CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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

January 27, 2023

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: February 1, 2023 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item 1 **File 23-0033**	**Department:** Arts Commission and Treasure Island Development Authority

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the Arts Commission and the Treasure Island Development Authority to enter into a new sole-source agreement with the developer Treasure Island Series 1, LLC, to construct a foundation for the "Point of Infinity" sculpture for an amount not to exceed $274,076, for a term starting upon approval of this resolution and ending upon the completion of the foundation.

Key Points

- The developer, Treasure Island Series 1, LLC, is responsible for building the Yerba Buena Island hilltop park, upon which the proposed foundation, along with the Point of Infinity Sculpture, will stand. The foundation will be built in conjunction with the completion of the park by July 2023. The Developer has hired Jensen Landscape Contractor, LLC as a subcontractor to complete the foundation work.
- While this proposed contract is below the Charter Section 9.118 threshold for Board of Supervisors approval, the City Attorney has advised TIDA and the Arts Commission that this contract requires Board of Supervisors approval because there is an arbitration clause in the contract between Treasure Island Series 1, LLC and construction contractor, and the City is responsible for paying for the work.

Fiscal Impact

- The total not to exceed amount for the construction of the foundation is $274,076. The foundation will be fully funded by the Treasure Island and Yerba Buena Island "one percent for art" redevelopment fee. The fee fund is managed by the Arts Commission and currently has a balance of $3.36 million. If approved, the art fee fund balance would be reduced to $3.1 million.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

The proposed contract is below the Charter Section 9.118 threshold for Board of Supervisors approval of contracts greater than $10 million or ten years. However, the City Attorney has advised that this contract requires Board of Supervisors approval because there is an arbitration clause in the contract between the Treasure Island developer and the construction contractor for this proposed agreement hired by it to complete the work and the City is responsible for paying for the work.

BACKGROUND

On June 28, 2011, the City through the Treasure Island Development Authority entered into a Disposition and Developer Agreement (DDA) with Treasure Island Community Development, LLC to make productive use of underdeveloped, former military base property on Treasure Island and Yerba Buena Island.[1] A Parks and Open Space Plan is included in the development. One such park in the plan is the five-acre Yerba Buena Hilltop Park which is currently being built by Treasure Island Series 1, LLC, a subsidiary of the Master Developer, Treasure Island Community Development.

On June 5, 2017, the Arts Commission passed a resolution (No. 0605-17-124) approving the Treasure Island Arts Master Plan. The Plan guides the implementation of an art program to be funded over a 20-year period with the proceeds of development fee for art, which consists of one percent of vertical construction costs on Treasure Island and Yerba Buena Island.[2] On July 28, 2017, the Arts Commission issued a Request for Qualifications to solicit interested artists for certain art installation sites, according to the Arts Master Plan.

In June 2018, the Arts Commission approved a contract with the competitively selected artist Hiroshi Sugimoto (Resolution No. 0604-18-185) for design, fabrication, transportation, and consultation during installation of a sculpture for the Hilltop Park in an amount not to exceed $1,750,000.

According to Arts Commission staff, the City has an as-needed contract with the installer and will contract directly for the installation of the artwork. The fabrication and transportation are underway, and installation is anticipated to take place in May/June 2023. The cost for installation is currently anticipated to be $300,000 and is separate from the artist's contract.

The Sugimoto sculpture is called “Point of Infinity” and is a 69-foot sculpture comprised of glass fiber, reinforced concrete, and stainless steel that functions as a sundial. The tip of the sculpture will cast a shadow on a large stone during the vernal and autumnal equinoxes.

[1] The Treasure Island Development Authority is a non-profit, public benefit agency that is overseen by the City Administrator’s office and is dedicated to the economic development of former Naval Station Treasure Island.

[2] Treasure Island Arts Master Plan https://sf.gov/information/treasure-island-arts-master-plan

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Arts Commission and the Treasure Island Development Authority to enter into a new sole-source agreement with the developer Treasure Island Series 1, LLC, to construct a foundation for the "Point of Infinity" sculpture for an amount not to exceed $274,076, for a term starting upon approval of this resolution and ending upon the completion of the foundation.

The total not to exceed amount includes a 10 percent contingency amount of $24,916. A breakdown of the cost is shown in Exhibit 1, below.

Exhibit 1. Cost of Sculpture Foundation

Component	Cost
General Conditions	$13,000
Foundation	$171,250
Drainage and Gravel	$7,580
Site Work	$17,200
Steel Plate	$2,050
Electrical Grounding	$17,730
Bush-Hammered Wall	$20,350
Subtotal	$249,160
Contingency	$24,916
Total	**$274,076**

Source: Appendix B to Agreement between City and Treasure Island Series 1, LLC

Notes: "General Conditions" include pouring concrete and installing steel beams. Pricing is based on drilling four ground rods seven feet below the existing tank slab in a total of eight hours. Treasure Island Series 1, LLC notes that the soil conditions below the tank are unknown, but it is likely that there will be hard bedrock. If it takes longer than eight hours, then it will be considered extra work and contractor will track on Time and Materials.

