterprises, Inc. This lease is now being considered by the Board of Supervisors for approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease agreement (L-17093) for a term of approximately three years with three one-year options to extend between the San Francisco Port Commission as landlord, and Anderson Enterprises, Inc. as tenant. The lease is for approximately 118,353 square feet of premises at the Pier 68/70 Shipyard in San Francisco. The new lease agreement would commence upon approval of this resolution and extend for three years. The initial monthly base rent would be $66,702 ($0.56 per square foot), for a total annual base rent

[1] Port policy, and City Admin Code Section 23, permits the Port to enter into leases without competitive bid when competitive bid is impractical or impossible.

of $800,424 ($6.76 per square foot). The lease is a non-maritime lease. Exhibit 1 below summarizes the terms and conditions of the lease provisions.

Exhibit 1. Summary of Proposed Lease

	Proposed Lease
Premises	116,343 square feet of paved land and 2,010 square feet of shed space at Pier 68/70, San Francisco
Base Rent (annual)	$800,425 ($6.76 per square foot)
Utilities, Maintenance and Repair	Tenant solely responsible
Term	Three years from commencement date
Options to extend	Yes, three one-year options to extend
Base Rent Adjustment Amount	3.6 – 3.2% per year
Security Deposit	$157,517 (twice the monthly base rent at all times)

Source: Lease Agreement

Note: Lease term commences upon approval of the proposed resolution.

Site Usage

The 118,353 square feet of premises at Pier 68/70 shipyard are comprised of approximately 116,343 square feet of paved land, and 2,010 square feet of shed space. The premises are split into parcels, A through F. The new lease reduces the size of the premises by 12,592 square feet of paved land, from 128,935 square feet to 116,343 square feet, due to a future Port construction project. The 2,010 area of leased shed space remains the same.

The proposed lease allows for a continuation of the existing use of the property for Anderson Enterprises' vehicle storage, vehicle detailing, vehicle preparation and pre-delivery inspections for its San Francisco-based car dealerships. No outdoors vehicle washing, fueling, or major maintenance is permitted under the lease because any discharge could pollute the Bay. The lease requires the tenant to ensure there is no discharge through preemptive maintenance measures and regular inspections.

The Port considers this an interim use until a maritime lease can be established at Pier 68/70.

Utilities, Maintenance & Repair

Under the agreement, the tenant Anderson Enterprises will pay the utilities separately from the rent. The water supplied by utilities at the premises is non-potable only. The tenant is also responsible for all maintenance and repair to the premises.

Rent Determination

According to Port staff, the lease with Anderson Enterprises is considered a routine lease and was not competitively procured.[2] For such leases, the Port relies on the Port Commission-

[2] In contrast, the Port states that if a business model is highly competitive and represents a major revenue opportunity for the Port, the Port would issue a competitive solicitation.

approved FY 2023-24 parameter terms and conditions to determine the base rental rate. The rental rate structure listed in the parameter terms is informed by an analysis of comparable rent charged in the private sector and/or existing conditions of individual properties as adjusted annually to reflect market conditions. Parameter rents for paved open land and piers are set in a range of $0.55 - $0.75 per square foot per month; the proposed lease is on the low end of that range, at $0.55 per square foot per month. Parameter rents for sheds on Pier 96 are set at $1.30 - $1.40 per square foot per month and the proposed rent is $1.35 per square foot per month.[3]

Security Deposit

The security deposit from the prior lease will be applied toward the security deposit required under the new lease. The lease provisions require that the security deposit should at all times be equal to two times the applicable monthly base rent.

FISCAL IMPACT

As shown in Exhibit 2 below, over the first three years of the initial lease term of the proposed lease, rent to be paid by Anderson Enterprises, Inc. to the Port is approximately $2,487,924. This figure includes an annual base rent increase of approximately 3 percent, per contract term. If Anderson Enterprises and the Port mutually agree to exercise each of the three one-year lease extension options, the total rental income would be approximately $5,236,068.

Exhibit 2. Annual Rents Paid by Anderson Enterprises, Inc.

	Monthly Base Rent	Annual Rent
Year 1	$66,702	$800,424
Year 2	$69,109	$829,308
Year 3	$71,516	$858,192
Subtotal		$2,487,924
Extension Option 1	$73,923	$887,076
Extension Option 2	$76,331	$915,972
Extension Option 3	$78,758	$945,096
Potential Lease Total		**$5,236,068**

Source: Proposed lease. Totals may not add due to rounding.

