CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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July 14, 2023

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: July 19, 2023 Budget and Finance Committee Meeting

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Item 3 File 23-0749	Department: Office of the Treasurer & Tax Collector

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes the Office of the Treasure and Tax Collector (TTX) to enter into the third amendment to their agreement with Banc of America Merchant Services, LLC and Bank of America, N.A. (Bank of America) to increase the not-to-exceed amount by $1,127,020 for a total not-to-exceed of $9,127,020 and extend the contract by one year from August 14, 2023 through August 14, 2024, for a total term of 11 years from August 15, 2013 through August 24, 2024.

Key Points

- TTX entered into an agreement with Bank of America on September 25, 2013 to provide merchant processing services for credit card payments. Bank of America was selected through a competitive request for proposals (RFP) process and received the highest score.
- The proposed amendment adds an addendum fee schedule for services provided to the Department of Public Health for the use and purchase of credit card processing terminals that provide payment integration with Epic Electronic Health Record System.

Fiscal Impact

- The proposed $1,127,020 increase to the contract spending authority would fund $1,000,000 in transaction fees and $127,020 for the purchase of the credit card processing terminals and associated fees.
- The original agreement did not include a not to exceed amount as TTX reports this was considered a "zero-dollar revenue contract" and the cost of the fee was netted out from the transaction. In 2019, changes to the accounting practices allowed TTX to track the cost of fees. They used this information to estimate an $8 million not to exceed that is being increase to $9,127,020 through the proposed resolution.

Policy Consideration

- The RFP used to procure this contract stated a maximum term of 5 years with two 2-year extensions at City's discretion or a total maximum term of nine years. TTX extended the agreement through August 2022, resulting in a ten-year, under the Mayor's 47th Supplement to the COVID Emergency Declaration, now expired, which allowed Departments extend agreements without complying with the procurement procedures of the Administrative Code. The proposed resolution would extend the agreement by one year, for a total term of 11 years, now two years beyond the term stated in the RFP. According to TTX staff, the extension is necessary because the Department was delayed in issuing a new RFP, but plans to do so in July 2023.

Recommendation

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

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

On September 25, 2013, the Office of the Treasurer & Tax Collector (TTX) entered into an agreement with Banc of America Merchant Services, LLC and Bank of America, N.A. (Bank of America) to provide merchant processing services, which allows the City to accept credit and debit cards at point-of-sale terminals.[1] These merchant services are primarily for processing in person card transactions and credit card payments. According to the proposed resolution, in FY 2021-22, TTX estimates that these services generated $64 million in revenue from over 500,000 transactions.

Bank of America was selected to provide merchant processing services following a Request for Proposal that was issued on May 11, 2012. There were seven respondents, which included Bank of America Merchant Services, Bank of the West - Elavon, Chase Paymentech, Citibank Merchant Services, FIS, U.S. Bank – Elavon, and Wells Fargo Merchant Services. The proposals were reviewed by four panelists,[2] and scored out of 100 points and then weighted by staff to compare the top candidates. Bank of America Merchant Services received the highest weighted score, of 148.50 and the next closest score was 134.82 for U.S. Bank.

The original agreement with Bank of America was for a term of five years from August 15, 2013 through August 15, 2018. The agreement includes the Merchant Processing Agreement (MPA), which governs the processing services related to credit, debit, and other card transactions and services and specifies the fee schedule for these transactions. The agreement has been amended two times. It was amended first on July 31, 2018 to extend the term through August 14, 2022, update the fee schedule, and add additional services. The second amendment extended the term through August 14, 2023 and amended the MPA to remove the annual minimum bankcard volume requirement between July 1, 2021 and August 15, 2022.

[1] According to the proposed resolution, departments processing credit card payments include Animal Care and Control, County Clerk, San Francisco International Airport, Office of Assessor-Recorder, Art Commission, Board of Supervisors, Superior Court, Department of Building Inspection, Department of Public Health, Fire Department, Metropolitan Transportation Authority, Public Library, Port Authority, San Francisco Public Utilities Commission, Recreation and Parks, and San Francisco Unified School District.

[2] Panelist titles were not provided as TTX reports that it was a historic practice to not reveal this information and the document retention period for this has expired.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the third amendment to the agreement between TTX and Bank of America to increase the not-to-exceed amount of the contract by $1,127,020 for a total not to exceed amount of $9,127,020 and extend the term by one year from August 14, 2023 through August 14, 2024, for a total term of 11 years from August 15, 2013 through August 24, 2024.

The proposed amendment adds an addendum fee schedule for services provided to the Department of Public Health. The addendum describes the use and purchase of credit card processing terminals related to Bank of America's Health Payment Solutions Platform. These terminals provide payment integration with Epic Electronic Health Record System, allowing for integration for point-of-service transactions as well as integration to process payments through MyChart, Epic's patient portal.

Exhibit 1 details the current MPA fee schedule for transactions, which has been in place without changes since the July 2018 amendment.

Exhibit 1: Merchant Processing Agreement Fee Schedule

Card Type	Authorization Fee (per attempt)	Per Item Fee (per settled sale/transaction)
Visa	$0.0140	$0.0000
Master Card	$0.0140	$0.0000
American Express	$0.0500	$0.0000
Discover	$0.0140	$0.0000
PIN Debit	$0.0000	$0.0400
Per Occurrence Fees		**Amount**
Chargeback		$10.00
Return Item		$0.0140
Servicers Hourly Rate		$125.00
Voice Authorization		$0.95
Automated Clearing House (ACH) Reject and Deposit Fees		Waived
Wire Deposit & Pin Debit Adjustment Fee		N/A
Monthly Fee		**Amount**
Minimum Discount Fee		$10.00
Client Line Fee, Paper Statement Fee		Waived

Source: First Amendment MPA

TTX staff report that once this agreement ends in August of 2024, they will be entering into a new contract for merchant processing services. This will be competitively procured through an RFP that they intend to issue by the end of July 2023.

FISCAL IMPACT

The proposed $1,127,020 increase to the contract is projected to be used as shown in Exhibit 2 below.

Exhibit 2: Projected Uses of Contract Funds

Category	Estimated Cost
Health Payment Solutions Platform Equipment Costs	
Equipment Purchase (200 units at $379.00 per unit)	$75,800
Equipment Fees per month (200 units at $16.00 per month per unit)*	51,200
Account Item Fee (200 units at $0.10 per unit)	20
Subtotal, Equipment (Credit Card Processing Terminals)	*$127,020*
Department fees rounded up**	$1,000,000
Total	$1,127,020

Source: TTX

*Note: The $16.00 a month in fees is comprised of an $8.00 monthly account fee and an $8.00 monthly terminal fee. TTX is budgeting equipment fees for 16 months because they anticipated equipment could be utilized sooner.

**TTX estimates department fees of $970,365 for 12 months and rounded this figure to $1 million

No more than $127,020 will be used for the purchase of the credit card processing terminals (equipment) and the associated fees as outlined in the Payment Solutions Addendum based on an estimated 6,000 transactions. TTX estimates that the department fees associated with merchant processing will be $970,365 for 12 months. This is based on the monthly amount of fees collected July through May of FY 2022-23 and discounted 19 percent to remove select payments from Airport, Fire, and Public Health departments that will be moving to other City contracts[3], which was roughly 19 percent of the total payments processed in FY 2022-23. The estimated department fees and equipment costs were rounded up to $1,000,000, which is $29,635 (3 percent) more than $970,365 estimated.