Construction Contractor

Treasure Island Series 1, LLC is responsible for building the Yerba Buena Island hilltop park, upon which the proposed foundation, along with the Point of Infinity Sculpture, will stand. The foundation will be built in conjunction with the completion of the park.

Treasure Island Series 1, LLC has subcontracted the foundation construction work to the Milpitas-based company Jensen Landscape Contractor, LLC. Jensen is already mobilized on site for the construction of the park. For efficiency and cost savings, Arts Commission staff requested a quote from Jensen for pouring the foundation. The Arts Commission requested quotes from two other contractors to ensure that the City was getting a fair price for the foundation building work. We reviewed the comparison quotes, which were both higher than Jensen's.

Treasure Island Series 1, LLC will oversee the work to construct the sculpture's foundation, structural slab, and related architectural gravel and drainage. All construction requirements, including the payment of prevailing wages, hiring, and nondiscrimination requirements are incorporated into the construction contract, similarly to the developer's larger Disposition and Development Agreement (DDA).

Any changes to the construction contract and any increase to the price must be approved by the Arts Commission in advance. Any unused portion of the foundation construction cost will be returned to the Arts Commission upon project completion. The Arts Commissions may request construction contract status updates from Treasure Island Series 1, LLC.

Construction Timeline

Arts Commission staff estimate that the time to build the foundation is one month. Form work for the foundation has begun, and the concrete pour is intended to begin in late January 2023. The sculpture is anticipated to be installed in May/June 2023. The hilltop park is anticipated to be complete in July 2023. The Arts Commission has not been invoiced yet for the work, and will not be until there is a signed, Board-approved agreement in place.

Arbitration Clause

The proposed agreement states that any legal dispute between the City and Treasure Island Series 1, LLC related to the agreement will be resolved in a manner consistent with the DDA. The agreement also states that the City agrees to participate in and be bound by any dispute resolution procedure (litigation, arbitration, or other) resulting from a third-party dispute pertaining to this contract.

FISCAL IMPACT

The total not to exceed amount for the construction of the foundation is $274,076. The foundation will be fully funded by the Treasure Island and Yerba Buena Island "one percent for art" redevelopment fee. The fee fund is managed by the Arts Commission and currently has a balance of $3.36 million. If approved, the art fee fund balance would be reduced to $3.1 million.

RECOMMENDATION

Approve the proposed resolution.

Item 2 File 23-0010	Department: San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve Modification No. 9 to the project management support services contract for the Courtyard 3 Connector Project between the San Francisco International Airport (Airport) and PGH Wong & Partners JV (PGH Wong), increasing the not-to-exceed amount by $10,600,000, for a total not to exceed $27,850,000, and extending the term by approximately one year and one month through January 25, 2025.

Key Points

- The Airport's Courtyard 3 Connector Project includes a pre-security and post-security connector between Terminals 2 and 3, as well as an adjacent five-story building for office space (including the Airport Integrated Operations Center, or AIOC), tenant lease space, passenger amenities, and lounges. The terminal connectors and building shell are complete and the remaining project scope is the building interior, including the planning and buildout of the AIOC, which had been suspended since November 2020 due to the impact of the COVID-19 pandemic on Airport revenues. Project completion is estimated in mid-2025.
- PGH Wong's support services include project and construction management and quality assurance oversight, building code compliance, safety policy, procedure oversight, project controls, scheduling, contract administration, cost estimating services, and field inspection. Because the Airport suspended annual contractor performance evaluations during the early phase of the pandemic, the contractor has not been evaluated since October 2020.
- The proposed resolution's not to exceed amount includes spending through FY 2025-26, however the contract term ends in January 2025.

Fiscal Impact

- The proposed Modification No. 9 would increase the not-to-exceed amount of the contract by $10,600,000. Contract costs are funded by Airport capital revenues.

Recommendations

- Amend the proposed resolution to request that Airport staff conduct a performance evaluation of the contractor within 90 days and to submit the report to the legislative file.
- Amend the proposed resolution to reduce the contract not-to-exceed amount to $25,000,000.
- Approve the resolution, as amended.

MANDATE STATEMENT

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

BACKGROUND

The San Francisco International Airport's (Airport) Courtyard 3 Connector Project includes a pre-security and post-security connector between Terminals 2 and 3, as well as an adjacent five-story building for office space, tenant lease space, passenger amenities, and lounges. In December 2017, after conducting a Request for Proposals (RFP) process, the Airport Commission awarded a project management support services contract to PGH Wong & Partners JV (PGH Wong), a joint venture then consisting of PGH Wong Engineering, Inc., CFWright Consulting, LLC, and Avila Associates Consulting Engineers, Inc. for an initial one-year term from March 12, 2018 through March 12, 2019 and an amount not to exceed $3,250,000. The contract has since been modified eight times, as shown in Exhibit 1 below.