Southern Waterfront Beautification Set Aside Benefit Fund Accounting

In accordance with the Port's Policy for Southern Waterfront Community Benefits and Beautification, and the FY 2023-24 Monthly Rental Rate Schedule, 6.5 percent of lease revenues will go towards the Port's Southern Waterfront Community Benefits and Beautification Fund. Over the initial three-year lease term, this equates to approximately $161,000, and $340,000 if all three one-year options to extend are exercised. The funds will be applied to any or all of the

[3] The holdover rent for the current lease's premises of 128,935 square feet is $67,933 per month. Holdover rent is $0.52 per square feet for paved land and $1.28 per square feet for shed space.

Port's Southern Waterfront beautification projects, including open space, wetlands restoration, pier removal, public art, historic preservation, or other projects.

POLICY CONSIDERATION

Like the 2018 lease it is replacing, the proposed new lease on Port land with Anderson Enterprises, Inc. was not competitively procured. San Francisco Administrative Code Section 23.33 states that any leases that are expected to produce more than $2,500 per month in revenue be awarded in accordance with Competitive Bidding Procedures, unless such procedures are impractical or impossible.

According to the Port, they have approximately 550 relatively small areas of land that are routinely leased. Competitively bidding on such a large volume of leases would be impractical because the cost of resources that would be required to competitively bid on the leases outweighs the prospective return on rent. Furthermore, according to the Port, it is the policy not to competitively bid leases for unimproved land, special events, office, and warehouse space.

According to the Port, Anderson Enterprises has consistently been in compliance with all terms and conditions of the lease during their tenancy over the past five years. Anderson Enterprises is considered to be a "tenant in good standing."

RECOMMENDATION

Approve the proposed resolution.

Item 8 **File 23-1133**	**Department:** Mayor's Office of Housing and Community Development

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize a second amendment to the City's loan agreement with Sunnydale Infrastructure Phase 1A3, LLC, increasing the loan amount by $1,495,294, from $25,072,111 to $26,567,405.

Key Points

- The Sunnydale project is one of four sites in HOPE SF, a program replacing aging public housing buildings and creating new, mixed-income communities. Phase 1A-3 of the project includes a portion of the Sunnydale site encompassing a community center, two affordable housing developments, and the Sunnydale Avenue right of way.
- In February of 2022, the Board of Supervisors approved a $25,072,111 amended and restated loan agreement between the Mayor's Office of Housing and Community Development (MOHCD) and Sunnydale Infrastructure Phase 1A-3, LLC, an affiliate of Mercy Housing California and the Related Companies of California, LLC, the project sponsors.
- The project team has incurred unforeseen costs due to extreme weather during the winter of 2022-2023, unforeseen site conditions, temporary power connection costs, and other reasons. Completion of infrastructure construction in Phase 1A-3 has now been delayed from the initial target of December 2022 and is now expected to be completed in November of 2023.

Fiscal Impact

- The proposed amendment would increase the loan amount by $1,495,294, from $25,072,111 to an amount not to exceed $26,567,405, as well as modify the funding sources for the overall loan. The sources of the proposed increase are 2019 general obligation bonds ($901,418) and the Housing Trust Fund ($593,876). The loan would be forgiven once the City accepts the improvements.

Policy Consideration

- Approximately $500,000 of the hard costs contributing to this loan request result from the provision of temporary power to a portion of the construction site. SFPUC has agreed to reimburse approximately half of these costs, but the final amount has not yet been determined, and this reimbursement is thus not reflected in the loan request. Any funds reimbursed by SFPUC would reduce the amount of MOHCD's loan.

Recommendations

- The Board of Supervisors should 1) request MOHCD and SFPUC to report back within 30 days on SFPUC reimbursement of costs incurred related to temporary power connection during horizontal infrastructure construction in Sunnydale Phase 1A-3 and include the report in the legislative file; 2) request MOHCD and SFPUC to enter into an agreement clarifying cost-sharing for power connection costs, to avoid future uncertainty; and 3) 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

In January of 2017, the Board of Supervisors approved a master development agreement to replace the City's largest public housing community, located on the 50-acre Sunnydale-Velasco Housing Authority site in the Visitacion Valley neighborhood. The Sunnydale project is one of four sites in HOPE SF, a program replacing aging public housing buildings and creating new, mixed-income communities. The current developer, Sunnydale Development Co., LLC, is affiliated with Mercy Housing California and the Related Companies of California, LLC, which were selected as the project sponsors following a 2007 request for qualifications.

Under the terms of the development agreement, Sunnydale Development Co. will redevelop the site in phases over the course of 25 years, replacing 775 units of public housing and adding up to 995 additional housing units, including both market-rate and affordable units. In addition to housing units, the project includes the creation of a community center, retail space, parks, open spaces, new streets, and improved pedestrian and bicycling infrastructure.

Phase 1A-3 of the project includes a portion of the Sunnydale site encompassing a community center, two affordable housing developments, and the Sunnydale Avenue right of way.[1] Prior to construction of these new buildings, this area required demolition of existing structures, hazardous conditions abatement, utility installation, and other site preparation steps.