TTX reports the original agreement and subsequent amendments did not include a not to exceed amount, which is required under Administrative Code Section 21.19, because the original agreement was considered a "zero-dollar revenue contract" at the time it was signed in 2013, as the transaction fee that Bank of America charged each department was netted out from the revenue earned through a payment. According to TTX staff, the City updated its accounting practices in 2019 and TTX subsequently began to centralize and track the service fees.

The proposed third amendment similarly does not include a not to exceed amount. However, to calculate the $9,127,020 not-to-exceed amount presented in the proposed resolution, TTX staff

[3] TTX reports that they manage two other contracts for merchant processing that are focused on processing online transactions. These contracts are with First Data Merchant Services CityBase. TTX also reports that departments may be granted a waiver to enter department-specific contracts if they do not wish to use a citywide system. Two departments have been granted waivers: the Library, which has a system to integrate with its Sierra Integrated Library System and Recreation and Parks Department to integrate with ActiveNet for reservations.

report that they estimated $8 million in contract costs under the current agreement and added the $1,127,020 increase associated with the proposed amendment. TTX's estimate of $8 million for the current agreement based on actual contract expenses from 2019 to the present and retroactively applied those fees to prior years when fees were not tracked.

POLICY CONSIDERATION

Extension of Contract Term

The RFP used to procure this contract stated a maximum term of 5 years with two 2-year extensions at City's discretion or a total maximum term of nine years. TTX extended the agreement through August 2022, resulting in a ten-year, under the Mayor's 47th Supplement to the COVID Emergency Declaration, now expired, which allowed Departments extend agreements without complying with the procurement procedures of the Administrative Code. The proposed resolution would extend the agreement by one year, for a total term of 11 years, now two years beyond the term stated in the RFP. According to TTX staff, the extension is necessary because the Department was delayed in issuing a new RFP, but plans to do so in July 2023.

RECOMMENDATION

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

Items 6 & 7 Files 23-0618, 23-0619	Department: Port Commission (Port)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolutions would approve mutual termination agreements between the Port of San Francisco (Port) and (1) D&G Company dba Lou's Pier 47 (File 23-0618) and (2) 340 Jefferson, LLC dba Pompei's Grotto (File 23-0619), and authorize the Port's Executive Director to enter into modifications to the mutual termination agreements that do not materially increase the obligations or liability of the City.

Key Points

- Lou's Pier 47 and Pompei's Grotto have operated as restaurants on Jefferson Street on Port property since 1977 and 1946, respectively. Due to the COVID-19 pandemic, Lou's Pier 47 and Pompei's Grotto ceased operations in March 2020 and have not reopened. As of February 15, 2023, Lou's Pier 47 owed $514,346 in past due rent and interest and Pompei's Grotto owed $494,761 (net of security and environmental clearance deposits).
- The Port has negotiated mutual termination agreements with Lou's Pier 47 and Pompei's Grotto to settle past due rent and quickly regain the premises without litigation. According to Port staff, both properties are in relatively good condition and new tenants would be able to begin operations with minimal repairs or improvements. As part of the mutual termination agreements, the tenants agreed to pay for the Port's cost to board up broken windows and doors and the removal of exterior signage. Lou's Pier 47 repaired its broken elevator and removed utilities and access to the neighboring Crab Boat Owner's Association (CBOA) premises, which the restaurants had used for storage. Pompei's Grotto agreed to indemnify the Port for claims related to past due loans. The Port would begin seeking new tenants for the premises immediately after approval of the proposed mutual termination agreements.

Fiscal Impact

- Under the proposed mutual termination agreements, Lou's Pier 47 would pay a $200,000 termination fee in exchange for $514,346 in waived rent and interest, and Pompei's Grotto would pay a $150,000 termination fee in exchange for $494,761 in waived rent and interest. The net cost to the Port between the two lease terminations would be $659,107.
- Pompei's Grotto has also agreed to transfer its personal property to the Port, which it estimates to be valued at $122,000. The Budget and Legislative Analyst is unable to validate that estimate.

Recommendation

- Approve the proposed resolutions.

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.

BACKGROUND

Lou's Pier 47

Lou's Pier 47 has operated as a restaurant on Port of San Francisco (Port) property at 300 Jefferson Street since 1977, first as the Sports Fishing Center, and subsequently as Lou's Blues. In 1997, Lou's Blues declared bankruptcy and the lease was sold at Bankruptcy Court auction to Lou's Pier 47. In 2010, the Board of Supervisors approved a new lease with Lou's Pier 47 for a term of 15 years and six months, from July 2010 through December 2025, with a five-year option to extend through December 2030. Also in 2010, the Port issued a license for non-exclusive sidewalk use through December 2030.

Pompei's Grotto

Pompei's Grotto has operated as a restaurant on Port property at 340 Jefferson Street since 1946. In 1975, the Port entered into a 61-year lease with Pompei Enterprises Corporation to operate a restaurant and entertainment venue on the premises. In 2005, the Port entered into a companion Sidewalk Encroachment Permit Revocable License for the plaza in front of the restaurant. In June 2015, the Port approved the assignment of the lease and license to 340 Jefferson, LLC. Pompei Grotto's lease expires on April 20, 2036.

COVID-19 Pandemic

Due to the COVID-19 pandemic, Lou's Pier 47 and Pompei's Grotto ceased operations in March 2020 and have not reopened. As of February 15, 2023, Lou's Pier 47 owed $514,346 in past due rent and interest and Pompei's Grotto owed $494,761 (net of security and environmental clearance deposits). Because neither restaurant reopened, they were not eligible for the Port's COVID-19 Rent Relief Program. After inspecting the premises, Port staff negotiated mutual termination agreements with the two tenants. In April 2023, the Port Commission approved the mutual termination agreements.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would approve mutual termination agreements for leases and licenses between the Port and (1) D&G Company dba Lou's Pier 47 (File 23-0618) and (2) 340 Jefferson, LLC dba Pompei's Grotto (File 23-0619), and authorize the Port's Executive Director to enter into modifications to the mutual termination agreements that do not materially increase the obligations or liability of the City.

Under the mutual termination agreements, the Port would receive termination fees of $200,000 from Lou's Pier 47 and $150,000 from Pompei's Grotto in exchange for waiving all unpaid rent

and interest. According to Don Kavanagh, Port Senior Property Manager, the owner of Pompei's Grotto initially refused to provide a termination fee, but after threats of litigation, Pompei's agreed to pay $150,000. The Port would also receive all personal property in the restaurant (such as furniture and kitchen equipment), which Pompei's Grotto estimated to be valued at $122,000.[1] Port management believes that the mutual termination option is the best path forward for each property, as it avoids the costs, risks, and time of litigation and allows the Port to regain the premises quickly to seek new tenants.

