CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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November 8, 2013

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: November 13, 2013 Budget and Finance Committee Meeting

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Item 1 **File 13-0801**	**Department:** Sheriff's Department

EXECUTIVE SUMMARY

Note: This item was continued from the November 6, 2013 Budget and Finance Committee meeting.

Legislative Objectives

- The proposed resolution would authorize the Sheriff's Department to amend an existing inmate telephone services agreement with Global Tel*Link to (1) retroactively extend the term from June 1, 2013 through May 31, 2015, (2) increase the commission paid to the Sheriff's Department's Inmate Welfare Fund from 60 percent to 65 percent of gross revenue sales, and (3) make other modifications.

Key Points

- The Sheriff's Department contracts with Global Tel*Link to provide telephone equipment, calling services and charges for inmate telephone calls. Inmates pay Global Tel*Link for their telephone calls based on specified rates and then Global Tel*Link pays an agreed upon commission back to the Sheriff's Department. The Sheriff's Department deposits such revenues into the City's Inmate Welfare Fund, which is used for inmate benefits.

Fiscal Impact

- The proposed increase in the commission rate from 60 percent to 65 percent would result in an estimated $60,965 in additional annual revenues from telephone sales, which would accrue to the Inmate Welfare Fund.

Policy Consideration

- On May 20, 2009 the Sheriff's Department entered into a sole source agreement with Praeses to provide third-party consulting, management and reconciliation services for inmate telephone services, without obtaining a sole source waiver. The agreement between the Sheriff's Department and Praeses included an initial approximately three-year and three-month term from May 20, 2009 through August 14, 2012, with automatically renewing consecutive one-year terms unless specifically terminated.
- The Inmate Welfare Fund year-end fund balance increased from $279,485 in FY 2009-10 to $1,099,560 in FY 2012-13, an increase of $820,075 or 293 percent. The Sheriff's Department could budget more expenditures in FY 2014-15 and in future years for enhanced inmate benefits.
- The Budget and Finance Committee accepted the Budget and Legislative Analyst's recommendation at the November 6, 2013 meeting.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT/BACKGROUND

Mandate Statement

Charter Section 9.118(a) requires that the modification, amendment or termination of any contract with anticipated revenues to the City of $1,000,000 or more is subject to the approval of the Board of Supervisors by resolution.

California Penal Code Section 4205 requires that any money, refund, rebate, or commission received from a telephone company from the use of telephones by confined inmates be deposited into a separate account that is used exclusively for the benefit of inmates. The Sheriff's Department administers the City's Inmate Welfare Fund, into which all revenues received from inmates' use of telephones are deposited. In accordance with Section 10.100-329 of the City's Administrative Code, the Sheriff's Department uses the revenues from the Inmate Welfare Fund to provide educational, vocational, recreational, medical, dental and legal supplies, facilities and equipment for the use and benefit for inmates confined in San Francisco's jails.

Background

Inmates housed in San Francisco's jails are permitted to make personal telephone calls by use of a debit card payment system, at their own expense, with certain restrictions.[1] To provide personal telephone services for inmates, the Sheriff's Department contracts with an outside firm to provide the necessary telephone equipment, calling services and charges for inmates. Individual inmates pay the outside firm for their telephone calls based on specified rates. The outside firm collects the inmate call revenues and then pays an agreed upon commission back to the Sheriff's Department. The Sheriff's Department deposits such commission revenues into the City's Inmate Welfare Fund, which is used for services that directly benefit the inmates. All revenues deposited into the City's Inmate Welfare Fund are subject to appropriation approval by the Board of Supervisors in the City's annual budget.

Existing Agreement with Global Tel*Link

On May 18, 2010, the Board of Supervisors approved a three-year agreement between the City, acting on behalf of the Sheriff's Department, and Global Tel*Link to provide inmate telephone services from June 1, 2010 through May 31, 2013, with two one-year options to extend the term for up to five years through May 31, 2015 (File No. 10-0442). Global Tel*Link was selected from among six bidders in a competitive bid process.

Under the existing inmate telephone services agreement, Global Tel*Link is required to pay the Sheriff's Department (a) a base annual payment of $100,000 for the term of the agreement and (b) a 60 percent commission on gross telephone sale revenues.

[1] Inmates may not place calls to private parties who have requested a blocked telephone number or have obtained a restraining order against the inmate. In addition, all inmate phone calls are recorded for security of Sheriff's Department staff and for certain legal agencies. Inmates are allowed to make free calls to the public defender, private attorneys and certain community-based organizations and governmental agencies.

The existing inmate telephone services agreement with Global Tel*Link includes specified rates that inmates are charged for making telephone calls, which vary depending on the type and length of the telephone call made. The rates that inmates are charged would remain the same under the proposed amendment to the existing agreement with Global Tel*Link.

Third-party Agreement with Praeses, LLC

On May 20, 2009, the Sheriff's Department entered into a sole source agreement with Praeses, LLC (Praeses) to provide third-party consulting, management and reconciliation services related to the Department's inmate telephone services. Under the agreement between the Sheriff's Department and Praeses, Praeses manages all aspects of the Department's inmate telephone services and is paid a management fee equal to 10.57 percent of all revenues paid to the Sheriff's Department by Global Tel*Link. The agreement between the Sheriff's Department and Praeses included an initial approximately three-year and three-month term from May 20, 2009 through August 14, 2012,[2] with automatically renewing consecutive one-year terms unless specifically terminated. The agreement was not subject to Board of Supervisors approval because it was for less than ten years and for less than $10,000,000. According to information provided to the Budget and Legislative Analyst by the Sheriff's Department in 2010, the primary reason for contracting with Praeses was the need for auditing and collection of outstanding telephone commissions from the Sheriff's Department's previous inmate telephone service contractor, PCS. In 2010, Praeses reported that PCS owed the Sheriff's Department $3,063,800 in outstanding commissions from January 2006 to February 2010. The City Attorney is actively negotiating with PCS in an effort to resolve the dispute concerning commissions due.