In February of 2022, the Board of Supervisors approved a $25,072,111 amended and restated loan agreement between the Mayor's Office of Housing and Community Development (MOHCD) and Sunnydale Infrastructure Phase 1A-3, LLC (Sunnydale Infrastructure), an affiliate of Sunnydale Development Co., LLC, to fund Phase 1A-3 infrastructure work (File 21-1266). The project team has incurred unforeseen costs due to extreme weather during the winter of 2022-2023, unforeseen site conditions, temporary power connection costs, and other reasons. Completion of infrastructure construction in Phase 1A-3 has now been delayed from the initial target of December 2022 and is now expected to be completed in November of 2023.

[1] In 2023, the Board of Supervisors approved gap financing for two residential developments in Sunnydale Phase 1A3: $27.3 million in Block 3A (File 23-0377) and $31.5 million for Block 3B (23-0062). In 2022 the Board approved an $11 million grant to help fund the Community Center in Block 1, also within Sunnydale Phase 1A-3.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize a second amendment to the City's loan agreement with Sunnydale Infrastructure Phase 1A3, LLC, increasing the loan amount by $1,495,294, from $25,072,111 to $26,567,405.

The purpose of the loan increase is to fund $1,495,294 in unexpected costs and delays during an infrastructure construction phase of the Sunnydale mixed-income housing development project. The increase would have a loan term of 55 years and would be forgiven once the project is completed, and improvements have been accepted by the City. It would not accrue interest.

The proposed resolution would also authorize MOHCD to approve non-material contract amendments.

Extreme Weather

Extreme weather during the winter of 2022-2023 accounts for a portion of the unexpected costs incurred during Phase 1A-3, according to MOHCD. Completion of this project phase has been set back by more than 40 rain days, significantly more than the 10 days estimated in the original contract schedule. When the Board approved the current loan, construction was expected to occur between February 2022 and December 2022, which would have avoided the rainiest months of the year (December – March). However, delays in obtaining approval from the Housing Authority and in obtaining permits resulted in construction not beginning until May 2022. It is now expected to be completed in November 2023. MOHCD did not consider delaying this project's infrastructure construction during the winter rain season, but is considering doing so in future projects.

According to the October 20, 2023 MOCHD staff memo prepared for the Citywide Affordable Housing Loan Committee, the Phase 1A-3 site receives runoff from McLaren Park and the rest of the Sunnydale site, and the amount of runoff exceeded what was projected in the project's Storm Water Prevention Plan. Based on lessons learned during Phase 1A3, the project team has also updated the Storm Water Prevention Plan for the next development phase, Phase 3, in an effort to avoid future rain-related construction delays. Construction budget contingencies for Phase 3 will also be updated to accommodate more rain-related delays. MOHCD expects that new infrastructure constructed during Phase 1A-3 will be sufficient to accommodate future runoff.

Unforeseen Conditions

Unforeseen conditions uncovered at the construction site also contributed to added costs, according to MOHCD's loan evaluation. For example, when installing catch basins at one intersection, the project team discovered that a PG&E duct bank had been incorrectly installed, requiring the project team to redesign the catch basins and drainage infrastructure. A manhole also required unexpected retrofitting.

Temporary Power Connection

Another unexpected cost relates to the provision of temporary power to a portion of the Sunnydale site. As part of Phase 1A-3, power to part of Blocks 6 and Q of the Sunnydale site was slated to be interrupted in order to allow for removal of utility poles in Block 3 (within Phase 1A-3), according to the San Francisco Public Utility Commission (SFPUC). The construction plan called for this connection to be replaced with a new permanent connection. However, PG&E declined to provide the full 1,500 kW of capacity requested by SFPUC, providing only 635 kW, according to SFPUC staff. As a result of delays associated with this disagreement, the project sponsor installed a temporary power connection, known as a power shoofly, at a cost of $507,429. The temporary power connection is being used to power the construction site within Phase 1A-3 as well as the fully developed and occupied Blocks 6 and Q in Sunnydale (see the appendix to this report for a map of the Sunnydale development area).

Agency Coordination

Additional unexpected costs relate to requests from City departments, rescheduled inspections, and errors on the part of the City requiring additional work. As an example of additional work, the project team had to reinstall a hydrant that had been installed incorrectly based on City instructions, according to MOHCD's loan evaluation.

Temporary Relocation of Residents

Because the Sunnydale site's existing housing units are being replaced, project costs include temporary relocation services for residents. These services, provided by the project sponsor and reimbursed by the city, consist largely of staffing costs associated with preparing residents for, and assisting residents with, relocation. They also include direct resident moving expenses. Initially, the project sponsor intended to request reimbursement for Phase 1A-3 relocation services during the next project phase, Phase 3. However, due to the delayed completion of Phase 1A-3 – and thus the delayed start of Phase 3 – the project sponsor is requesting reimbursement through the current loan increase.