According to Senior Property Manager Kavanagh, both properties are in relatively good condition and new tenants would be able to begin operations with minimal repairs or improvements. As part of the mutual termination agreements, the tenants agreed to pay for the Port's cost to board up broken windows and doors and the removal of exterior signage. Lou's Pier 47 repaired its broken elevator and removed utilities and access to the neighboring Crab Boat Owner's Association (CBOA) premises, which the restaurants had used for storage. For Pompei's Grotto, the tenant agreed to indemnify the Port for any claims related to the Paycheck Protection Act and other emergency loans to prevent the Small Business Administration from placing liens on the property. The key terms of the mutual termination agreements are shown in Exhibit 1 below.

Exhibit 1: Key Terms of Mutual Termination Agreements

	Lou's Pier 47 (File 23-0618)	**Pompei's Grotto (File 23-0619)**
Termination Fee	$200,000	$150,000
Rent Waived (As of February 2023)	$514,346	$494,761
Personal Property	To remain on premises and transferred to Port via Bill of Sale	
Conditions of Surrender	Tenant must replace broken windows and doors and maintain property until final Termination Date	
Board-Up Costs	$7,676	$2,800
Exterior Signage	Tenant must remove or pay $3,500 disposal fee to Port	
CBOA Space	Tenant must remove utilities connection and access to CBOA space	
Indemnity	N/A	Tenant must indemnify Port for claims related to Paycheck Protection Act and other emergency loans

Source: Proposed Mutual Termination Agreements

According to Senior Property Manager Kavanagh, the Port would begin seeking new tenants for the premises immediately after approval of the proposed mutual termination agreements.

[1] The Lou's Pier 47 termination agreement also included the transfer of personal property to the Port, but it was not considered a material contribution from the tenant.

FISCAL IMPACT

Under the proposed mutual termination agreements, Lou's Pier 47 would pay a $200,000 termination fee in exchange for $514,346 in waived rent and interest, and Pompei's Grotto would pay a $150,000 termination fee in exchange for $494,761 in waived rent and interest. The net cost to the Port between the two lease terminations would be $659,107, as shown in Exhibit 2 below.

Exhibit 2: Fiscal Impact to Port from Mutual Termination Agreements

	Lou's Pier 47 (File 23-0618)	Pompei's Grotto (File 23-0619)	Total
Termination Fee	$200,000	$150,000	$350,000
Waived Rent	(514,346)	(494,761)	(1,009,107)
Net Cost to Port	**($314,346)**	**($344,761)**	**($659,107)**

Source: Proposed Mutual Termination Agreements

In addition to the $150,000 termination fee, Pompei's Grotto has agreed to transfer its personal property to the Port, which it estimates to be valued at $122,000. The Budget and Legislative Analyst is unable to validate this estimate. Lou's Pier 47 performed a major renovation in 2012 with an estimated cost of over $1 million. These improvements and property transfers may assist the Port in marketing the spaces to new tenants for greater or faster revenue generation.

POLICY CONSIDERATION

According to Port management, mutual termination agreements are beneficial because the Port recovers a portion of the rent due and obtains possession of the properties faster and with greater certainty and less cost than pursuing an unlawful detainer action, from which the Port could only recover 12 months of unpaid rent. The mutual termination option also avoids the potential of the tenant declaring bankruptcy, which may result in little to no recovery of past due rent. According to Senior Property Manager Kavanagh, these properties are ready for new tenants with minimal repairs and improvements.

In June 2022, the Board of Supervisors approved a mutual termination agreement between the Port and Alioto Fish Company (File 22-0438). Alioto paid a $250,000 termination fee and forfeited a $25,975 security deposit in exchange for the Port waiving $861,427 in unpaid rent and late fees. As of this writing, the space has not been leased. Because the proposed resolutions are similar to recent Board of Supervisors action, the Budget and Legislative Analyst recommends approval.

RECOMMENDATION

Approve the proposed resolutions.

Item 9 File 23-0557	Department: Public Utilities Commission (PUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would approve Amendment No. 4 to the Scheduling Coordinator Service and Full Load Service contracts between the San Francisco Public Utilities Commission (SFPUC) and the U.S. Department of Energy's Western Area Power Administration (WAPA), increasing the not-to-exceed amount by $13,130,000, for a total not-to-exceed of $41,500,000, and extending the term by five years through December 2029.

Key Points

- SFPUC is entitled to purchase low-cost electricity for Treasure Island and Yerba Buena Island from the federal government under the Federal Base Closure and Realignment Act. Since 2001, SFPUC has had a Base Resource electricity purchase contract with WAPA, which expires in December 2054. SFPUC also has a Scheduling Coordinator Service and Full Load Service contract to meet California Independent Systems Operator (CAISO) requirements and supplement the electricity provided through the base contract. The Scheduling Coordinator Service and Full Load Service contracts expire December 31, 2024.
- WAPA typically seeks certainty from its customers every five years to make advanced energy purchases and avoid spikes in the market. The proposed increase in the contract amount is due to the estimated cost of the 2025-2029 supplemental electricity and scheduling coordinator costs, including a ten percent contingency.

Fiscal Impact

- The proposed Amendment No. 4 would increase the not-to-exceed amount of the contracts by $13,130,000. For 2025-2029, SFPUC estimates annual electricity purchased under the Base Resources Contract of 3,101 megawatt hours (MWh) while supplemental electricity purchases are estimated to range from 15,674 MWh to 18,131 MWh per year.
- Most residents on Treasure Island are customers of the Treasure Island Development Authority (TIDA). The contracts are funded by rates charged by SFPUC to these customers through TIDA. TIDA residential customers are not individually metered, but receive a uniform utility fee that bundles water, electricity, and natural gas, averaged across occupied residential units.

Recommendation

- Approve the proposed ordinance.

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 Public Utilities Commission (SFPUC) is entitled to purchase low-cost electricity for Treasure Island and Yerba Buena Island from the federal government under the Federal Base Closure and Realignment Act. In January 2001, the Board of Supervisors approved a base resource electricity purchase contract between SFPUC and the U.S. Department of Energy Western Area Power Administration (WAPA) for a term of 20 years, from January 2005 through December 2024, and an amount not to exceed $20,000,000 (File 00-2191). In May 2021, the Board of Supervisors approved Amendment No. 1 to the contract, extending the term by 30 years through December 2054, and increasing the not-to-exceed amount by $7,691,541, for a total not to exceed $27,691,541 (File 21-0336).

Subsequently, the Board of Supervisors approved a supplemental electricity[1] purchase contract between SFPUC and WAPA for (1) Scheduling Coordinator Services,[2] and (2) electricity to supplement the electricity provided through the base contract (Full Load Service). The supplemental electricity purchase contract has been amended three times, with the term extended through December 2024 and the not-to-exceed amount increased to $28,370,000 (Files 07-1458, 11-1096, and 18-0356).[3]

The three contract amendments were proposed at WAPA's request, as WAPA typically seeks certainty from its customers every five years to make advanced energy purchases and avoid spikes in the market.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would approve Amendment No. 4 to the Scheduling Coordinator Services and Full Load Service contracts between SFPUC and WAPA, increasing the not-to-exceed amount by $13,130,000, for a total not-to-exceed of $41,500,000, and extending the term by five years through December 2029. All other contract terms would remain unchanged.