According to Ms. Bree Mawhorter, Sheriff's Department Chief Financial Officer, after deducting the 10.57 percent payments to Praeses, the Sheriff's Department received a total of $2,256,572 in net revenues from the inmate telephone services agreement with Global Tel*Link, inclusive of two base annual payments, from June 1, 2010 through May 31, 2013, as shown in Table 1 below. Global Tel*Link will make the base annual payment of $100,000 for June 1, 2012 to May 31, 2013 upon approval of the proposed first amendment to the agreement, resulting in total net revenues of $2,356,572.

[2] Under the agreement with Praeses, the initial three-year term would expire three years from the delivery of the initial monthly report, which occurred on August 15, 2009.

Table 1: Sheriff's Department Revenue from Inmate Telephone Services Contract with Global Tel*Link

	Commission Revenues + Base Annual Payment from Global Tel*Link	Fee Paid to Praeses by the Sheriff's Department[3]	Annual Net Revenues Realized by the Sheriff's Department
June 1, 2010 to May 31, 2011	$770,068	$86,396	$683,672
June 1, 2011 to May 31, 2012	$940,752	$99,437	$841,315
June 1, 2012 to May 31, 2013	$805,517	$73,932	$731,585
Total	**$2,516,337**	**$259,765**	**$2,256,572**

Source: Sheriff's Department

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Sheriff's Department to amend an existing inmate telephone services agreement between the Sheriff's Department and Global Tel*Link as follows:

Extension of Agreement

The proposed amendment to the agreement includes a retroactive extension of the term of the agreement from June 1, 2013 to May 31, 2014, which was previously approved by the Board of Supervisors in May 2010 (File 10-0442) as well as an additional one-year option to extend the term to May 31, 2015.

Increase in Commission Rate

The proposed resolution would also authorize the Sheriff's Department to amend the existing agreement by increasing the commission rate paid by Global Tel*Link to the Inmate Welfare Fund from 60 to 65 percent of gross telephone sale revenues. According to Ms. Mawhorter, the proposed 5 percent increase to the commission rate was negotiated by the Sheriff's Department with the goal of increasing funding for inmate benefits.

Contractor Insurance Requirements

The proposed resolution would also authorize the Sheriff's Department to amend the existing agreement to approve two substantive modifications to Global Tel*Link's insurance coverage requirements:

1. Under the existing agreement, Global Tel*Link is required to obtain Commercial General Liability Insurance requiring the insurer to pay up to $1,000,000 for bodily injury and property damage. Under the proposed amendment, Global Tel*Link would be required to obtain Commercial General Liability Insurance requiring the insurer to pay up to $2,000,000 in aggregate for bodily injury and property damage.

[3] Praeses' fee does not equal exactly 10.57 percent of gross revenues due to accounting adjustments.

2. Under the existing agreement, Global Tel*Link is required to obtain Errors & Omissions Insurance[4] with limits not less than $1,000,000. Under the proposed amendment, Global Tel*Link would not be required to obtain Errors & Omissions Insurance.

According to Ms. Elizabeth Fitzergerald in the Risk Management Division of the City Administrator's Office, the Global Tel*Link's insurance policy and the proposed modifications to Global Tel*Link's insurance coverage requirements under the agreement meet the City's insurance requirements.

Replacement of Payment System

The proposed resolution would also authorize the Sheriff's Department to amend the agreement to discontinue the use of a debit card payment system to be replaced with an electronic debit system. Once implemented, each inmate would be assigned a unique personal identification number (PIN), and would deposit electronic debit funds into an electronic debit account through the commissary provider.[5] Under the proposed modifications, the Sheriff's Department reserves the right to switch from the proposed electronic debit system back to a debit card system at any time during the agreement. According to Ms. Mawhorter, the electronic debit system is currently being implemented.

FISCAL IMPACT

According to Ms. Mawhorter, the Sheriff's Department estimates that the proposed increase of the inmate telephone services commission rate from 60 percent to 65 percent of gross telephone sale revenues would result in an estimated $60,965 in additional annual revenues from telephone sales, which would accrue to the Inmate Welfare Fund. Ms. Mawhorter advises that the Sheriff's Department intends to use the increased revenues to fund additional benefits for inmates.

POLICY CONSIDERATION

Sole Source, Automatically Renewing Third-party Agreement with Praeses

Under the Rules and Regulations pertaining to San Francisco Administrative Code Chapter 21 Acquisition of Goods and Services, City departments wishing to award contracts to procure commodities or services that are unique and known to be provided by only one vendor or contractor must obtain a sole source waiver by submitting documentation to the City's Office of Contract Administration, justifying why the contract must be awarded on a sole source basis.

As noted above, the Sheriff's Department entered into a sole source agreement on May 20, 2009 with Praeses to provide third-party consulting, management and reconciliation services

[4] Errors & Omissions Insurance insures individuals and companies against liabilities arising from negligence claims made by a client.

[5] The commissary is a store within the City's jails from which inmates may purchase products.

related to the Department's inmate telephone services. The agreement between the Sheriff's Department and Praeses included an initial approximately three-year and three-month term from May 20, 2009 through August 14, 2012,[6] with automatically renewing consecutive one-year terms unless specifically terminated.

According to Ms. Mawhorter, the Sheriff's Department, inadvertently, did not obtain a sole source waiver to enter into the sole source agreement with Praeses. In preparing this report in October of 2013, the Budget and Legislative Analyst was advised by Deputy City Attorney Ms. Sallie Gibson that the Sheriff's Department should have obtained a sole source waiver in 2009 for its agreement with Praeses. According to Ms. Mawhorter, based on the advice the Sheriff's Department just received from the City Attorney's Office, the Sheriff's Department will be requesting a sole source waiver for the ongoing agreement with Praeses.

With regard to the provision of the Sheriff's Department's agreement with Praeses allowing for the automatic renewal of consecutive one-year terms, the Budget and Legislative Analyst recommends that the Board of Supervisors urge the Sheriff's Department to amend the existing agreement to establish a date certain term that corresponds to the term of the Global Tel*Link agreement.