Exhibit 1: Previous Contract Modifications

No.	Date	Approval	Description
1	9/1/2018	Administrative	Amended overhead rates
2	2/19/2019	Airport Commission	Extended term by 1 year through March 12, 2020 and increased not-to-exceed amount to $8,250,000
3	10/18/2019	Administrative	Amended base labor rates
4	2/18/2020	Airport Commission	Extended term by approximately 2 years and 3 months through June 30, 2022, increased not-to-exceed amount to $9,750,000, and acknowledged that CFWright was no longer a joint venture member
5	6/23/2020	Board of Supervisors	Increased not-to-exceed amount to $17,250,000 (File 20-0418) to accommodate the increased scope of work of Courtyard 3 project.
6	11/23/2020	Administrative	Amended base labor rates
7	4/5/2022	Airport Commission	Extended term by 1 year and 6 months through December 31, 2023, added subconsultant STOK LLC, and amended labor rates
8	11/21/2022	Administrative	Added subconsultant Helton Ventures[1]

Source: Airport, Previous Contract Modifications

In November 2020, due to the impact of the COVID-19 pandemic on air travel and Airport revenues, the Airport suspended construction of the building's interior. Construction of the building shell and terminal connectors continued. In August 2022, the Airport lifted the suspension and directed contractors to proceed with the building interiors. In December 2022, the Airport Commission approved Modification No. 9 to the PGH Wong contract to continue project management support services through substantial completion of the project.

[1] As of Modification No. 8 to the contract, PGH Wong's subcontractors are Chaves & Associates, Helton Ventures LLC, Montez Group, Saylor Consulting Group, Stok LLC, Studio 151, and UDC Pros.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Modification No. 9 to the Airport's contract with PGH Wong, increasing the not-to-exceed amount by $10,600,000, for a total not to exceed $27,850,000, and extending the term by approximately one year and one month through January 25, 2025. The proposed resolution would also adopt the Planning Department's Final Negative Declaration (FND) under the California Environmental Quality Act (CEQA).

Under the proposed Modification No. 9, PGH Wong would continue to provide project management support services for the Courtyard 3 Connector Project. Support services include project and construction management and quality assurance oversight, building code compliance, safety policy, procedure oversight, project controls,[2] scheduling, contract administration, cost estimating services, and field inspection.

Contract Term

The total contract term from December 2017 through January 2025 is approximately 3.5 years longer than the 40-month term specified in the original RFP because the Courtyard 3 Connector Project and associated design-build contract scope and timeline increased, requiring continued project management and support services. According to Victor M. Madrigal Jr., Airport Principal Administrative Analyst, the term end date is approximately six months prior to the scheduled completion date of mid-2025 of the Courtyard 3 Connector Project because the project is currently refining the schedule associated with the Airport's new AIOC. The project will return to the Airport Commission to authorize a duration extension once the schedule related to the AIOC is fully developed. A future contract amendment may be needed to extend the term through project completion.

Project Status

According to Principal Administrative Analyst Madrigal, the terminal connectors and building shell are complete, and the remaining project scope is the building interior. The fourth floor of the building would house the new Airport Integrated Operations Center (AIOC). According to Principal Administrative Analyst Madrigal, the AIOC would integrate the Airport's current Communications Center, Security Operations Center, and Emergency Operations Center, and house representatives from the Airport Operations and Facilities Departments. These functions are currently operating out of Terminal 2 and Airport Building 682. The space would consist of open workstations, enclosed offices, and conference rooms and would contain infrastructure and technology to support critical Airport systems. The Airport is still finalizing the programming plan for the AIOC, and project completion is estimated in mid-2025.[3] The total project budget has increased by $68.3 million (27 percent) overall from approximately $253.7 million in the FY 2017-

[2] Project controls include utilizing systems compatible with the Airport's project control software, real-time data entry, assisting the design-build contractor to exchange information with other contractors, producing regular reports to Airport staff, and providing high-level project cost information to the Airport's Capital Improvement Program (CIP) consultants.

[3] According to Principal Administrative Analyst Madrigal, the original anticipated completion before the COVID disruption was January 25, 2022. However, this date did not include any work associated with the AIOC, which is a contributing factor in the cost increases.

18 Capital Improvement Plan to approximately $322.0 million as of January 2023, including a $29.0 million increase since June 2020.[4] According to Principal Administrative Analyst Madrigal, the $29.0 million increase since June 2020 is due to escalation cost impacts for the suspended scope of work and the estimated cost of programming, design, and construction of the Airport's new AIOC.

Performance Monitoring

The contract is subject to compliance with standard reporting and monitoring requirements. Annual performance requirements for the contract include reporting on the following criteria categories: (1) general issues (safety and security, management, technical enterprise, responsive to requests, dependability and trust, independent action, and innovation); (2) project controls; (3) data entry; (4) change order preparation; (5) quality control; (6) contract administration; (7) teamwork and communication; (8) management of the project cost and schedule; and (9) team resources management. In the most recent performance evaluation, dated October 31, 2020, PGH Wong met or exceeded expectations in 29 of 30 measures and received a score of 52 out of 60 points. Although the contractor performed $7.1 million of work during FY 2020-21 and FY 2021-22, according to Principal Administrative Analyst Madrigal, the Airport suspended annual contractor performance evaluations during the pandemic, which were not conducted in 2021 and 2022. Evaluations will resume in 2023. The Budget and Legislative Analyst recommends amending the proposed resolution to request Airport staff to conduct a performance evaluation within 90 days and submit the report to the legislative file.