FISCAL IMPACT

The proposed amendment would increase the loan amount by $1,495,294, from $25,072,111 to an amount not to exceed $26,567,405, as well as modify the funding sources for the overall loan. The sources of the proposed increase are 2019 general obligation bonds ($901,418) and the Housing Trust Fund ($593,876). The overall change in the Phase 1A-3 infrastructure budget since the Board approved the original infrastructure loan is shown in Exhibit 1 below.

Exhibit 1: Sources and Uses for Sunnydale Phase 1A-3 Infrastructure

	Current Loan	Proposed Loan	Difference
Sources			
2015 GO Bonds	$9,800,000	$9,800,000	$0
2019 GO Bonds	$14,672,111	$9,673,529	($4,998,582)
Housing Trust Fund	$600,000	$3,005,700	$2,405,700
HOPE SF General Fund	$0	$4,088,176	$4,088,176
Total Sources	**$25,072,111**	**$26,567,405**	**$1,495,294**
Uses			
Hard Costs	$20,831,764	$22,108,397	$1,276,633
Soft Costs	$3,785,801	$4,004,462	$218,661
Developer Fee	$454,545	$454,545	$0
Total Project Costs	**$25,072,110**	**$26,567,404**	**$1,495,294**

Source: MOHCD

Notes: Soft costs include tenant relocation costs. A $6.5 million state grant awarded to the City (File 23-0061) reduces the City's net loan amount.

Hard Costs

When needs arise beyond the work outlined in a contract, the general contractor or the project sponsor requests a change order. MOHCD staff review these requests against contract requirements and design documents, asking for additional information or performing site visits as necessary, according to MOCHD. The MOHCD project manager and construction manager must sign off for the additional work to occur.

The amount of the requested loan associated with hard costs represents the difference between total cost of the change orders and the combined contingencies of the general contractor and the project sponsor. Exhibit 2 below details costs incurred through change orders. The "Change Orders – Other" category, accounting for $1,861,568, generally represents change orders for changes to project scope and work efforts not anticipated during the design phase. The remaining hard cost categories – weather, temporary power, and agency coordination – bring total hard costs above the combined contingencies budgeted by the project sponsor and the general contractor.

Exhibit 2: Hard Costs

Hard Costs	Amount
Change Orders – Weather	$793,909
Change Orders - Temporary Power	$507,429
Change Orders - Agency Coordination	$172,571
Change Orders – Other	$1,861,568
Total Change Orders	$3,335,477
Contract Contingencies	$2,058,844
Difference of Change Orders and Contingency	**$1,276,633**

Source: MOHCD

Relocation Services

The $218,661 requested for relocation services covers services provided between October of 2022 and December of 2023, as shown below in Exhibit 3. Services are provided by Mercy Housing.

Exhibit 3: Relocation Services

Category	Amount
Relocation readiness staffing, Oct. 2022-Dec. 2022	$27,227
Relocation readiness staffing, 2023	$144,996
Direct resident moving costs	$46,438
Total	**$218,661**

Source: MOHCD

POLICY CONSIDERATION

Power Connection Costs

Approximately $500,000 of the hard costs contributing to this loan request result from the provision of temporary power to a portion of the construction site, as discussed above. SFPUC has agreed to reimburse approximately half of these costs under a pending agreement with Sunnydale Development Co. LLC, MOHCD, and PUC, but the final amount has not yet been determined, and this reimbursement is thus not reflected in the loan request. Any funds reimbursed by SFPUC would reduce the amount of MOHCD's loan. We recommend the Board request MOHCD and SFPUC to report back to the Board of Supervisors within 30 days of approval of this resolution on the final SFPUC funding.

According to SFPUC Power Enterprise staff, customers typically pay for their new power connections, unless the infrastructure benefits all utility customers. SFPUC is only reimbursing a portion of the power connection costs because it benefits existing customers (Sunnydale Blocks 6 and Q) who already paid for their new power connections. We recommend the Board request

MOHCD and PUC enter into an agreement clarifying cost-sharing for power connection costs, to avoid future uncertainty.

Developer Funds

As noted above, the project sponsor is receiving a $454,545 developer fee for completing infrastructure work in Sunnydale Phase 1A-3 and will be receiving a $5 million fee for all infrastructure work in Sunnydale. The developer will also be receiving distributions and fees from affordable housing rental projects it is building and operating in Sunnydale with City funding. Although we believe the City should negotiate cost sharing of these project costs with the developer, MOHCD did not consider doing so in this case and in general does not believe it is feasible to request cost sharing with its project sponsors for unexpected affordable housing development costs. Because this request is consistent with recent Board approvals of loan increases for affordable housing projects that faced increased costs due to PG&E-related delays, 500 Turk (23-0319) and 4648 Mission (23-0318), we recommend approval of the proposed resolution.