Under-spending of the Inmate Welfare Fund

Revenues deposited into the Inmate Welfare Fund from FY 2010-11 through FY 2012-13 exceeded expenditures by an average of $273,358 annually. As a result, as shown in Table 2 below, the Inmate Welfare Fund year-end fund balance increased from $279,485 at the end of FY 2009-10 to $1,099,560 at the end of FY 2012-13, an increase of $820,075 or over 293 percent. According to Ms. Mawhorter, the Sheriff's Department budgets expenditures from the Inmate Welfare Fund conservatively to ensure there are sufficient revenues to cover expenditures. Given the FY 2012-13 year-end fund balance of $1,099,560 and that revenues were consistently higher than expenditures over the past three years, the Sheriff's Department could budget additional Inmate Welfare Fund expenditures in FY 2014-15 and in future years that are commensurate with the revenues received to provide inmate benefits.

Table 2: Inmate Welfare Fund FY 2010-11 to FY 2012-13

	FY 2010-11	FY 2011-12	FY 2012-13
Beginning of Year Fund Balance	$279,485	$492,986	$733,628
Revenues[7]	$1,167,285	$1,255,713	$1,260,293
Expenditures	$953,784	$1,015,071	$894,361
Year End Fund Balance	**$492,986**	**$733,628**	**$1,099,560**

Source: Sheriff's Department

[6] Under the agreement with Praeses, the initial three-year term would expire three years from the delivery of the initial monthly report, which occurred on August 15, 2009.

[7] The Inmate Welfare Fund has other sources of revenue in addition to inmate telephone services revenues, including: (1) commissary, (2) confiscated or contraband money from inmates, (3) earned interest, and (4) bail bond revenue.

The Budget and Finance Committee accepted the Budget and Legislative Analyst's recommendation at the November 6, 2013 meeting.

RECOMMENDATION

Approve the proposed resolution.

Item 4 **File 13-1036**	**Department:** Department of Public Health (DPH) Real Estate Division (RED)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the lease between Department of Public Health (DPH), as tenant, and AIM TWO, as landlord, for office and parking space at 755 and 759 South Van Ness Avenue, for approximately four years and seven months from December 1, 2013 through June 30, 2018 that includes one four-year option to extend.

Key Points

- The DPH has occupied the space at 755 and 759 South Van Ness Avenue since 1981, and currently operates its Transitional Aged Youth (TAY) Program, HIV Mental Health Case Management Program, and the Mission Family Center (MFC) in the space.

- The initial term of existing lease between DPH and AIM TWO was from October 1, 2003 through June 30, 2013, which included base rent of $20,317.50 per month, or approximately $1.50 per square foot per month, with no increases during the initial lease term. DPH has continued to occupy the space at the existing rent on a month-to-month basis since expiration of the existing lease on June 30, 2013.

Fiscal Impact

- The proposed rent of $38,739 per month (approximately $2.86 per square foot per month) is fair market value and includes parking for which there is no additional charge.

- Total first year rent is $464,864 and estimated utility costs are $10,656, for total first year costs of $472,520, which are included in DPH's FY 2013-14 and FY 2014-15 budgets, as previously approved by the Board of Supervisors.

- The proposed lease agreement includes an annual adjustment to the Consumer Price Index (CPI), at be no less than 3% and more than 5% of the previous year's rent. The total estimated cost for the rent of the proposed new five-year lease ranges between $2,250,038 and $2,333,248.

Policy Considerations

- DPH has leased the space at 755 and 759 South Van Ness Avenue for more than 32 years, and from July 1, 2003 through the end of the proposed lease term on June 30, 2018, DPH will have paid total rent of $4,913,138.

- While DPH plans to reduce the number of leased sites, DPH does not currently have a facility plan to relocate the services provided by DPH at 755 and 759 South Van Ness Avenue to a City-owned facility. In order for the Board of Supervisors to have better information on the potential for reducing the number of DPH leased facilities, the Budget and Legislative Analyst recommends that DPH provide a report to the Board of Supervisors when the Board considers the City's 10-year Capital Plan for 2015-2024 that details the DPH facility plan, including plans to reduce the number of leased sites and consolidate programs and services at City-owned facilities.

Recommendations

- Amend the proposed resolution to request that the Department of Public Health provide a report on the DPH facility plan, including plans to reduce the number of leased sites and consolidate programs and services at City-owned facilities, to the next Board of Supervisors hearing on the City's 10-year Capital Plan.

- Amend the proposed resolution to clarify that the initial term of the proposed lease is approximately four years and seven months, rather than five years, as stated in the proposed resolution.

- Approve the proposed resolution, as amended.

MANDATE STATEMENT

Under Administrative Code Section 23.27, leases with a term of more than one year or rent of more than $5,000 per month, in which the City is the tenant, are subject to the Board of Supervisors approval, by resolution.

BACKGROUND

In 1981, the Board of Supervisors approved an initial one-year lease with four one-year options to extend (Resolution No. 756-81), between the Department of Public Health (DPH), as tenant, and AIM TWO, as landlord, for (1) 13,545 square foot office space at 755 and 759 South Van Ness Avenue and (2) an adjacent 3,675 square foot parking lot at no further cost, from July 1, 1981 through June 30, 1986. Since 1986, the Board of Supervisors has approved subsequent leases between DPH and AIM TWO at the same locations.

On August 26, 2003, the Board of Supervisors approved the existing nine-year and nine-month lease (Resolution No. 583-03), between DPH and AIM TWO at the same locations. The base rent was $20,317.50 per month, approximately $1.50 per square foot per month with no increases during the lease term from October 1, 2003 through June 30, 2013. Under the existing lease the landlord constructed Americans with Disabilities Act (ADA), electrical system, and Heating, Ventilation and Air Conditioning (HVAC) improvements to the property at the landlord's sole cost.

DPH has continued to occupy the space at the existing rent on a month-to-month basis since expiration of the existing lease on June 30, 2013.

Under the existing lease, DPH provides Community Behavior Health Service programs that include clinical mental health services and operations of the Transitional Aged Youth (TAY) Program[1] and HIV Mental Health Case Management Program[2] in the space at 755 South Van Ness Avenue and operations of the Mission Family Center (MFC)[3] at 759 South Van Ness Avenue.

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[1] The Transitional Aged Youth (TAY) Program serves San Francisco youth aged sixteen through twenty-five (16 – 25) who are dealing with gender issues, i.e., gender non-conforming, transgender, and gender variant. Services provided are: individual psychotherapy, clinical case management with wrap around services and housing, group therapy, and psychiatric medication evaluation and monitoring.