FISCAL IMPACT

The proposed Modification No. 9 would increase the not-to-exceed amount of the contract by $10,600,000, for a total not to exceed $27,850,000. Contract costs are primarily labor costs, which range from $42 to $125 per hour.

The increase in the contract budget is due to changes in the project scope for the Courtyard 3 Connector Project discussed above, according to Principal Administrative Analyst Madrigal. Actual expenditures on the contract through December 2022 total $16,287,277. Projected expenditures for the remainder of the contract plus are shown in Exhibit 2 below.

[4] The $39.3 million increase between the FY 2017-18 Capital Improvement Plan budget of $253.7 million and the June 2020 budget of $293.0 million was due to project scope changes including: (a) additional structural and infrastructure requirements; (b) new elevator cab; (c) net-zero energy initiatives such as mechanical system and dynamic glazing; (d) special systems room infrastructure relocation and upgrades of selected systems; (e) interim relocation of Airport's Security Operation Center and Communications Center that required relocation and upgrade of 911 System and other security systems.

Exhibit 2: Projected Contract Expenditures

Task	FY 2022-23 (6 Months)	FY 2023-24	FY 2024-25	FY 2025-26	Total
Construction Management	$1,008,509	$2,476,694	$2,173,485	$1,288,228	$6,946,916
Project Controls	296,614	587,753	540,178	212,359	1,636,903
Architectural Support	197,837	399,306	317,038	188,763	1,102,944
Contract Administration	280,068	616,428	525,704	94,382	1,516,581
Inspection	28,228	68,800	48,151	-	145,180
Other Direct Costs	45,900	91,800	76,500	-	214,200
Total Projected Expenditures	**$1,857,155**	**$4,240,781**	**$3,681,055**	**$1,783,732**	**$11,562,723**
Actual Expenditures (Through Dec. 2022)					16,287,277
Total Not-to-Exceed					**$27,850,000**

Source: Airport. Totals may not add due to rounding.

The contract is funded by Airport capital funds.

Not To Exceed Amount Is Not Consistent with Contract Term

Although the proposed contract term expires in January 2025, the proposed Modification No. 9 provides funding in FY 2025-26 because the forecasted budget reflects the latest project schedule extending through FY 2025-26 based on the anticipated project duration. According to Principal Administrative Analyst Madrigal, the project will return to the Airport Commission to authorize a duration extension once the schedule related to the AIOC is fully developed. The Budget and Legislative Analyst recommends amending the proposed resolution to reduce the not-to-exceed amount of the contract to $25,000,000, which is sufficient to cover costs through the proposed contract term ending January 2025.

RECOMMENDATIONS

1. Amend the proposed resolution to request that Airport staff conduct a performance evaluation of the contractor within 90 days and to submit the report to the legislative file.
2. Amend the proposed resolution to reduce the contract not-to-exceed amount to $25,000,000.
3. Approve the resolution, as amended.

Item 9 **File 22-1281**	**Department:** Port Commission

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a water purchase agreement between the Port Commission and Mission Rock Utilities (MRU) for purchase of non-potable water for Port-owned parks and open space at Mission Rock, with a term of 30 years up to a maximum cost of $44,656,545.

Key Points

- MRU is a non-stock corporation established by the Master Developer and partners to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development, to comply with the City's Non-Potable Water Ordinance.
- MRU issued bonds to cover construction costs of the wastewater facility, which will be repaid by MRU customers, including the Port and building owners, through capacity charges.

Fiscal Impact

- The Port would be financially responsible for its share of actual costs based on capacity needs (capacity charge) and water usage (flow charge). The agreement also establishes maximum annual costs (the "Annual Cap") based on projected cost-based charges plus a 10 percent contingency, which total $44.7 million over the 30-year agreement.
- The Port intends to assign its obligations under the water purchase agreement to an affiliate of the Master Developer through a lease of the Port-owned parks and open space. If the Port does not assign its water purchase agreement obligations to a tenant or the assignment of obligations to the tenant is terminated, the Port will utilize the Mission Rock Community Facilities District Contingent Special Services Tax to pay for its obligations.

Policy Consideration

- The Port originally planned for the San Francisco Public Utilities Commission (PUC) to operate the facility and for the Port to use public financing to pay for construction of the plant. However, due to facility size, a non-profit entity (MRU) will now finance development and operate the facility. Other district-scale private developments subject to the City's Non-Potable Water Ordinance requirements are run by a homeowners association; or, more commonly, each building subject to the Non-Potable Water Ordinance has its own water recycling system.
- The initial flow charge base rate is more than three times the PUC rate for potable water.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

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

BACKGROUND

In January 2018, the Port Commission approved a mixed-use development project at Seawall Lot 337 and Pier 48 of approximately 28-acres known as the "Mission Rock Project" ("Project"). The Project is bound by the San Francisco Bay, Mission Rock Street, Third Street, and the China Basin Channel.