[1] Under the 1998-2004 power purchase agreement between SFPUC and WAPA, WAPA guaranteed that TIDA's electricity requirements in excess of the base allocation would be met through a supplemental agreement with PG&E. The subsequent 2005-2024 power purchase agreement did not have a guarantee for supplemental electricity.
[2] Scheduling Coordinator Services are required for all electricity transmitters by the California Independent System Operator (CAISO), which operates California's wholesale power grid. The Scheduling Coordinator is needed to meet financial, operational, equipment, software, and security requirements, and to maintain a 24-hour operations center.
[3] The proposed ordinance incorrectly states that the contract expires on September 30, 2024.

The proposed ordinance would also: 1) indemnify the United States against claims results from acts of the City under the contract amendment, and 2) waive contract requirements in Administrative Code Sections 21.29 and 21.35 regarding maximum costs and liability of claimants for filing false claims. These code provisions, which are not standard in federal power purchase contracts, were also waived in ordinance approving the third amendment to the WAPA agreements.

According to Jeremy Spitz, SFPUC Local and Regional Policy and Government Affairs Manager, the increase in the contract amount is due to the estimated cost of the 2025-2029 supplemental electricity and scheduling coordinator costs, including a ten percent contingency. Spending in excess of the $42 million would require Board of Supervisors' approval (the proposed $41.5 million not-to-exceed amount plus the $500,000 buffer provided by City Charter Section 9.118(b)).

While the base allocation portfolio is hydro generation, the subject contract to provide supplemental electricity generally is based on lowest market cost from unspecified resources within California.

FISCAL IMPACT

The electricity received under the Base Resource Contract between SFPUC and WAPA varies each year and is accordingly supplemented by electricity purchases under the Full Service Contract. For 2025-2029, SFPUC estimates annual electricity purchased under the Base Resources Contract of 3,101 megawatt hours (MWh) while supplemental electricity purchases are estimated to range from 15,674 MWh to 18,131 MWh per year. Projected contract expenditures are shown in Exhibit 1 below.

Exhibit 1: Projected Contract Expenditures

Year	Supplemental Energy	Scheduling Coordinator Services	Total Expenditures
2025	$1,627,692	$925,275	$2,552,967
2026	1,561,107	953,033	2,514,140
2027	1,487,072	981,624	2,468,696
2028	1,432,628	1,011,073	2,443,701
2029	1,458,258	1,041,405	2,499,663
Subtotal, Projected Expenditures	*$7,566,758*	*$4,912,410*	*$12,479,168*
Contingency (10% of Projected Expenditures)	756,676	491,241	1,247,917
Actual and Projected Expenditures through 2024			27,772,915
Total Not-to-Exceed			**$41,500,000**

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

SFPUC estimates that supplemental energy will cost approximately $100.51 per MWh in 2025, decreasing to $77.74 per MWh in 2029 and will include annual portfolio management charges of $43,285 to $48,717 in the same timeframe. A 10 percent contingency is included to account for increased energy costs or volume. A detailed breakdown of anticipated contract expenditures is included as Attachment 1 to this report.

Most residents on Treasure Island are customers of the Treasure Island Development Authority (TIDA). The SFPUC serves these customers under rates set by TIDA. TIDA residential customers

are not individually metered, but receive a uniform utility fee that bundles water, electricity, and natural gas, averaged across occupied residential units. The electricity rate charged to the TIDA customers is $0.234 per kilowatt hour (kWh) as of April 2023, which is less than PG&E's current 2023 retail rate of $0.298 per kWh.

RECOMMENDATION

Approve the proposed ordinance.

Attachment 1: Detailed Breakdown of Anticipated Expenditures

Year	Supplemental Electricity (MWh)	Esimated Price per MWh	Total Supplemental Electricity Cost	Portfolio Management Charge	Scheduling Coordinator Charge	CAISO Charges and FERC Fees	Restoration Charges	Total Expenditures
2025	15,764	$100.51	$1,584,408	$43,285	$64,908	$778,516	$81,851	$2,552,967
2026	16,330	$92.87	1,516,523	44,583	66,855	801,871	84,307	2,514,140
2027	16,913	$85.21	1,441,151	45,921	68,861	825,928	86,836	2,468,696
2028	17,513	$79.10	1,385,330	47,298	70,927	850,705	89,441	2,443,701
2029	18,131	$77.74	1,409,541	48,717	73,055	876,227	92,124	2,499,663
Subtotal, Projected Expenditures			*$7,336,953*	*$229,804*	*$344,605*	*$4,133,247*	*$434,558*	*$12,479,168*
Contingency (10% of Projected Expenditures)			733,695	22,980	34,461	413,325	43,456	1,247,917
Actual and Projected Expenditures Through 2024								27,772,915
Total Not-to-Exceed								**$41,500,000**

Source: SFPUC

Note: Price per MWh is rounded to the nearest two decimals.

Item 10 File 23-0750	Department: San Francisco Public Utilities Commission

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the first modification to the professional services contract with Parsons Water & Infrastructure Group, Inc. for construction management services. The amendment would increase the contract amount by $12 million for a total not to exceed amount of $47 million, with no change to the contract term.

Key Points

- SFPUC selected Parsons Water & Sewer Infrastructure, Inc. (Parsons) through a competitive process to provide construction management services for the Southeast Water Pollution Control Plant capital program (SEP). In April 2018, the Board of Supervisors approved the original $35 million contract with a term June 2018 through June 2028. As of July 2023, SFPUC has spent 90 percent of the contract value, in part due to higher than expected electrical and safety work and also to provide technical assistance to Local Business Enterprises that was not part of the original contract budget.
- The existing contract allows for evaluation of contractor performance. The first and only performance evaluation for this contract was completed July 2023. SFPUC assigned a rating of "Good," the second-highest of four ratings, in six out of seven categories for FY 2022-23. SFPUC assigned a rating of "Fair," the second-lowest of four ratings, for the schedule management category citing delays in the delivery of the program integration schedule. SFPUC plans to complete performance monitoring evaluation annually going forward.

Fiscal Impact

- The proposed increase in contract spending authority is sufficient to fund activities in FY 2023-24 and FY 2024-25. The remaining three years of the contract (FY 2025-26 through FY 2027-28) are not funded by the contract modification. According to SFPUC staff, the additional two years of support under this contract will allow SFPUC Management to reevaluate service delivery to determine whether it should be provided in-house by City Staff or under a new contract.
- Contract costs will be funded by Wastewater ratepayers.

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

Southeast Water Pollution Control Plant Projects

The Southeast Water Pollution Control Plant (SEP), located on Phelps Street in Bayview Hunters Point, treats approximately 58 million gallons of wastewater per day, accounting for 83 percent of the City's wastewater flow. The San Francisco Public Utilities Commission (SFPUC) is constructing and upgrading treatment facilities at SEP as part of its Sewer System Improvement Program (SSIP). The 2022 Approved Phase I SSIP budget is $4.403 billion, which is $1.492 billion greater than the 2016 baseline budget. The 2022 approved program completion date for Phase I projects is June 30, 2032, which is 5 years and eight months later than the 2016 baseline completion date. Of the total Phase I SSIP budget of $4.403 billion, $3.387 billion is allocated to SEP projects.