[2] The HIV Mental Health Case Management Program provides individual psychotherapy, clinical case management and group therapy and psychiatric medication and monitoring for individuals with HIV-related mental health issues.

[3] The Mission Family Center (MFC) is an adolescent and children's counseling center and serves clients up to 18 years old. Services provided are: counseling assessment and evaluation; medication evaluation and management; individual therapy for individual with co-morbidity (mental health and substance abuse); consultation to San Francisco schools; and family therapy.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new lease for approximately four years and seven months ending June 30, 2018 for the same 13,545 square foot office space at 755 and 759 South Van Ness Avenue and the adjacent 3,675 square foot parking lot at no further cost, between DPH, as tenant, and AIM TWO, the landlord, with the following lease terms:

Table 1: Summary of Proposed Lease at 755 and 759 South Van Ness Avenue

Term	Approximately 4 years and 7 months (from the date of Board of Supervisors approval through June 30, 2018)
Square feet (approximate)	13,545 office space 3,675 adjacent parking lot at no further cost
Rent per square foot per month Total rent per month Total annual rent	Approximately $2.86 $38,739 $464,864
Parking	Includes adjacent parking lot at no further cost
Annual rent increases	Annual adjustment to Consumer Price Index (CPI), but no less than 3% and more than 5% of the previous year.
Utilities and services	City pays all utilities. The lease includes janitorial services paid by the landlord
Options to further extend	One four-year option through June 30, 2022 at 95% of fair market rent as determined by the Director of Real Estate

The leased space would continue to be used to provide space for clinical mental health services and operations of DPH's Transitional Aged Youth (TAY) Program, HIV Mental Health Case Management Program, and the Mission Family Center (MFC).

According to the proposed resolution, "the City agrees to indemnify, defend, and hold harmless the Landlord, and its agents from and against any and all claims, costs, and expenses, including, without limitation, reasonable attorney's fees, incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its obligations under the lease, or (c) any negligent acts or omissions of City or its agents, in, on, or about the Premises or the property, provided, however, City shall not be obligated to indemnify Landlord or its agents to the extent any claim arises out of the negligence of willful misconduct of Landlord or its agents". According to Mr. John Updike, Director of Real Estate, this provision in the resolution states the City's legal obligations under the agreement, is consistent with similar resolutions previously approved by the Board of Supervisors, and does not reflect a change in how the City executes real estate lease agreements and does not reflect new costs or risk obligations to the City.

Also, although the proposed resolution provides for an initial lease term of five years, the actual initial lease term is four years and seven months. Therefore, the proposed resolution should be amended to clarify that the initial term of the proposed lease is approximately four years and seven months, rather than five years.

FISCAL IMPACT

Under the proposed lease agreement, the monthly base rent of $38,739, or $2.86 per square foot per month, is $18,421.50 or 90.7% more than the existing base monthly rent of $20,317.50 per month or $1.50 per square foot. Ms. Claudine Venegas, Senior Real Property Officer of the Real Estate Division, reports that the monthly rent of $38,739, or approximately $2.86 per square foot, is comparable to the market rates of properties in the surrounding area of 755 and 759 South Van Ness Avenue.[4] According to Ms. Venegas, the proposed rent is reasonable because it represents fair market value, includes parking for which there is no additional charge, and has improvements previously constructed by the landlord that are specific to DPH's programmatic use within the community it is servicing. Facilities with these improvements are presently not available to be rented by DPH in other comparable office buildings in the areas in which DPH provides the respective services.

As shown in Table 2 below, the first year total rent and utility expenses are expected to total $472,520. Total General Fund monies of $464,864 for rent and $10,656 for utilities are included in DPH's FY 2013-14 and FY 2014-15 budgets, as previously approved by the Board of Supervisors.

Table 2: Total First Year Costs for the Proposed Lease at 755 and 759 South Van Ness Avenue

Rent – $ for 13,545 square feet (2.86 per square foot per month or $34.32 annually)	$ 464,864
Utilities – Estimated[5]	10,656
Total First Year Costs	$ 472,520

According to Ms. Venegas, the cost of utilities will increase during the 5-year term as a result of higher costs for services due to inflation.

The proposed new lease agreement includes an annual adjustment to the Consumer Price Index (CPI), at be no less than 3% and more than 5% of the previous year's rent. As shown in

[4] According to the CoStar Office Report for the 3rd quarter, 2013, market rates of properties in the surrounding area of 755 and 759 South Van Ness Avenue range between $2.88 to $3.53 per square foot.

[5] Estimated annual utility cost at 755 South Van Ness is $4,464 or $0.63 per square foot for 7,100 square feet and at 759 South Van Ness is $6,192 or $0.96 per square foot for 6,445 square feet, for a total of $10,656 estimated annual utility cost.

Table 3 below, the total estimated cost for the rent of the proposed new lease ranges between $2,250,038 and $2,333,248.

Table 3: Estimated Range of Total Rent for the Proposed DPH Lease for Four Years and Seven Months, from December 1, 2013 through June 30, 2018

Lease Year	Minimum Monthly Rent (3% increase)	Minimum Annual Rent (3% increase)	Maximum Monthly Rent (5% increase)	Maximum Annual Rent (5% increase)
1	$38,739	$464,864	$38,739	$464,864
2	39,901	478,814	40,676	488,111
3	41,098	493,178	42,710	512,517
4	42,331	507,974	44,845	538,143
5 (7 months)	43,601	305,208	47,087	329,612
Total		**$2,250,038**		**$2,333,248**

POLICY CONSIDERATION

DPH has leased the space at 755 and 759 South Van Ness Avenue since 1981, or a period of more than 32 years

DPH has paid $2,579,890 in rent for 755 and 759 South Van Ness Avenue for the ten year and five month period from July 1, 2003 through November 30, 2013, and will pay up to an estimated $2,333,248 for the four years and seven months from approximately December 1, 2013 through June 30, 2018 under the proposed lease.[6] Therefore, over the 15 year period, rent and related costs paid by DPH are $4,913,138.