RECOMMENDATIONS

1. Request MOHCD and SFPUC to report back within 30 days on SFPUC reimbursement of costs incurred related to the temporary power connection during horizontal infrastructure construction in Sunnydale Phase 1A-3 and include the report in the legislative file for this item.
2. Request MOHCD and SFPUC to enter into an agreement clarifying cost-sharing for power connection costs, to avoid future uncertainty.
3. Approve the proposed resolution.

Appendix: Sunnydale Map

Source: MOHCD

Item 9 **File 23-1131**	**Department:** Controller's Office of Public Finance

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the issuance of Treasure Island Tax Increment Revenue Bonds in an amount not to exceed $10.0 million and approve related documents, including an Official Statement, one or more supplements to Indentures of Trust, Bond Purchase Agreements, and Continuing Disclosure Certificates.

Key Points

- The Treasure Island/Yerba Buena Development Project (Project) is part of the Treasure Island Development Authority's (TIDA) ongoing project to transition Treasure Island and a portion of Yerba Buena Island from a former military base to a residential and commercial development. The Project will include up to 8,000 residential units, including 2,173 affordable units (27 percent), as well as retail and commercial space, up to 500 hotel rooms, and 300 acres of public open space.
- To date, the Project has completed infrastructure improvements on Yerba Buena Island and Treasure Island Phase I, including a new public park, street improvements and utilities, new water storage facilities, and a new ferry terminal. In addition, 229 new housing units have been completed, and approximately 740 units are under construction with expected completion in early 2025.
- The Board of Supervisors previously approved the formation of the Treasure Island Infrastructure and Revitalization Financing District (IRFD) No. 1, adopted the Infrastructure Financing Plan, and authorized the issuance of up to $780 million in tax increment bonds to finance eligible project costs.
- Proceeds from the proposed bonds would be used to reimburse eligible project costs, including geotechnical work and affordable housing. The bonds would be repaid with tax increment revenue collected within the IRFD.

Fiscal Impact

- The proposed bonds are anticipated to generate $8,340,802 in proceeds, have a 30-year term and an estimated true interest cost of 6.4 percent based on market conditions as of October 23, 2023. Total debt service is expected to be $19,577,321 or approximately $659,292, on average, per year. The proposed bonds are expected to be issued by January 2024.
- The Bonds would be limited obligations of the IRFD and are secured and payable only from the pledged tax increment of the IRFD.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

California Government Code Section 53369 et seq. authorizes the Board of Supervisors to establish an Infrastructure and Revitalization Financing District (IRFD) and to act as the legislative body for the IRFD.

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

Treasures Island/Yerba Buena Development Project

The Treasure Island/Yerba Buena Development Project (Project) is part of the Treasure Island Development Authority's (TIDA) ongoing project to transition Treasure Island and a portion of Yerba Buena Island from a former military base to a residential and commercial development. In 2011, the Board of Supervisors approved the Development Agreement between the City and Treasure Island Community Development, LLC (TICD), the master developer for the Treasure Island development project, and the Disposition and Development Agreement (DDA) between TIDA and TICD (Files 11-0226 and 11-0291). The Project will include up to 8,000 residential units, including 2,173 affordable units (27 percent), as well as retail and commercial space, up to 500 hotel rooms, and 300 acres of public open space.

Financing Plan

The Financing Plan attached to these agreements obligates the City to provide funding for certain public improvements through: (a) the issuance of special tax bonds[1] issued by one or more community facilities districts (CFDs); and (b) tax increment revenue bonds[2] issued by the Treasure

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[1] The 1982 Mello-Roos Community Facilities Act allows for the formation of CFDs to fund public infrastructure improvements by levying special taxes on taxable property within a CFD. In 2017, the Board of Supervisors approved a resolution forming Community Facilities District No. 2016-1 on Treasure Island and determining necessity to incur bonded indebtedness in an amount not to exceed $5 billion to finance eligible project costs, with the issuance of up to $250 million of special tax bonds authorized for Improvement Area No. 1 of the CFD (Files 16-1122 and 16-1127) and the remaining $4.75 billion identified for future annexations of new Improvement Areas. Subsequently, up to $278.2 million in special tax bonds were authorized at the annexation of Improvement Area No. 2 (File 20-0977) and up to $731.4 million in special tax bonds were authorized at the annexation of Improvement Area No. 3.