The SEP projects include:

- The **Biosolids Digester Facilities Project** to replace and relocate the existing solids treatment facilities that process the solid waste into biosolids for beneficial use on land applications (such as fertilizers). When the project was initiated in December 2014, the project was estimated to cost $1.750 billion and to be completed by August 2023. SFPUC now estimates the project will cost $2.373 billion and that construction will be completed in May 2028.
- The **New Headworks Replacement Project** is construction of a new headworks facility consisting of influent pumping, grit removal, and odor control. When the project was initiated in March 2013, the project was estimated to cost $183 million and to be completed by March 2020. SFPUC now estimates the project will cost $689 million and that construction will be completed in May 2026.
- **Other SEP Projects** include: (a) Power Feed and Primary Switchgear Upgrades to improve power distribution and create power redundancy; (b) Facility-Wide Distributed Controls System Upgrades, which includes planning and design of system wide control systems to ensure consistency (including other Wastewater Enterprise facilities), and software/hardware upgrades; (c) Seismic Reliability and Condition Assessment Improvements to address numerous seismic, conditional, and operational issues associated with existing facilities; (d) Primary and Secondary Clarifiers Upgrades to upgrade the mechanical, structural, and electrical components of the primary and secondary sedimentation tanks (clarifiers); (e) Primary Treatment Health & Safety Improvements to address inadequate ventilation issues and health and safety concerns

at SEP buildings; (f) Oxygen Generation Plant, which is a redundant liquid oxygen facility mandated by the U.S. Environmental Protection Agency permit; and other projects to upgrade and repair SEP facilities. These projects are scheduled to be completed between 2025 and 2029. The projects' current budgets total $610 million, including $336 million in Phase I.

Construction Management Services for SEP Program

SFPUC selected Parsons Water & Sewer Infrastructure, Inc. (Parsons) through a competitive process to provide construction management services for the SEP program. In April 2018, the Board of Supervisors approved the original professional services contract between the City and Parsons in an amount not to exceed $35 million over a ten-year term. The original contract term is June 2018 through June 2028.

Scope of Services

The scope of services for the professional services contract includes the following components for the SEP program:

1. Southeast Plant Construction Management
2. Construction Controls Management
3. Construction Contract Management
4. Construction Risk Management
5. Safety Management
6. Environmental Compliance Services
7. Public Outreach and communications
8. Supplier Quality Surveillance

According to the SFPUC staff memo on the proposed contract modification to increase the contract amount, additional contract staffing beyond what was originally planned and budgeted for resulted in spend down of the contract amount earlier than planned. Specifically, increased support was provided:

- To provide plantwide electrical inspection and administration support beyond what was originally planned to two projects that were essential to the start-up of the Biosolids and New Headworks facilities, including the Power Feed & Switchgear and Distributed Systems Control Projects. Actual contract spending on this effort is $5.4 million, which is $0.3 million more than originally budgeted.
- To provide limited safety management and supplier quality surveillance support to non-SEP projects[1] within the SSIP, including the Oceanside Treatment Plant, North Shore Pump Station, and Westside Pump Stations projects, to ensure consistency across SSIP

[1] The scope of services under the original agreement states that the contractor will provide safety management as needed on SSIP projects located at other wastewater facilities and will provide supplier quality surveillance services as assigned by the SFPUC.

treatment plant projects. Actual contract spending to date on this work totals $3.8 million.

- To support the Contractors Assistance Center, which is staffed by the SFPUC Workforce and Economic Program Services Department and provides mentorship, training, and technical assistance to Local Business Enterprises (LBEs) pursuing City contracts, including capital projects for all SFPUC enterprises. According to SFPUC staff, the contractor is supporting the Contractors Assistance Center within the public outreach and communications task for the SEP Program because the SEP Program reflects a significant portion of the SFPUC capital program.[2] However, this work was not contemplated in the original contract budget. Actual contract spending to date on this program totals $1.9 million.

Social Impact Partnership

The original agreement included $1 million in community benefits commitment over the life of the agreement, including $545,000 in direct financial contributions, $255,000 in volunteer hours, and $200,000 in in-kind contributions. According to SFPUC staff, 42 percent of the commitments have been fulfilled with approximately five years remaining in the contract term. Exhibit 1 below shows the beneficiary organizations.

[2] SSIP projects reflect $2.9 billion (33 percent) of the SFPUC 10-Year Capital Plan for FY 2023-24 to FY 2032-33, and the majority of SSIP projects are within the SEP program.

Exhibit 1: Social Impact Partnership Beneficiary Organizations

Category	Beneficiary	Total Contributions
Environmental Health	Bayview Senior Center; 3rd Street Youth Clinic; Southeast Asian Community Development Center	$150,000
Education	Southeast Asian Community Development Center; Hunters Point Family Services; Children's Book Project; Urban Ed Academy; Young Community Developers	305,000
Small Business Support	Bayview Merchants' Association; Bayview Renaissance Entrepreneurship Center; Bayview Opera House; Bayview Small Business Relief Fund	280,000
Job Exposure, Awareness, and Internships	Hunters Point Family Services; Young Community Developers	265,000
Total		**$1,000,000**

Source: SFPUC

Subcontractors

Parsons' proposal exceeded the 20 percent Micro/Small-Local Business Enterprise (LBE) subconsultant participation requirement by including a total LBE participation rate of 53 percent. The subconsultants, LBE-credited participation percentages based on the proposal, and LBE participation to date based on invoices are shown in Exhibit 2 below.

Exhibit 2: Subcontractors

Subcontractor	Services	Credited LBE Participation	LBE Participation to Date
EMS	Construction Safety and Contract Management	37.00%	31.30%
Albion Partners	Specialty Env. Monitoring	7.00%	3.33%
The Their Group	Senior Outreach Liaison	7.00%	4.24%
Sonika Corporation	Environmental Inspector	2.00%	3.70%
Applied Technology and Science	Environmental Compliance		0.00%
Bonner Communications	Development & Management of Social Media Profiles		2.83%
JBR Partners Inc.	Contracting and Procurement Protocols Review		0.65%
KRAAL Consulting	LBE Support		1.81%
MSA Design & Consulting	Contracting and Procurement Protocols Review		0.26%
Yadejs, Inc.	Cleaning Services		0.44%
Yerba Buena Engineering & Construction	LBE Support		0.64%
Total		**53.00%**	**49.20%**

Source: Contract Monitoring Division, Office of the City Administrator

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first modification to the professional services contract with Parsons Water & Infrastructure Group, Inc. for construction management services for the SEP program to increase the contract amount by $12 million for a total not to exceed amount of $47 million, with no change to the contract term.

Performance Monitoring

The existing contract allows for evaluation of contractor performance. The first and only performance evaluation for this contract was completed July 2023. SFPUC assigned a rating of "Good," the second-highest of four ratings, in six out of seven categories for FY 2022-23. SFPUC assigned a rating of "Fair," the second-lowest of four ratings, for the schedule management category citing delays in the delivery of the program integration schedule. SFPUC plans to complete performance monitoring evaluation annually going forward consistent with their broader commitment on this issue.

FISCAL IMPACT

Under the proposed contract modification, the contract amount would increase by $12 million to fund services in FY 2023-24 and FY 2024-25. According to SFPUC staff, the total budget for FY 2023-24 is $7.0 million (which includes $2.0 million in unspent funds from the current contract amount and $5.0 from the proposed contract modification) and the total budget for FY 2024-25 is $7.0 million, as shown in Exhibit 3 below.