According to Mr. Greg Wagner, DPH Chief Financial Officer, although the department plans to reduce DPH's number of leased sites, the department does not currently have a plan to relocate the services provided by DPH at 755 and 759 South Van Ness Avenue to a City-owned facility. The City's Capital Planning Committee is reviewing DPH capital needs for City-owned facilities as well as leased properties where the City is responsible for maintenance and repairs, pending the proposed submission to the voters of a Public Health Facilities General Obligation Bond in November 2015. In order for the Board of Supervisors to have better information on the potential for reducing the number of DPH leased facilities, the Budget and Legislative Analyst recommends that DPH provide a report to the Board of Supervisors when the Board

[6] The ten year and five month period from July 1, 2003 through November 30, 2013 includes three months of month-to-month rent from July 1, 2003 through September 30, 2003, prior to the beginning of the existing lease on October 1, 2003, and five months of month-to-month rent from July 1, 2013 through November 30, 2013 after the termination of the existing lease on June 30, 2013.

considers the City's 10-year Capital Plan for 2015-2024 that details the DPH facility plan, including plans to reduce the number of leased sites and consolidate programs and services at City-owned facilities.

RECOMMENDATIONS

1. Amend the proposed resolution to request that the Department of Public Health provide a report on the DPH facility plan, including plans to reduce the number of leased sites and consolidate programs and services at City-owned facilities, to the next Board of Supervisors hearing on the City's 10-year Capital Plan.

2. Amend the proposed resolution to clarify that the initial term of the proposed lease is approximately four years and seven months, rather than five years, as stated in the proposed resolution.

3. Approve the proposed resolution, as amended.

Item 5 File 13-0797	Department: Department of Elections

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would authorize the Department of Elections to enter into a third amendment to the existing agreement with Dominion Voting Systems to (a) extend the term of the agreement for three years through December 10, 2016, (b) increase the agreement by $3,645,900, for a total not-to-exceed $19,690,933, and (c) waive the requirement of Administrative Code Section 21.9 that all City contracts for commodities or services be limited to the initial terms and period of extensions included in the solicitation.

Key Points

- In 2005, the Department of Elections issued a Request of Proposal (RFP) for new voting equipment and services for a total term of up to six years. In 2007, based on a competitive RFP process, the Board of Supervisors approved a not-to-exceed $12,650,233 agreement between the Department of Elections and Sequoia Voting Systems, Inc. (now Dominion Voting Systems, Inc.) for a new voting system and related voting services from December 11, 2007 to December 10, 2011, with two one-year options to extend the agreement.
- On January 18, 2008, the Board of Supervisors approved a first amendment for an additional $1,130,000. On December 1, 2011, the Board of Supervisors approved a second amendment to exercise the two one-year options to extend the term through December 10, 2013 for an additional $2,264,800, or a total not to exceed $16,045,033.

Fiscal Impacts

- The proposed costs would remain at the same rate of (a) $497,400 per election for Election Services and (b) $386,300 per year for Maintenance and License Agreements, as currently charged by Dominion Voting Systems, Inc. under the existing 2007 through 2013 agreement.
- All of the additional Department of Elections costs would be paid with General Fund revenues, subject to future appropriation approval by the Board of Supervisors.

Policy Considerations

- The proposed ordinance to approve the extension of the existing agreement for an additional three years or through December 10, 2016 would be beyond the terms of the original RFP, such that the proposed ordinance requires the Board of Supervisors to waive the Administrative Code Section 21.9 requirement that all City contracts for commodities or services be limited to the initial terms and period of extensions included in the solicitation.

Recommendation

- Approve the proposed ordinance.

MANDATE STATEMENT/ BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of $10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than $500,000 are subject to approval by the Board of Supervisors.

Background

On March 31, 2005, the Department of Elections issued a Request for Proposal (RFP) for new voting equipment and related services for an initial term of four years with two one-year options to extend or a total term of six years. On December 11, 2007, based on the results of the competitive RFP process, the Board of Supervisors approved a not-to-exceed $12,650,233 agreement between the Department of Elections and Sequoia Voting Systems, Inc. for the purchase of a new voting system and the provision of associated voting services for the four-year period from December 11, 2007 through December 10, 2011, with two one-year options to extend the agreement, through December 10, 2013 (File 07-0040;Resolution 654-07).

Table 1 below summarizes the sources and uses of the funds totaling $12,650,233 to purchase the City's new voting equipment, including related services, under the original four-year agreement between the Department of Elections and Sequoia Voting Systems, Inc.

Table 1: Sources and Uses of Funds for the Original Four-Year Agreement

Source of Funds	
Help America Vote Act (HAVA) (Federal Funds)	$ 1,950,235
Proposition 41 (State Funds)	3,544,110
General Fund	7,155,888
Total Funding Sources	**$12,650,233**
Use of Funds	
Voting Equipment, Software, Training and Outreach	$ 9,094,933
Trade-in of City's Existing Voting Equipment	(1,130,000)
Warehouse Capital Improvements	542,000
Election Services ($497,400 x 6 elections[1])	2,984,400
Maintenance and License Fees ($386,300 x 3 years)[2]	1,158,900
Total Funding Uses	**$ 12,650,233**

[1] Elections services are provided for six elections including two elections in 2008, one election in 2009, two elections in 2010 and one election in 2011.

[2] Only three years of Maintenance and License Fees were charged, under the subject four-year agreement, because there were no Maintenance and License Fees charged for the first year of the agreement.

As shown in Table 1 above, as part of the $12,650,233 agreement approved in December of 2007 with Sequoia Voting Systems, Inc. the City was to receive a $1,130,000 credit by trading in the City's previous voting equipment. However, on February 12, 2008, the Board of Supervisors approved a settlement of a lawsuit (File 08-0123; Ordinance No. 18-08) between the City and Election Systems and Software, Inc. (ES&S), the City's previous voting equipment contractor prior to Sequoia Voting Systems, Inc., for ES&S to pay the City a net amount of $3,457,865, in exchange for the City returning all of the previous voting equipment back to ES&S.