[2] State Infrastructure and Revitalization Financing District (IRFD) law allows for a portion of property tax revenues to be allocated to IRFDs to pay for public improvements. In 2017, the Board of Supervisors approved the formation of the Treasure Island IRFD No. 1, adopted the Infrastructure Financing Plan, and authorized the issuance of up to $780 million in tax increment bonds to finance eligible project costs (Files 16-1120 and 16-1121). Each bond issuance (of the $780 million total authorized) is subject to Board of Supervisors' approval of the terms of sale and related documents. In February 2022, the Board of Supervisors approved the addition of territory to the IRFD and amendments to the Infrastructure Financing Plan (File 21-1196).

Island Infrastructure and Revitalization Financing District (IRFD). To date, the Board of Supervisors has approved three issuances of special tax bonds (Files 20-0978, 21-0508, and 21-1054), and the City has issued a total of $83.6 million on behalf of the CFD across the three issuances. The Board of Supervisors has also approved one issuance of tax increment revenue bonds (File 22-0294), and the IRFD has issued a total of $29,390,000, including $24,270,000 to finance facilities (2022A Facilities Bonds) and $5,120,000 to finance affordable housing (2022B Housing Bonds). The Controller's Office of Public Finance is proposing additional bond issuances to finance the project, including up to $17.0 million in special tax bonds (File 23-1166) and up to $10.0 million in tax increment revenue bonds (as discussed below).

Infrastructure and Revitalization Financing District

The Treasure Island IRFD includes five project areas on Yerba Buena Island (Project Area A) and Treasure Island (Project Areas B, C, D, and E), which represent the Project's initial phases of development. The five project areas included in the IRFD are shown in Attachment 1.

The IRFD Financing Plan stipulates how incremental property tax revenue generated by project areas within the IRFD will be used to reimburse eligible project costs, including public facilities (such as roads, sidewalks, parks, and shoreline improvements) and affordable housing. Each project area within the IRFD can have a different start date and extend for 40 years from the start date. Each project area can generate property tax increment and issue debt against the property tax increment at different times. Project Area A began generating tax increment for the IRFD in FY 2019-20, and Project Areas B and E began generating tax increment in FY 2022-23 according to the October 31, 2023 Office of Public Finance memo to the Board of Supervisors (Office of Public Finance memo).

The City's share of the 1.0 percent property tax rate is approximately 0.646 percent. According to the Infrastructure Financing Plan, approximately 0.566 percent is pledged as "net available increment" to pay for IRFD improvements and 0.08 percent is pledged as "conditional City increment" that will accrue to the City's General Fund if not required for the repayment of bonds. According to the Infrastructure Financing Plan, 82.5 percent of the net available increment allocated to the IRFD will be used to finance facilities and 17.5 percent will be dedicated to TIDA to finance affordable housing.

Project Status

To date, the Project has completed infrastructure improvements on Yerba Buena Island and Treasure Island Phase I, including a new public park, street improvements and utilities, new water storage facilities, and a new ferry terminal. In addition, 229 new housing units have been completed, and approximately 740 units are under construction with expected completion in early 2025.

The 2011 DDA anticipated a twenty-year development timeline, with project completion anticipated in 2030. According to an April 2023 schedule of performance adjustment letter, TIDA anticipates project completion by 2042. The letter reflects the fifth revision to the Schedule of Performance attached to the DDA and extends the previous development timeline by two to three years based on delays related to City permitting, the unanticipated complexity of project phasing, and current market conditions, including high interest rates, which have impacted access to private capital and increased financing costs for infrastructure. In particular, slower land/pad sales to residential developers for condominium development have slowed down the timing of revenues available to finance infrastructure development according to TIDA staff.

The total budget for the project has increased by 90 percent from $1.334 billion anticipated in the 2011 DDA to $2.529 billion as currently estimated according to TIDA staff. Increases in the budget are primarily due to development schedule delays and higher than anticipated escalation and construction costs compared to the original DDA proforma. According to TIDA, these cost increases will be covered by higher special tax and property tax revenues, which have also been revised upward since 2011. The current budget for Yerba Buena and Treasure Island Major phase I is $478 million.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the issuance of Treasure Island Tax Increment Revenue Bonds in an amount not to exceed $10.0 million and approve related documents, including an Official Statement, one or more supplements to Indentures of Trust, Bond Purchase Agreements, and Continuing Disclosure Certificates.

Treasure Island Tax Increment Revenue Bonds Series 2023A and 2023B

The bonds would be sold as separate series for facilities (2023A Facilities Bonds) and housing (2023B Housing Bonds). It is anticipated that both bond series will be issued on a tax-exempt basis. The housing project that is proposed to be financed by the Housing Bonds is located on Treasure Island and will be developed by John Stewart Company and Catholic Charities. A proposed ordinance to be heard at a future Budget and Finance Committee Meeting would appropriate these funds to the Mayor's Office of Housing and Community Development (MOHCD) for this purpose (File 23-1128)

Bond Purchase Agreements

The IRFD intends to issue the proposed bonds as a negotiated, rather than a competitive sale. The City's independent Municipal Advisor (CSG) recommended a negotiated sale for these transactions. According to the Office of Public Finance memo, the proposed bonds are outside of the City's customary general fund credit profile.