Exhibit 3: Contract Modification Budget

Task	Proposed Hours	FY 2023-24 Budget	FY 2024-25 Budget	Two-Year Budget
1. Southeast Plant Construction Management	27,619	$2,508,592	$3,291,747	$5,800,339
2. Construction Controls Management	2,735	231,008	343,427	574,435
3. Construction Contract Management	4,307	363,384	541,158	904,542
4. Construction Risk Management	1,571	132,375	197,731	330,106
5. Safety Management	7,598	640,998	954,586	1,595,584
6. Environmental Compliance Services	2,884	300,096	305,611	605,707
7. Public Outreach and communications	7,228	569,399	948,538	1,517,937
8. Supplier Quality Surveillance	2,815	237,517	353,715	591,232
Labor, Subtotal	56,757	4,983,369	6,936,513	11,919,882
Other Direct Costs		30,000	50,118	80,118
Total Contract Modification		**$5,013,369**	**$6,986,631**	**$12,000,000**
Unspent Funds		$2,000,000		$2,000,000
Total Budget		**$7,013,369**	**$6,986,631**	**$14,000,000**

Source: SFPUC

According to SFPUC staff, the proposed budget was developed based on historical expenditures and adjusted based on upcoming work.

Billing Rates

According to SFPUC staff, costs for the tasks noted in Exhibit 2 above are based on the estimated hours for each task and the billing rates for Parsons and their subcontractors, which range from $85.11 to $240.00 per hour. Under the existing contract, the maximum billing rate for key/lead staff is $240/hour, for all other staff the maximum billing rate is $220/hour. The average hourly billing rate for Parsons and their subcontractors is $210 based on the budgeted amount and total hours. The contractor will only be allowed to escalate its 2022 billing rates based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers.

Impact on Ratepayers

Contract costs, as well as capital plan costs, are recovered from Wastewater Enterprise ratepayers. The 2023 Water and Wastewater Rate Study (conducted by an independent consultant) will be used to set rates for FY 2023-24 through FY 2025-26. The rates were adopted

at the May 23, 2023 SFPUC Commission meeting. According to the report, Wastewater Enterprise revenue will increase by nine percent annually from FY 2023-24 to FY 2025-26.

Actual Spending & Industry Average

As of July 2023, actual spending on the current $35 million contract is $31.4 million (90 percent), leaving approximately $3.6 million (10 percent) unspent with five years remaining in the contract term. A 2023 Office of the Controller audit of the program management contract for the SSIP program found that the $150.0 million contract amount was depleted years earlier than expected due to cost estimates that were lower than industry standards as well as inadequate contract oversight.

According to the audit, "an industry study led by the Construction Management Association of America in 2014, found that the proportion of [program management consultant] fees to SSIP program costs was lower than industry averages, which were an approximate average of 5.6 percent of a capital improvement program's total budget." The proposed amended contract amount for program management of the SEP program is 1.4 percent of the Phase I SEP program budget.

Remaining Years of SEP Program Unfunded

The contract modification does not fund construction management services through completion of SEP program projects. Based on current forecasts, the timelines of certain SEP projects are expected to extend into 2029, beyond the contract end date of June 30, 2028. In addition, the remaining three years of the contract (FY 2025-26 through FY 2027-28) are not funded by the contract modification. According to SFPUC staff, the additional two years of support under this contract will allow SFPUC Management to reevaluate service delivery to determine whether it should be provided in-house by City Staff or under a new contract.

RECOMMENDATION

Approve the proposed resolution.

Item 11 File 23-0752	Department: San Francisco Public Utilities Commission (SFPUC)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the first modification to the professional services contract with McMillen Jacobs/Santec Joint Venture for tunnel engineering services for the Folsom Area Stormwater Improvement Project to increase the contract amount to $17.2 million and increase the contract term by four years through November 30, 2027.

Key Points

- The Folsom Area Stormwater Improvement Project will improve conveyance of stormwater to the neighborhood surrounding 17th and Folsom Street, an area that has been frequently flooded during storms, as part of the Sewer System Improvement Program (SSIP). Key components of the Folsom Area Stormwater Improvement Project (the Project) include construction of a new 4,000 feet long, 12-feet diameter sewer tunnel to convey stormwater and upsizing existing sewer pipes. Since the original contract, the scope of the project has increased due to discovery of Caltrans infrastructure within the construction area.
- A joint venture of McMillen Jacobs and Santec scored highest of two proposals in response to a competitive solicitation for tunnel engineering services for the Folsom project and was awarded a contract in May 2020. The contract has been amended four times and now has a not to exceed amount of $9.7 million and ends November 2023.
- The existing contract allows for evaluation of contractor performance. SFPUC assigned a rating of "Good" or "Excellent," the second-highest and highest of four ratings, across the majority of sub-categories for the FY 2022-23 evaluation, which was not yet signed at the time of our review. However, the evaluation cited long response times for acquiring design services for temporary PG&E power and to issue recommendations for geotechnical engineering services that caused delays to the iterative design process. SFPUC did not complete performance monitoring reports for prior years of the contract but plans to complete performance monitoring evaluations annually going forward.

Fiscal Impact

- The total cost of the proposed amendment is $17.2 million, the cost of which is funded by Wastewater ratepayers. The unanticipated Caltrans analysis costs $5 million or 29 percent of the proposed amendment's cost.

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

Folsom Area Stormwater Improvement Project

The San Francisco Public Utilities Commission's (SFPUC) Folsom Area Stormwater Improvement Project will improve conveyance of stormwater to the neighborhood surrounding 17th and Folsom Street as part of the Sewer System Improvement Program (SSIP). The neighborhood has been subject to flooding during moderate to heavy storms due to: (a) the local topography, as the area is naturally low-lying, resulting in collection of stormwater runoff in the neighborhood when the collection system reaches capacity; (b) runoff from upstream areas, as the area draining to the neighborhood is steep and highly urbanized, resulting in significant flow to the collection system in a short period during heavy storms; (c) insufficient stormwater conveyance capacity, as system flows during heavy rains can surpass the combined carrying capacity of the sewers and streets; and (d) potentially lower property elevation because the area is built on a historical creek (Mission Creek).

Key components of the Folsom Area Stormwater Improvement Project (the Project) include construction of a new 4,000 feet long, 12-feet diameter sewer tunnel to convey stormwater from the neighborhood to the Channel Consolidated Transport/Storage Box and upsizing of existing infrastructure (including sewer pipes and sewer boxes). Phase 1 of the project includes planning, environmental, and design phases only. When Phase 1 was initiated in July 2016, the project was estimated to cost $36.3 million and to be completed by November 2019. SFPUC now estimates Phase 1 will cost $38.4 million and will be completed in December 2023, four years later an initially planned.

Phase 2 of the project includes bid award through construction and is anticipated cost $282 million and to be completed in June 2027. In 2021, the California Regional Water Quality Control Board issued a Cleanup and Abatement Order to the City to abate threats to the use of groundwater from sewer overflows in low-lying areas. The Abatement Order requires the Project to be completed by June 30, 2027, among other actions.