As a result of that settlement, on January 18, 2008, the Board of Supervisors approved a first amendment to the agreement with Sequoia Voting Systems, Inc. to pay Sequoia an additional $1,130,000 from the lawsuit settlement proceeds received from ES&S, instead of transferring the City's old voting machines to Sequoia (Resolution No. 65-08). This additional $1,130,000 together with the original not to exceed $12,650,233 resulted in a total four-year agreement with Sequoia for a not to exceed $13,780,233.

On June 4, 2010, Sequoia Voting Systems, Inc. was acquired by Dominion Voting Systems, Inc., such that Dominion Voting Systems, Inc. has assumed the existing agreement with the Department of Elections and has continued to provide voting services for the City.

On December 1, 2011, the Board of Supervisors approved a second amendment to the agreement with Dominion Voting Systems, Inc. (File 11-1153; Resolution No.494-11) to exercise the two one-year options in order to extend the term of the agreement through December 10, 2013 for an additional $2,264,800, or a total not to exceed $16,045,033 ($13,780,233 plus $2,264,800). Table 2 below identifies the additional $2,264,800 agreement costs to be incurred by the Department of Elections under the two-year extension period.

Table 2: Expenditures Under the Two-Year Extension Agreement

	2012 (two elections)	2013 (one election)	Total
Election Services	$994,800	$497,400	$1,492,200
Maintenance and License Agreements	386,300	386,300	772,600
Total	$1,381,100	$883,700	$2,264,800

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would approve a third amendment to the existing agreement between the City and County of San Francisco, through the Department of Elections, for Dominion Voting Systems to continue to provide elections services for the Department of Elections. This third amendment would (a) extend the term of the existing agreement for three years, from December 11, 2013 through December 10, 2016, for a total term of nine years, (b) increase the agreement by $3,645,900, from $16,045,033 to a total not-to-exceed $19,690,033, and (c) waive the requirement of Administrative Code Section 21.9 that all City contracts for commodities or services be limited to the initial terms and period of extensions included in the solicitation (see Policy Considerations section below).

FISCAL IMPACTS

Mr. John Arntz, the Director of the Department of Elections advises that under the proposed third amendment term from December 11, 2013 through December 10, 2016, the following elections are currently scheduled to occur:

- Consolidated Statewide Primary Election on June 3, 2014;
- Consolidated General Election on November 4, 2014;
- General Municipal Election on November 3, 2015;
- Consolidated Statewide Primary Election on June 7, 2016; and
- Consolidated General Election on November 8, 2016.

Based on the above-noted two elections in 2014, one election in 2015 and two elections in 2016, or a total of five scheduled elections over the next three years, the following costs are anticipated to be incurred by the Department of Elections.

Table 3: Expenditures to be Incurred by the Department of Elections Under the Proposed Third Amendment to the Dominion Voting Systems Agreement

	2014 (two elections)	2015 (one election)	2016 (two elections)	Total
Election Services	$994,800	$497,400	$994,800	$2,487,000
Maintenance and License Agreements	386,300	386,300	386,300	1,158,900
Total	$1,381,100	$883,700	$1,381,100	$3,645,900

As shown in Tables 2 and 3 above, the proposed costs would remain at the same rate of (a) $497,400 per election for Election Services and (b) $386,300 per year for Maintenance and License Agreements, as currently charged to the Department of Elections by Dominion Voting Systems, Inc. under the existing 2007 through 2013 agreement. Election Services include equipment testing, ballot layouts, system configuration with election-specific information, logistical support such as delivery and retrieval of the voting equipment to and from polling places, project management fees and election-day technical support. Maintenance and License Agreements include annual comprehensive reviews, repairs and replacement of equipment and parts and annual licensing fees for the Ranked Choice Voting and other system software. Over the three-year extended period, as shown in Table 3 above, the total costs would be $3,645,900.

All of the costs under the proposed three-year extension period would be paid with General Fund revenues, subject to appropriation approval by the Board of Supervisors in the FY 2014-15, FY 2015-16 and FY 2016-17 budgets.

POLICY CONSIDERATIONS

As discussed above, in 2005 the Department of Elections issued a RFP for new voting equipment and related services for up to six years. In 2007, based on the results of this competitive RFP process, the Board of Supervisors approved the existing agreement between the Department of Elections and Dominion Voting Systems (previously Sequoia Voting Systems) to purchase a new voting system and provide related services for the initial four-year period from December 11, 2007 through December 10, 2011, with two one-year options to extend the agreement, through December 10, 2013. As noted above, based on the first and second amendments to the subject agreement, the current agreement between the Department of Elections and Dominion Voting Systems currently extends through December 10, 2013 for a total not to exceed $16,045,033. Therefore, the up to six-year term contemplated in the original solicitation will be completed by December 10, 2013.

However, the proposed ordinance would extend the existing agreement by an additional three years, or through December 10, 2016, for an additional cost of $3,645,000, or a total not to exceed $19,690,033. This additional three-year term would be beyond the terms of the original RFP, without undergoing a new competitive RFP process. Therefore, approval of the proposed third amendment is being requested with an ordinance, rather than a resolution, because the proposed ordinance also requires that the Board of Supervisors find that it is reasonable and in the public interest to waive, and therefore do waive, the requirement in the City's Administrative Code Section 21.9 that all City contracts for commodities and/or services be limited to the initial terms and period of extensions included in the previous solicitation.

Mr. Arntz advises that he is requesting approval of the proposed amendment to extend this agreement with Dominion Voting Systems for three years, without undergoing a new competitive RFP process, because: (a) the last time the Department of Elections issued a RFP for a new voting system, the RFP process took over two and a half years to complete, (b) the Department of Elections does not anticipate having additional funds to secure new voting equipment and only wants to extend existing election services, maintenance and licenses using the current voting equipment, (c) there are no new voting systems currently available that have been certified by the California Secretary of State that can accommodate elections using Ranked-Choice Voting, (d) only one contractor offers Ranked Choice Voting options, which is the City's current contactor, Dominion Voting Systems, and (e) the existing six-year agreement is unusually short and unique to San Francisco for a voting system. Furthermore, Mr. Arntz states that Dominion Voting Systems has provided satisfactory services to the Department of Elections.

RECOMMENDATION

Approve the proposed ordinance.

Item 6 File 13-0962	Department: Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Note: This item was continued from the November 6, 2013 Budget and Finance Committee meeting.