In February 2018, the Board of Supervisors approved a Disposition and Development Agreement (DDA) between the Port and Seawall Lot 337 Associates, LLC ("Master Developer"), a joint venture consisting of the San Francisco Giants and Tishman Speyer (File 18-0092). The DDA requires the Master Developer to build horizontal and vertical improvements within the Mission Rock Project Area and the Port to reimburse the developer for certain infrastructure costs.

In December 2019, the Master Developer subleased certain aspects of Phase 1 of the DDA to the developer referred to as Mission Rock Horizontal Sub (Phase 1), LLC. Mission Rock Horizontal Sub (Phase 1) then engaged with Mission Rock Utilities (MRU), a non-stock corporation established by the Developer and partners to provide wastewater treatment and non-potable water delivery services to the Mission Rock Development.

Mission Rock Black Water Recycling System

According to the Staff Memorandum to the Port Commission on November 4, 2022, a key element of the Project's sustainability strategy is the production of a District-scale Black Water Recycling System (BWRS) to substantially decrease the use of potable water for non-potable water uses, such as irrigation and toilet flushing. The Black Water Recycling System also satisfies the Project's obligations under the City's Onsite Water Reuse for Commercial, Multi-family, and Mixed-Use Development Ordinance (Non-Potable Water Ordinance), which requires large development projects to construct an alternate water source system to reuse available non-potable water to meet on-site demands for toilet and urinal flushing as well as irrigation.

MRU is responsible for the finance, design, and construction of a centralized wastewater treatment and recycled, non-potable water delivery system in the Mission Rock Project Area. Construction of MRU's BWRS facility began in June 2021, and recycled water operations are expected to fully commence in January 2024. MRU owns both the facility and the distribution system, and the Port owns the piping connecting the wastewater to the collection points.

MRU has entered into an agreement with Mission Rock Owners Association, Inc. ("Master Association") whereby the Master Association obtains water for the development of commercial and residential buildings within the Mission Rock Project Area. MRU is responsible for serving all residential, commercial, and other uses of water for non-potable uses within the Project. SFPUC is responsible for providing potable water. Therefore, Port staff and MRU have negotiated an agreement for the Port to purchase water from MRU's BWRS for non-potable uses in Port-owned parks (e.g., China Basin Park) and other future public open spaces accepted by the Port. In November 2022, the Port Commission approved the agreement, subject to Board approval (Port Resolution No. 22-54), and the Office of Contract Administration of the City Administrator's Office approved a sole-source justification to award this contract to MRU.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a water purchase agreement between the Port Commission and Mission Rock Utilities (MRU) for purchase of non-potable water for Port-owned parks and open space at Mission Rock, with a term of 30 years up to a maximum cost of $44,656,545. The agreement would initially apply to the "Initial Premises" area, which includes China Basin Park and other Port-owned open spaces in Phase 1. As the Port accepts other areas within the Mission Rock Development, the expansion areas would become subject to the agreement. The agreement would become effective upon the Port's acceptance of Phase 1 of the Mission Rock open space, which is expected to be completed by the master developer in late 2023. After the initial 30-year term, the Port will have the option to extend the agreement.

MRU will operate the Black Water Recycling System (BWRS) that recycles non-potable water from lavatories, showers, baths, and urinals to all the buildings of the Mission Rock Development for irrigation, toilet flushing, and cooling tower makeup water. The BWRS would decrease the use of fresh/potable water for non-potable uses, which is consistent with the Port's environmental sustainability goals and the City's Non-Potable Water Ordinance. MRU must also comply with Article 12C of the San Francisco Health Code and San Francisco Department of Public Health regulations.

Port's Intent to Assign Agreement Obligations

The Port intends to assign its obligations under the water purchase agreement to an affiliate of the Master Developer through a lease of the Port-owned parks and open space; therefore, the affiliate of the Master Developer (tenant) will assume all the Port's obligations under the water purchase agreement.

According to the Port, this lease will be brought to the Port Commission and Board of Supervisors for approval later in 2023. The tenant will take over all obligations of the water purchase agreement for the term of the lease, releasing the Port of any obligations, including payment for recycled water and maintenance of wastewater piping. Under the lease, the tenant will present an annual budget for park, open space, and recycled water operations to the Port Commission for approval. Additionally, the tenant will provide regular updates to the Port on key provisions of the obligations under the lease.

Port's Financial Responsibility Under Proposed Agreement

Under the proposed agreement, the Port would be financially responsible for its share of actual costs based on capacity needs and water usage. The agreement also establishes maximum annual costs (the "Annual Cap") based on projected cost-based charges plus a 10 percent contingency. The Annual Cap for the initial year of the agreement is $672,145, which will increase annually by up to five percent.[1] The proposed agreement states that in no event will the total annual charges or fees or any other obligation exceed the Annual Cap unless the affected parties secure appropriate contract amendments and approvals by the Port Commission and Board of Supervisors.

Capacity & Water Flow Charges

The charges incurred by any BWRS customer are divided amongst two categories:

- The **Capacity Charge** is a fixed charge allocated towards the debt service or other financing costs associated with construction of the BWRS, as well as operating and maintenance costs, such as personnel costs, repair costs, and water testing costs. According to Mission Rock Utilities, the Port's capacity charge in the Annual Cap reflects approximately 25 percent of total capacity charges for all MRU's customers, who are not part of this agreement, based on estimated usage by the Port and other customers.