Request for Proposals for Tunnel Engineering Services

On March 26, 2018, SFPUC issued a Request for Proposals (RFP) for Tunnel Engineering Services for the Folsom Area Stormwater Improvement Project. SFPUC received two proposals, and a

selection panel[1] determined McMillen Jacobs Associates/Stantec, Joint Venture (McMillen Jacobs) to be the most qualified and highest-ranking proposer. McMillen Jacobs achieved a score of 898 out of 1,000 points possible, and the other proposer (Brierley Associates) achieved a score of 895.

The RFP provided for an initial agreement term of 18 months, which could be extended for up to a total term of nine years.

Agreement History

In October 2018, the SFPUC executed an original agreement with McMillen Jacobs for an 18-month term ending May 1, 2020 and a not to exceed amount of $5.7 million. The SFPUC modified the agreement four times, as shown in Exhibit 1 below.

Exhibit 1: Contract Amendments

Modification No.	Date	Description	Not-to-Exceed Amount
1	5/11/20	Extended the term from May 2020 to September 2020 for a total term of one year and 10 months.	$5,700,000
2	9/1/20	Extended the term from September 2020 to October 2021 for a total term of three years and increased the not to exceed by $4 million.	$9,700,000
3	9/22/21	Extended the term from October 2021 to May 2023 for a total term of four years and seven months.	$9,700,000
4	4/11/23	Extended the term from May 2020 to November 2023 for a total term of five years and one month.	$9,700,000

Source: Contract Amendments

Changes to Contract Scope and Timeline

Since the original contract was executed there have been cost increases and schedule delays to the Project due to conflicts with Caltrans structures that were discovered during project design and challenges obtaining access to property necessary for project staging. The design team identified previously unknown underground supports for the U.S. 101 freeway within the tunnel area. In addition, the contractor had to identify an alternative site for project staging of materials and equipment (including the tunnel boring machine) because acquisition of the previously identified site was infeasible. These developments resulted in an expansion in the scope of services to relocate the tunnel boring machine launch, remove and replace Caltrans foundation piles, and add one access shaft. According to SFPUC staff, Caltrans required extensive analysis and modeling for replacing Caltrans foundation piles and the addition of one access shaft, which

[1] According to SFPUC staff, the selection panel consisted of: a San Francisco Municipal Transit Agency Construction Management Manager, an SFPUC Project Manager, a Caltrans representative, and an SFPUC Engineering Bureau Manager.

resulted in increased design costs ($3.2 million and $1.8 million, respectively as shown in Exhibit 4 below) under the contract.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first modification to the professional services contract with McMillen Jacobs/Santec Joint Venture for tunnel engineering services for the Folsom Area Stormwater Improvement Project to increase the contract amount to $17.2 million and increase the contract term by four years through November 30, 2027.

Scope of Services

Under the proposed modification, McMillen Jacobs would continue to provide the following services:

1. **Management and Coordination**, including development of a Draft Project Management Plan and a Draft Engineering Work Plan, coordination of kick-off meeting and progress meetings, presentations on deliverable milestones, and submittal of monthly progress reports.
2. **Quality Assurance/Quality Control**, including development and implementation of Quality Assurance Plan to ensure all work complies with applicable standards, codes, and industry practices.
3. **Review Background Information**, including a review of relevant documents (such as Project Needs Assessment and Alternatives Analysis Report and SFPUC Infrastructure Division Project Design Procedures).
4. **Develop Supplemental Information** (such as identifying location of utilities and facilities that may conflict with the tunnel facilities) to determine if changes are needed to construction method or tunnel alignment.
5. **Seismic, Geotechnical & Hazardous Materials Investigation and Site Characterization** to inform design parameters and to assess ground and groundwater conditions for the Project.
6. **Permits and Agreements**, including obtaining required environmental or access permits for fieldwork and obtaining permits and approvals for project implementation.
7. **Advanced Hydraulic Numerical Modeling** to appropriately size certain tunnel elements, such as drop structures, tunnel shafts, and venting structures.
8. **Tunnel Engineering Design & Design Support to City Staff**, including preparation of design reports, specifications, construction schedules, and cost estimates.
9. **Technology Transfer/Cross Training**, including providing training sessions to City staff in areas related to contract scope.
10. **Communication and Public Outreach**, including public presentations, assistance with materials to support public meetings, and assistance with tunneling contractor outreach.
11. **Soil-Structure Interaction Analyses for the Remainder of the Project**, as directed by the City, to evaluate the interaction between the ground and the tunnel structures and performance of the structures during seismic activity.

12. **Bid Phase Services** (Optional) to provide engineering support services, such as providing responses to bidder inquiries, during the construction bidding period.
13. **Provide Engineering Support Services During Construction** (Optional) to provide as-needed support during construction.

Social Impact Partnership

The original agreement included $110,000 in community benefits commitment over the life of the agreement, including $77,000 in direct financial contributions, $30,000 in volunteer hours, and $3,000 in in-kind contributions. According to SFPUC staff, as of March 7, 2023, 100 percent of the commitments have been fulfilled. The total completed commitments included $78,200 in direct financial contributions, $21,600 in volunteer hours, and $15,366 in in-kind contributions. Exhibit 2 below shows the beneficiary organizations.

Exhibit 2: Social Impact Partnership Beneficiary Organizations

Category	Beneficiary	Total Contributions
Education	Ignite – Professional Development for Public School Teachers Environmental Education Partnership with John O'Connell High School	$84,500
Education	San Francisco Unified School District for STEM Education Stem Career Awareness and Wrap-Around Services in San Francisco with a focus at John O'Connell High School in the field of water/ wastewater	$30,666
Total		**115,166**

Source: Original Agreement

Subcontractors

The contract requires eight percent Local Business Enterprise (LBE) participation.

Exhibit 3: List of Subcontractors

Subcontractor Name	Role
1. **AGS Inc.**	Geotechnical Investigations
2. **AEW Engineering**	Hazardous Materials Assessments
3. SC Solutions	Advanced Computer Modeling
4. Katz & Associates	Public Relations
5. Integrated Engineers & Contractors	Electrical Engineering
6. **Michael Thomas, Sole Proprietor**	Engineering Technical Support
7. Jonathan Bray, Sole Proprietor	Quality Assurance Technical Reviewer
8. Larry Snyder, Sole Proprietor	Quality Assurance Technical Reviewer
9. John Leahy, Sole Proprietor	Quality Assurance Technical Reviewer
10. David Hartwell, Sole Proprietor	Quality Assurance Technical Reviewer

Source: SFPUC
Note: LBEs in bold.

Performance Monitoring

The existing contract allows for evaluation of contractor performance. SFPUC assigned a rating of "Good" or "Excellent," the second-highest and highest of four ratings, across the majority of sub-categories for the FY 2022-23 evaluation, which was not yet signed at the time of our review. However, the evaluation cited long response times for acquiring design services for temporary PG&E power and to issue recommendations for geotechnical engineering services that caused delays to the iterative design process. SFPUC did not complete performance monitoring reports for prior years of the contract but plans to complete performance monitoring evaluations annually going forward consistent with their broader commitment on this issue.

FISCAL IMPACT

Not to Exceed Amount

Under the proposed contract modification, the total contract amount would be $17.2 million, as shown in Exhibit 4 below. This reflects an increase of $7.5 million (77 percent) above the current contract amount.