Legislative Objectives

- The proposed resolution would (a) exercise the first two-year option to extend the existing contract between the City, on behalf of the PUC, and S&S Trucking Corporation from December 20, 2013 through December 19, 2015 and (b) increase the not-to-exceed contract amount from $9,000,000 to $13,500,000 for hauling biosolids and grit, pursuant to Charter Section 9.118(b).

Key Points

- The Public Utilities Commission (PUC) operates four sewage/wastewater treatment plants which together generate approximately 80,000 tons of biosolids and grit material annually.
- In 2007, the Office of Contract Administration (OCA) working with the PUC competitively bid the City's biosolids and grit hauling services for the PUC and selected S&S Trucking Corporation (S&S Trucking) as the lowest bidder. Although the Board of Supervisors did not approve a resolution authorizing the City to enter into this contract (File 07-1386), based on a subsequent court ruling, on December 20, 2008, the OCA awarded a not-to-exceed $9,000,000 contract to S&S Trucking. Based on subsequent amendments, the existing contract with S&S Trucking is through December 19, 2013, with two, two-year options to extend, or through December 19, 2017.

Fiscal Impact

- As of September 30, 2013, the PUC had expended $8,236,805 to haul 385,564 tons of biosolids and grit from the City's wastewater treatment plants. Based on these costs incurred to date, if the proposed contract with S&S Trucking is extended for two additional years or through December 19, 2015, the PUC would incur an estimated total of $12,627,162 in costs. An additional contingency factor of $872,838 or approximately 6.9% is included, for an additional $4,500,000 or a total of $13,500,000.

Policy Consideration

- Administrative Code Section 21C.5 subjects employees who haul solid waste, including sludge, to the City's prevailing wage provisions. However, S&S Trucking's drivers/haulers are independent contractors and not employees. The PUC intends to competitively bid the subject sludge hauling contract during the first two-year extension period.

Recommendations

- Amend the proposed resolution to confirm the PUC's intention not to exercise the second two-year option to extend the existing S&S Trucking contract.
- Approve the proposed resolution as amended.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

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

Background

The Public Utilities Commission (PUC) operates the following four sewage/wastewater treatment plants:

- Oceanside Plant on the Great Highway near Sloat Boulevard;
- Southeast Plant near Third Street and Cesar Chavez Boulevard;
- Treasure Island on Treasure Island; and
- Northpoint near Fisherman's Wharf.

Three of these sewage/wastewater treatment plants operate 24 hours a day, 365 days a year and together generate approximately 80,000 tons of biosolids and grit[1] material annually[2].

In 2007, the Office of Contract Administration (OCA) working with the PUC competitively bid the City's biosolids and grit (sludge) hauling services for the PUC. The OCA and PUC received five bids and selected S&S Trucking Corporation (S&S Trucking) as the lowest responsive and responsible bidder for a five-year contract estimated at a cost of approximately $8.58 million. However, on November 13, 2007, the Board of Supervisors, following the recommendation of their Budget and Finance Committee, voted not to approve the proposed resolution authorizing the OCA and PUC to enter into a contract with S&S Trucking (File 07-1386).

As a result, in November of 2007, the PUC extended the existing contract with Sunset Scavenger[3], which had historically provided the sludge hauling services for the PUC on a sole source basis from the early 1950s until 2007.

On November 20, 2007, S&S Trucking filed a petition in Superior Court alleging that the Board of Supervisors could not interfere with the PUC's and OCA's award of this contract to S&S

[1] Biosolids are treated sludge that comes out of the wastewater treatment plants. Grit is the particulate matter (e.g., sand and rocks) that is removed before treatment at the wastewater plants.

[2] Approximately 73% of the loads are hauled from the Southeast Plant, which generally serves the eastern portion of the City, 27% is hauled from Oceanside Plant, which generally serves the western portion of the City, and less than 1% is hauled from the Treasure Island Plant, which serves Treasure Island. The Northpoint Plant generally only operates during the rainy season to handle stormwater overflow.

[3] Sunset Scavenger is currently known as Recology, which provides garbage and recycling services for all City residents and commercial customers.

Trucking because the contract did not have a term of ten years or more or anticipated expenditures of $10,000,000 or more, in accordance with the City's Charter. Both the Superior Court and subsequently the State Court of Appeal ruled that the Board of Supervisors lacked the authority to approve or disapprove the S&S Trucking contract, in accordance with the City's Charter and the PUC and OCA had the sole authority to award the contract.

On December 20, 2008, the OCA awarded an approximately three-year and four-month contract from December 20, 2008 through April 30, 2012 for a total not-to-exceed $9,000,000, with two, two-year options to extend, or through April 30, 2016, to S&S Trucking to haul the PUC's biosolids and grit. This original contract with S&S Trucking has been subsequently modified by OCA four times, to update contract conditions, increase prices, add new services and extend the initial contract term through December 19, 2013, with two, two-year options to extend, or through December 19, 2017.

Under the existing S&S Trucking contract, costs are charged to the PUC on a per mile basis, with additional fuel and bridge toll costs passed through to the PUC. The costs vary depending on the season, the materials being hauled and the distance to the disposal location. Based on the modifications to the contract, the rates per mile have increased since the contract began in 2008, as shown in Table 1 below.

Table 1: S&S Rates Charged per Mile for Biosolids and Grit Hauling

Effective Dates	Biosolids	Grit		
		M-F	**Sat**	**Sun**
12/20/08	$3.32	$3.14	$3.30	$3.45
1/1/11	$3.36	$3.18	$3.34	$3.49
2/1/12	$3.44	$3.26	$3.42	$3.57

Biosolids are disposed in various locations, requiring hauling of different mileage distances from each sewage treatment plant, including:

1. Various land application sites to enhance pastures in Solano and Sonoma counties;
2. Recology's Hay Road land fill site in Vacaville, Solano County; and
3. Synagro Central Valley Compost Facility in Merced County.

Grit is disposed in the Keller Canyon Landfill owned by Allied Waste Industries in Solano County.

As shown in Table 2 below, as of September 30, 2013, the PUC had expended a total of $8,236,805 to haul 385,564 tons of biosolids and grit from the City's wastewater treatment plants under the existing S&S Trucking contract, at an average cost of $21.36 per ton.