- The **Flow Charge**, an estimated $33.12 per centum cubic feet, or "CCF" (one hundred cubic feet or 748 gallons), is based on the amount of water each customer uses. The rate is set at $33.12 per CCF for service prior to January 1, 2023 and will increase by five percent annually. Flow charges include a portion of testing, treatment, and operating costs in order to bill customers based on actual water use.

FISCAL IMPACT

Exhibit 1 below shows the maximum Port Annual Cap with a five percent annual increase of the non-potable water flow rate. The total capacity charge amount over the 30-year period is $40,363,871, or approximately 90 percent of the total Port Annual Cap amount of $44,656,545.

[1] The five percent annual increase was established based on the "Escalator" set forth in the Rate and Method of Apportionment of the Special Tax District 2020-1.

Exhibit 1: Port's Cap for Capacity and Flow Charges for Proposed Purchase Agreement

Year	*Capacity Charge ($)*	*Water Flow Charge ($)*	*Port Annual Cap ($)*
1	$607,534	$64,611	$672,145
2	637,911	67,841	705,752
3	669,806	71,234	741,040
4	703,297	74,795	778,092
5	738,462	78,535	816,997
6	775,385	82,462	857,846
7	814,154	86,585	900,739
8	854,862	90,914	945,776
9	897,605	95,460	993,064
10	942,485	100,233	1,042,718
11	989,609	105,244	1,094,854
12	1,039,090	110,507	1,149,596
13	1,091,044	116,032	1,207,076
14	1,145,596	121,833	1,267,430
15	1,202,876	127,925	1,330,801
16	1,263,020	134,321	1,397,341
17	1,326,171	141,038	1,467,208
18	1,392,479	148,089	1,540,569
19	1,462,103	155,494	1,617,597
20	1,535,209	163,269	1,698,477
21	1,611,969	171,432	1,783,401
22	1,692,568	180,004	1,872,571
23	1,777,196	189,004	1,966,200
24	1,866,056	198,454	2,064,510
25	1,959,358	208,377	2,167,735
26	2,057,326	218,795	2,276,122
27	2,160,193	229,735	2,389,928
28	2,268,202	241,222	2,509,424
29	2,381,612	253,283	2,634,896
30	2,500,693	265,947	2,766,640
Total	**$40,363,871**	**$4,292,675**	**$44,656,545**

Source: Exhibit A-2, Proposed Water Purchase Agreement

The water flow charge is based on an estimated 4,000 gallons of non-potable water used per day in Phase 1. According to the Port, the capacity charge estimates are based on in-place agreements, quotes, and estimates of the costs to construct and operate the BWRS provided by MRU. Final charges will be based upon actual costs to operate the facility and adjust accordingly, subject to the Port's Annual Cap. Exhibit 2 below shows the estimated annual budget for 2025.

Exhibit 2: Blackwater Recycling System Budget (paid by all customers via capacity charges)

Annual Costs	Amount	Percent of Total
Operation & Maintenance[2]	$605,761	24.7%
General & Administrative[3]	510,247	20.8%
Utility Costs	95,020	3.9%
Working Capital[4]	202,343	8.2%
Debt Service	1,040,886	42.4%
Total Annual Costs	**$2,454,257**	**100.0%**

Source: Port

Debt Service

The Port reports that total construction costs for the BWRS are estimated to be $17 million and are fully debt-financed. The estimated annual budget for 2025 for the entire system will be approximately $2.5 million, including approximately $1.0 million for debt service.

In November 2020, MRU issued $25 million of bonds to fund the initial construction of BWRS and a thermal District Energy System (DES).[5] In June 2022, MRU issued a second issuance of $43.53 million of debt to repay the original shorter-term debt and fund the remaining costs of the system. The maturity date of the $43.53 million debt is July 1, 2027, with a yield of approximately seven percent.

The Port also reports that the MRU was able to secure cost savings for the project through lower debt financing rates compared to if initial project costs were publicly financed. These bonds will be repaid by MRU customers, including the Port and building owners, through capacity charges.

Projected Capacity Charges

The capacity charges listed in this agreement are estimated costs and MRU does not have a detailed line-item budget for these charges, therefore we cannot assess their reasonableness or accuracy. If actual BWRS costs are more than currently estimated, the proposed agreement may have to be amended to increase the Annual Cap.

Source of Funds

As mentioned above, the Port intends to enter into a lease of the Port-owned parks and open space with an affiliate of the Master Developer (tenant) and assign its financial obligations under

---

[2] Operation & Maintenance Costs include the costs of energy, chemicals, required lab analysis and associated labor, membrane replacement, and sewer charges.

[3] General & Administrative Costs include the costs of insurance, the plant space lease, onsite engineering, and administrative costs to facilitate the system and customer billing.

[4] According to the Port, working capital is required in the first year to have sufficient funds available for timely payment of system expenses.