The terms of sale of the bonds are documented in separate Bond Purchase Agreements, one for the 2023A Facilities Bonds and one for the 2023B Housing Bonds. To comply with State IRFD Law and sell the Bonds on a negotiated basis, the IRFD would first sell the bonds to the California Statewide Communities Development Authority, a third-party statewide joint powers authority, of which the City is a member. The California Statewide Communities Development Authority would then sell the bonds to the underwriter. The Bond Purchase Agreements are between the IRFD, the California Statewide Communities Development Authority, and Stifel, Nicolaus & Company, Incorporated, the underwriter for the proposed bonds. According to the Office of Public Finance, the underwriter was selected from the Office of Public Finance's pool of qualified underwriters, which was established through a competitive process.

First Supplements to Indentures of Trust

The proposed 2023A Facilities Bonds would be secured on a parity basis[3] with the 2022A Facilities Bonds, and the 2023B Housing Bonds would be secured on a parity basis with the 2022B Housing Bonds. As part of the issuance of the Series 2022AB Bonds, the City executed indentures of trust, which establish the terms by which the trustee administers and disburses bond payments. The proposed First Supplements to the Indentures of Trust will apply to the Series 2023AB Bonds. The net available increment is separately pledged under separate indentures of trust to each series based on the shares determined in the Infrastructure Financing Plan (82.5 percent to the Facilities Bonds and 17.5 percent to the Housing Bonds). The pledge of conditional City increment is split between the two series based on the same proportions.

Preliminary Official Statement & Continuing Disclosure Certificates

The Preliminary Official Statement describes the legal structure of the bonds as well as sources of revenue and major risks related to repayment for the benefit of prospective investors. The Preliminary Official Statement will be finalized after it is approved by the Board of Supervisors and Mayor and prior to the sale of the bonds. The proposed resolution allows the IRFD to issue annual Continuing Disclosure Certificates, which provide financial information relevant for existing and prospective bond investors.

FISCAL IMPACT

Exhibit 1 below shows the sources and uses of the proposed tax increment revenue bonds. Based on market conditions as of October 23, 2023, the City intends to issue approximately $8.52 million of Tax Increment Revenue Bonds with estimated proceeds of $8.34 million after the projected original issue discount. If interest rates decline, the City could issue up to $10.0 million in tax increment revenue bonds under the proposed resolution.

[3] Bonds issued on a parity basis have equal seniority to one another and equal rights of payment.

Exhibit 1: Estimated Sources and Uses of Proposed 2023 Tax Increment Revenue Bonds

	2023A Facilities Bonds	2023B Housing Bonds	Total
Sources			
Par Amount	$7,035,000	$1,480,000	$8,515,000
Discount	(143,833)	(30,365)	(174,198)
Total Sources	**$6,891,167**	**$1,449,635**	**$8,340,802**
Uses			
Project Fund	5,845,088	1,228,064	7,073,152
Debt Service Reserve	486,150	103,775	589,925
Delivery Expenses	559,929	117,796	677,725
Cost of Issuance	454,404	95,596	550,000
Underwriter's Discount	105,525	22,200	127,725
Total Uses	**$6,891,167**	**$1,449,635**	**$8,340,802**

Source: Office of Public Finance and Stifel, Nicolaus & Co, Inc.

The proposed resolution limits the underwriter's discount to 2.0 percent of the bonds' par value. Based on the values in Exhibit 1 above, the estimated underwriter's discount is 1.5 percent of the bonds' par value. The debt service reserve amounts are based on maximum annual debt service on the proposed and outstanding bonds and will depend on market conditions at the time of sale. Costs of issuance include legal and consultant fees, as well as reimbursement for staff time.

Project Costs Funded by Facilities and Housing Bonds

The proceeds of the 2023A Facilities Bonds would finance or reimburse expenditures on public improvements for the project incurred by the developer, including geotechnical work on Treasure Island.

The proceeds of the 2023B Housing Bonds are expected to be used by TIDA and MOHCD to finance a grant or forgivable loan for a proposed affordable housing development by John Stewart Company and Catholic Charities on Treasure Island. The proposed affordable housing development includes 150 units, including 30 transitional units for households relocating from housing that was previously owned by the Navy on Treasure Island, 60 replacement units for HomeRise One Treasure Island units for households that were previously homeless, and 60 new affordable lottery units. Construction is planned to begin in late 2026 and to be completed by mid-2028 according to TIDA staff in consultation with MOHCD.