Table 2: Total Costs, Tonnage and Average Costs by Calendar Year from December 20, 2008 through September 30, 2013

Year	Biosolids	Grit	Total	Total Tons	Average Cost/Ton
2008*	$63,825	$5,733	$69,558	3,132	$22.21
2009	1,534,441	41,725	1,576,166	80,474	19.59
2010	1,612,059	51,360	1,663,420	80,906	20.56
2011	1,573,205	91,674	1,664,878	78,760	21.14
2012	1,794,764	52,689	1,847,454	81,110	22.78
2013**	1,391,558	23,771	1,415,329	61,182	23.13
Total	**$7,969,852**	**$266,952**	**$8,236,805**	**385,564**	**$21.36**

*Reflects costs from December 20-December 31, 2008.

**Reflects tonnage and costs from January through September of 2013.

From 2009 through 2013, the hauling cost per ton has increased at an average rate of 4.3 percent per year.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (a) exercise the first two-year option to extend the existing contract between the City, on behalf of the PUC, and S&S Trucking Corporation from December 20, 2013 through December 19, 2015 and (b) increase the not-to-exceed contract amount from $9,000,000 to $13,500,000 for hauling biosolids and grit, pursuant to Charter Section 9.118(b).

FISCAL IMPACT

The existing contract with S&S Trucking is for a period of five years and for a not to exceed $9,000,000. The proposed contract would be extended for two years, through December 19, 2015 for an additional $4,500,000 or a total of $13,500,000. As shown in Table 2 above,

$7,969,852 or 97% of the total $8,236,805 costs incurred to date by the PUC are from hauling and disposing of biosolids from the City's wastewater treatment plants.

As shown in Table 3 below, based on actual costs incurred to date, if the proposed contract with S&S Trucking is extended for two additional years or through December 19, 2015, the PUC would incur an estimated total of $12,627,162 in costs.

Table 3: Projected Costs to Extend the S&S Trucking Contract by Two Years

Year	Total
Total through September 30, 2013 (Table 2)	$8,236,805
October 1-December 31, 2013 Projected	471,775
2014 Projected	1,959,291
2015 Projected	1,959,291
Subtotal	**$12,627,162**
Contingency (6.9%)	**872,838**
Total	**$13,500,000**

However, Ms. Bonnie Jones, Biosolids Coordinator at the PUC advises that the PUC has included a contingency factor of $872,838 or approximately 6.9% because:

- Projected rates do not assume any increases in fuel or bridge tolls, which may be passed through to the PUC, as increases in rates;
- Actual tonnage of biosolids and grit being hauled each year has been increasing as the economy improves and the residential and work population in San Francisco increases. An estimated 81,576 tons are projected to be hauled in 2013, which may further increase over the next two years; and
- The existing Recology Hay Road land fill contract in Vacaville, Solano County expires on November 30, 2014, such that the PUC does not currently know where or what the costs will be to haul and dispose of biosolids as of December 1, 2014. Currently, approximately 52% of all biosolids are disposed at the Hay Road land fill.

According to Mr. Carlos Jacobo, PUC Budget Manager, the Wastewater Enterprise operating budget includes the cost of the S&S Trucking contract, which is funded from sewer service charges to customers.

POLICY CONSIDERATION

According to Ms. Donna Levitt, Labor Standards Enforcement Officer in the City's Office of Labor Standards Enforcement (OLSE), in accordance with City Administrative Code Section 21C.5, the Board of Supervisors is responsible for determining the prevailing wage rates paid to ***employees*** (emphasis added) engaged in the hauling of solid waste, including sludge, based on the existing collective bargaining agreement between the Teamsters and Recology[4]. Ms. Jones advises that S&S Trucking's drivers/haulers are independent contractors and not employees of S&S Trucking. Under the existing Administrative Code provisions, employees are subject to the prevailing wage requirements but independent contractors are not subject to the prevailing wage requirements. Nevertheless, Ms. Levitt advises that during the term of the existing S&S Trucking contract, the OLSE conducted two audits, both of which resulted in the payment of back wages and penalties for employees hired by the independent contractors to S&S Trucking for prevailing wage violations.

Ms. Levitt further advises that, the Board of Supervisors approved an ordinance (File 11-1190; Ordinance 12-12) amending the prevailing wage provisions to require that any new solid waste or sludge hauling contract be provided by employees paid at the prevailing wage rates. However, the proposed resolution would extend the existing contract by two years, rather than approve a new contract, and as such, the S&S Trucking drivers/haulers will continue to be independent contractors, not subject to the City's prevailing wage requirements.

Ms. Ivy Fine, Manager of the Contract Administration Bureau for the PUC, advises that, rather than entering into a new contract at this time that would be subject to the City's new prevailing wage requirements, the PUC is requesting the first two-year extension of the existing S&S Trucking contract through December 19, 2015, because the PUC is currently investigating more comprehensive, beneficial and flexible approaches to reusing biosolids. Ms. Fine advises that at this time the PUC does not intend to exercise the second two-year contract extension option with S&S Trucking. Rather, Ms. Fine advises that the PUC intends to competitively bid the subject sludge hauling contract during the first two-year extension period.

Ms. Fine estimates that the PUC will require additional time to identify various strategies and approaches to more beneficially reusing biosolids. In addition, Ms. Fine estimates the PUC will then need 4-6 months to develop the procurement documents and another 6-8 months to competitively bid, evaluate and execute a new contract, which would be subject to the City's prevailing wage requirements. Given that the existing S&S Trucking contract expires on

[4] Specifically the provisions of the Collective Bargaining Agreement between Sanitary Truck Drivers and Helpers Union Local 350, International Brotherhood of Teamsters and Recology Sunset & Recology Golden Gate, in effect from January 1, 2012 through December 31, 2016.

December 19, 2013, Ms. Fine advises that the PUC does not have sufficient time to complete these tasks within that timeframe.

RECOMMENDATIONS

1. Amend the proposed resolution to confirm the PUC's intention not to exercise the second two-year option to extend the existing S&S Trucking contract.
2. Approve the proposed resolution as amended.