[5] DES is a separate project providing heating and cooling for each building in the Project Area.

the water purchase agreement to the tenant. In the event that the Port does not assign its water purchase agreement obligations to a tenant or the assignment of obligations to the tenant is terminated, the Port will utilize the Mission Rock Community Facilities District Contingent Special Services Tax to pay for its obligations and the operation and maintenance of the Port-owned parks and open spaces.

Port's Share of Costs Depends on the Number of Other Customers

The Port anticipates that the proposed agreement's costs will decrease over time as the Mission Rock development proceeds and more buildings share the capital and operations costs of the BWRS, however the Port's Annual Cap does not assume this cost sharing. If subsequent project phases are delayed, there will be fewer users than projected sharing the costs and the Port's actual costs will be closer to the Annual Cap.

POLICY CONSIDERATION

Operation of BWRS by a Private Entity

When the project was approved, the Port anticipated that the San Francisco Public Utilities Commission (PUC) would operate the BWRS and that the Port would use public financing to pay for construction of the plant. According to the PUC's Policy and Government Affairs staff, the San Francisco Public Utilities Commission (PUC) anticipated owning and operating the Blackwater Treatment Facility if it was going to be sized to also serve Mission Bay, but the Mission Rock project proceeded with a district-level system, serving only the Mission Rock development area, due to timeline restrictions. Since the plant will only serve the Mission Rock development area, PUC will not operate the plant. In September 2019, PUC sent a letter to the Port stating that the sustainability, water conservation, and renewable energy goals for the Mission Rock Project could be met through the formation of a nonprofit entity. Other district-scale private developments subject to the City's Non-Potable Water Ordinance requirements are run by a homeowners association; or, more commonly, each building subject to the Non-Potable Water Ordinance has its own water recycling system.

Cost of Non-Potable Water

As noted above, the BWRS is consistent with the requirements of Article 12C of the Health Code (Non-Potable Water Ordinance). However, the initial flow charge base rate for this agreement ($33.12 per CCF) is more than three times the PUC rate for potable water, according to the Port's analysis. According to the Port, the blackwater flow charge expense is greater due to the costs related to treating and testing recycled water and to promote conservation.

RECOMMENDATION

Approve the proposed resolution.

Item 10 **File 23-0009**	**Department:** Port Commission (Port)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would retroactively approve a lease between the Port of San Francisco (Port) and Autodesk, Inc. for approximately 30,590 square feet of office and shed space at Pier 9, for a term of one year from February 2023 through January 2024, with a one-year option to extend through January 2025, and initial monthly rent of $124,508.

Key Points

- Autodesk has leased space from the Port at Pier 9 since 2012. The lease comprises three parcels, totaling approximately 27,190 square feet of office space and 3,400 square feet of shed space. Autodesk's lease expired on January 15, 2023 and is currently in holdover status. Autodesk is unsure of its long-term office needs, as the staff may telecommute, and is only willing to agree to a one-year lease with a one-year option to extend at this time.
- Under the proposed lease, Autodesk would pay initial monthly rent of $4.25 per square foot for the office space and $1.75 per square foot for the shed space, consistent with the Port's FY 2022-23 minimum parameter rents approved by the Port Commission in August 2022.

Fiscal Impact

- Over the initial one-year term of the proposed lease, the Port would receive $1,494,090 in rent. If the one-year option to extend is exercised, the Port would receive an additional $1,538,546 in rent, for total rent of $3,032,636.

Policy Consideration

- Like the 2012 lease it is replacing, the proposed lease with Autodesk was not competitively bid. Administrative Code Section 23.33 states that leases of City-owned property with rent of at least $2,500 per month should be awarded through a competitive solicitation unless it would be impractical or impossible. According to Port staff, a competitive solicitation in this case would be impractical due to the customization of the premises, high commercial vacancy rates in downtown San Francisco, and the desire to retain a stable tenant in good standing. As the proposed rental rates are consistent with minimum parameter rates set in the FY 2022-23 Rental Rate Schedule, the Budget and Legislative Analyst recommends approval of the proposed resolution.

Recommendations

- Amend the proposed resolution to state that approval is retroactive.
- Approve the resolution as amended.

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, or having anticipated revenues to the City of $1,000,000, or (2) the modification, amendment, or termination of these leases is subject to Board of Supervisors approval.

According to City Administrative Code Section 23.33, leases of City property with rent of at least $2,500 per month should be awarded through a competitive solicitation unless such competitive solicitation is impractical or impossible. The terms "impractical" and "impossible" are not defined in the Administrative Code. Administrative Code Section 23.33 also specifies that any leases of City-owned property awarded without a competitive solicitation shall have rent equal to fair market value or more.

BACKGROUND

Autodesk, Inc. has leased space from the Port of San Francisco (Port) at Pier 9 since 2012. The lease totals approximately 30,590 square feet across three parcels, comprised of approximately 12,064 square feet of ground floor office space and 9,266 square feet of second floor office space in Parcel A, 5,860 square feet of ground floor office space in Parcel B, and 3,400 square feet of shed space in Parcel C.