Debt Service

The proposed bonds are anticipated to have a 30-year term and an estimated true interest cost of 6.4 percent based on market conditions as of October 23, 2023. Total debt service is expected to be $19,577,321 (including the anticipated total par amount of $8,515,000 and estimated total interest of $11,062,321) or approximately $659,292, on average, per year. The bonds would be repaid with tax increment revenue collected within the IRFD. The Office of Public Finance expects the bonds will be issued by January 2024.

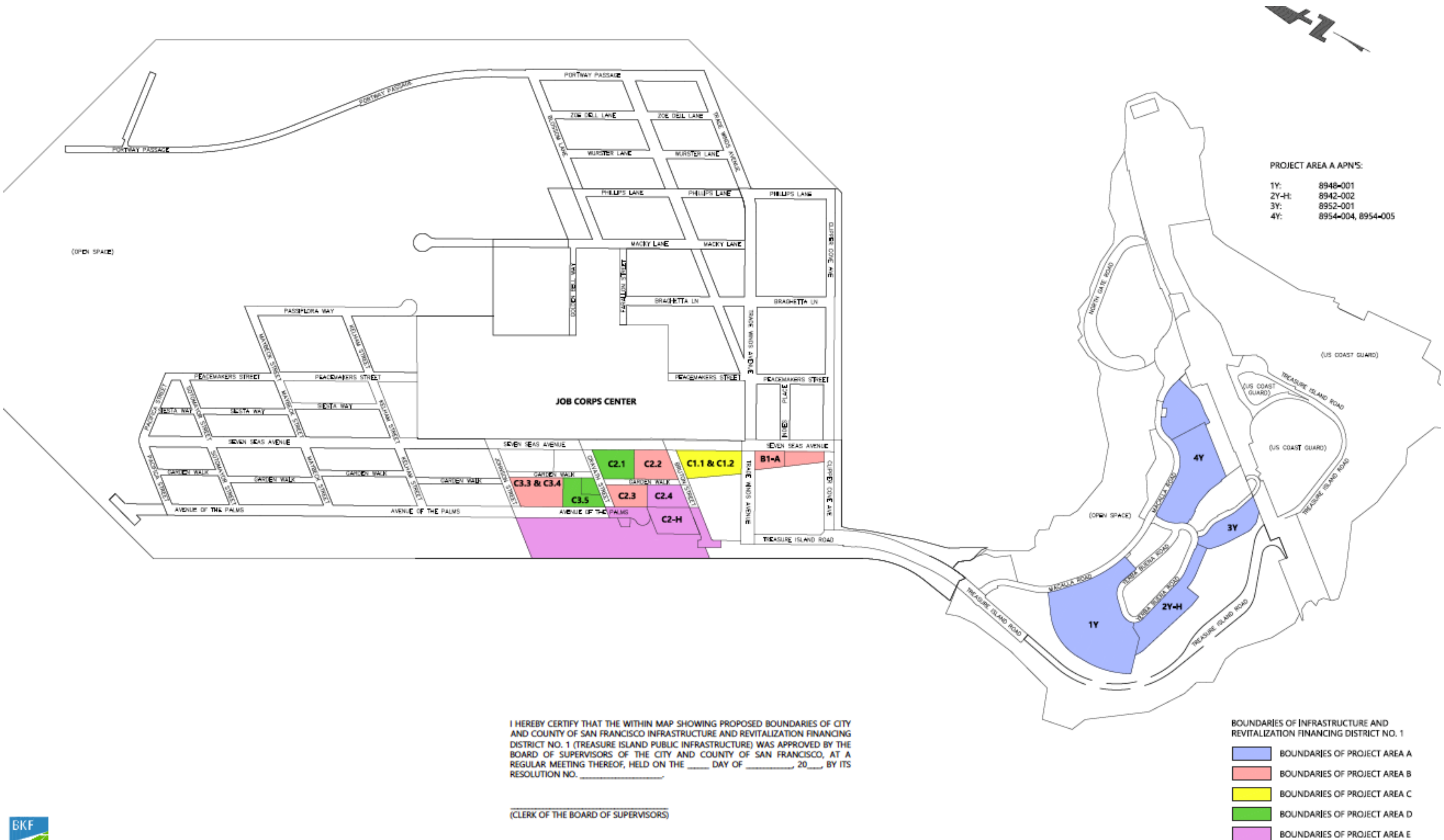
City Not Liable for Bond Repayment

The Bonds would be limited obligations of the IRFD and are secured and payable only from the pledged tax increment of the IRFD. The City's General Fund is not liable for the repayment of the bonds except for the pledged conditional City increment of the IRFD.

RECOMMENDATION

Approve the proposed resolution.

Attachment 1: Treasure Island IRFD No. 1 Boundaries



Source: Amended and Restated Infrastructure Financing Plan