Autodesk's lease expired on January 15, 2023 and is currently in holdover status. According to Port Management, Autodesk is unsure of its long-term office needs, as the staff may telecommute, and is only willing to agree to a one-year lease with a one-year option to extend at this time.[1] In November 2022, the Port Commission approved a new lease with Autodesk.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a lease between the Port and Autodesk for approximately 30,950 square feet of office and shed space at Pier 9 for a term of one year, with a one-year option to extend, and initial monthly rent of $124,508. The proposed resolution would also authorize the Port's Executive Director to make immaterial amendments to the lease. As the proposed lease would commence on February 1, 2023, the Budget and Legislative Analyst recommends amending the resolution to state that approval is retroactive.

According to Don Kavanagh, Port Senior Property Manager, Autodesk's space is highly customized and it would be difficult to find another long-term tenant for the premises in as-is condition. Autodesk is a tenant in good standing and has spent over $9 million in improvements to the space[2]. Autodesk would pay monthly rent of $4.25 per square foot for the office space and $1.75 per square foot for the shed space, consistent with the Port's FY 2022-23 minimum parameter rents approved by the Port Commission in August 2022. Additionally, Autodesk has three other leases with the Port for office and storage spaces at Pier 9 and Pier 19, totaling

[1] In January 2023, Autodesk announced that it is placing approximately 73,000 square feet of office space at its headquarters at 1 Market Plaza for sublease.

[2] To partially offset these improvements, the Port has provided $3,261,311 in rent credits (Files 12-1170, 14-0309).

approximately 11,505 square feet.[3] Port Staff has negotiated new leases with Autodesk for these spaces that would be coterminous with the proposed lease.

In addition to the leased office and shed space, the proposed lease would encompass Autodesk's Solar License and Public Access Parcel Maintenance Agreement, which have been separate documents. Autodesk has installed solar panels and equipment on approximately 6,622 square feet of roof space on Pier 9. Upon vacating the premises, Autodesk would have to remove the solar equipment or transfer ownership to the Port, if requested. Autodesk would also continue to pay the Port $3,000 per month to clean and maintain the public wharf between Piers 9 and 15. The key terms of the proposed lease are shown in Exhibit 1 below.

Exhibit 1: Key Terms of Proposed Lease

Premises	Approximately 30,590 square feet at Pier 9 (27,190 square feet of office space and 3,400 square feet of shed space)
Term	1 Year (February 2023 through January 2024)
Options to Extend	One 1-year option
Initial Monthly Rent	$124,508 (includes public access parcel cleaning/maintenance fee)
Rent Adjustment	3% increase during extension term
Solar License	6,622 square feet of roof space permitted for solar equipment
Public Access Parcel	$3,000 monthly payment to Port to clean and maintain public wharf
Security Deposit	$249,015
Maintenance and Repairs	Paid by tenant
Utilities	Paid by tenant

Source: Proposed Lease

FISCAL IMPACT

Over the initial one-year term of the proposed lease, the Port would receive $1,494,090 in rent. If the one-year option to extend is exercised, the Port would receive an additional $1,538,546 in rent, for total rent of $3,032,636. Annual rent paid by Autodesk is shown in Exhibit 2 below.

Exhibit 2: Annual Rent Paid by Autodesk

Year	Office Rent	Shed Rent	Maintenance Fee	Total Rent
Year 1	$1,386,690	$71,400	$36,000	$1,494,090
Year 2 (Option)	1,429,106	73,440	36,000	1,538,546
Total	**$2,815,796**	**$144,840**	**$72,000**	**$3,032,636**

Source: Proposed Lease

[3] The other three leases may be approved administratively and do not require Board of Supervisors or Port Commission approval because they do not exceed 10 years or $1 million in total revenue.

POLICY CONSIDERATION

No Competitive Solicitation

Like the 2012 lease it is replacing, the proposed lease with Autodesk was not competitively bid. Administrative Code Section 23.33 states that leases of City-owned property with rent of at least $2,500 per month should be awarded through a competitive solicitation unless it would be impractical or impossible, but does not define the terms “impractical” and “impossible.” In the resolution setting the Port’s FY 2022-23 Rental Rate Schedule, the Port Commission “finds that competitively bidding the real property agreements covered by the… rental rate schedules approved by this Resolution is impractical” and therefore established uniform rates for leases or licenses for special events, office, warehouse space, or unimproved land.

According to Port staff, a competitive solicitation in this case would be impractical due to the customization of the premises, high commercial vacancy rates in downtown San Francisco, and the desire to retain a stable tenant in good standing. The Port’s Tenant in Good Standing Policy states that tenants in good standing may receive consideration for lease amendments, additional term, change in leasehold size, assignments or sublets, and/or requests for additional agreements on Port property.

Administrative Code Section 23.33 also states that leases awarded without a competitive solicitation shall have rent equal to fair market value or more. As the proposed rental rates are consistent with minimum parameter rates set in the FY 2022-23 Rental Rate Schedule, the Budget and Legislative Analyst recommends approval of the proposed resolution.

RECOMMENDATIONS

1. Amend the proposed resolution to state that approval is retroactive.
2. Approve the resolution as amended.