Exhibit 4: Contract Modification Budget

Task Order	Expected Hours	Cost	Avg. Hourly Rate
1. Tunnel Engineering to 65%	21,600	$5,292,355	$204
2. Caltrans Foundation Modifications Design	14,364	3,240,848	200
3. Tunnel Engineering to 100%	11,084	2,371,194	210
4. Utilities & Power Support	643	242,369	176
5. Caltrans Launch Shaft Analysis	8,717	1,823,023	209
6. Engineering Support During Construction	18,475	4,054,896	219
Subtotal	*74,883*	*$17,024,685*	*$207*
Contingency (1.03%)		175,315	
Total		**$17,200,000**	

Source: SFPUC

Note: The cost for each task includes staff time and other direct costs.

SFPUC requested proposals for change orders from the contractor and then negotiated the final hours required for each task shown above. Costs associated with Caltrans Foundation Modifications Design ($3.2 million) and Caltrans Launch Shaft Analysis ($1.8 million) represent 29 percent of total contract costs.

Billing Rates

According to SFPUC staff, costs for the tasks noted in Exhibit 4 above are based on the estimated hours for each task and the billing rates for McMillen Jacobs and their subcontractors, which range from $80.98 to $250 per hour. Under the existing contract, the maximum billing rate for all staff is $250/hour. The average hourly billing rate for McMillen Jacobs and their subcontractors is $207 based on the budgeted amount and total hours. The contractor is allowed to escalate billing rates annually based on the annual percentage change of the Consumer Price Index (CPI) for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers. Annual CPI adjustments to billing rates exceeding $250/hour require approval by the Project Engineer and Bureau Manager.

Actual Spending

As of July 2023, actual spending on the current $9.7 million contract is $7.6 million (79 percent), leaving approximately $2.1 million (21 percent) unspent.

Impact on Ratepayers

Contract costs, as well as capital plan costs, are recovered from Wastewater Enterprise ratepayers. The 2023 Water and Wastewater Rate Study (conducted by an independent consultant) will be used to set rates for FY 2023-24 through FY 2025-26. The rates were adopted at the May 23, 2023 SFPUC Commission meeting. According to the report, Wastewater Enterprise revenue will increase by nine percent annually from FY 2023-24 to FY 2025-26.

RECOMMENDATION

Approve the proposed resolution.

Items 13 & 14 Files 23-0775, 23-0776	Department: Municipal Transportation Agency (MTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolutions would retroactively approve the following amendments to the San Francisco Municipal Transportation Agency's (SFMTA) contracts regarding the Central Subway project: (1) Amendment No. 9 to the contract with Central Subway Design Group, (CSDG) extending the term by one year through July 1, 2024, and increasing the not-to-exceed amount by $1,000,000 to $55,779,692 (File 23-0775); and (2) Amendment No. 13 to the contract with HNTB-TSE JV (HNTB), extending the term by one year through July 1, 2024, and increasing the not-to-exceed amount by $1,000,000 to $35,857,691 (File 23-0776). The resolutions would also allow for the option to extend each contract by an additional year through July 1, 2025 and increase the not-to-exceed amounts by an additional $1,000,000.

Key Points

- In 2010, the Board of Supervisors approved professional design service contracts to CSDG and HNTB for the Central Subway project, which have respectively been amended eight and 12 times. Although Central Subway revenue service has begun, there are closeout tasks and enhancements that require additional engineering and design services. SFMTA decided to extend the CSDG and HNTB contracts for these services due to their familiarity with the project and to avoid costs and delays associated with putting the contracts out to bid.
- Engineering and design tasks to be completed by CSDG and HNTB include project management, preparation of bid documents, reviewing and responding to contractor submittals, requests for information (RFIs), requests for substitution, and contract claims, and updating design drawings and specifications as needed to memorialize approved project changes.

Fiscal Impact

- The proposed amendments would increase the not-to-exceed amounts of the CSDG and HNTB contracts by $1,000,000 each, for a total added cost to SFMTA of $2,000,000. If the one-year options to extend are executed, each contract would be increased by an additional $1,000,000, for a total added cost of SFMTA of $4,000,000.

Policy Consideration

- Despite delays and cost overruns of the Central Subway project, SFMTA has never completed performance evaluations of either contactor. The lack of regular contractor performance evaluations is a financial and operational risk to public transit and we recommend the Board of Supervisors hold a hearing on this topic in September 2023.

Recommendation

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

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

Central Subway Project

The San Francisco Municipal Transportation Agency's (SFMTA) Central Subway Project opened with limited weekend service in November 2022 and full revenue service in January 2023 and provides a new 1.7-mile transit connection between Chinatown (Washington and Stockton Streets) and the Caltrain Terminal/Muni T-Line (Fourth and King Streets). The Central Subway has three underground subway stations: (1) Yerba Buena/Moscone Station, (2) Union Square/Market Street Station, and (3) Chinatown Station; as well as a surface station at Fourth/Brannan Street Station. The project was delayed by approximately four years from its initial schedule of revenue service beginning in December 2018.

Architectural and Engineering Services

In 2009, SFMTA issued a Request for Proposals (RFP) for professional design services for the Central Subway Project divided into three design packages: (1) Utilities Relocation and Tunnel Design, (2) Subway Stations Design, and (3) System and Trackway Integration Design. SFMTA selected Central Subway Design Group (CSDG) for the Subway Stations Design package and HNTB-B&C Transit Inc. (now known as HNTB-TSE JV, or HNTB) for the System and Trackway Integration Design package. In 2010, the Board of Supervisors approved contracts with these firms (Files 10-0007, 10-0331).

The CSDG contract has been amended eight times, with term extended through June 2023 and the not-to-exceed amount increased to $54,779,692.[1] The HNTB contract has been amended 12 times, with the term extended through June 2023 and the not-to-exceed amount increased to $34,857,691.[2] Although Central Subway revenue service has begun, there are closeout tasks and enhancements that require additional engineering and design services. SFMTA decided to extend the CSDG and HNTB contracts for these services due to their familiarity with the project and to avoid costs and delays associated with putting the contracts out to bid. In June 2023, the SFMTA Board of Directors approved amendments to the contracts to extend each contract by one year,

[1] The Board of Supervisors most recently approved Amendment No. 6 to the CSDG contract, which increased the not-to-exceed amount to $54,779,692, with no change to the term expiring on April 4, 2022 (File 20-0670). Subsequent amendments executed by SFMTA extended the term through June 2023.

[2] The Board of Supervisors most recently approved Amendment No. 6 to the HNTB contract, which increased the not-to-exceed amount to $34,930,000, with no change to the term expiring on April 27, 2020 (File 18-0603). Subsequent amendments executed by SFMTA extended the term through June 2023 and reduced the not-to-exceed amount to $34,857,691.

rather than the two years requested by MTA staff, with an option to extend each contract by an additional year, subject to approval of the MTA Board of Directors.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would retroactively approve the following amendments to SFMTA contracts regarding the Central Subway Project:

1. Amendment No. 9 to the contract with CSDG, extending the term by one year through July 1, 2024, and increasing the not-to-exceed amount by $1,000,000 for a total not to exceed $55,779,692, with an option to extend the term by one year through July 1, 2025, and increase the not-to-exceed amount by $1,000,000 to $56,779,692 (File 23-0775);[3] and
2. Amendment No. 13 to the contract with HNTB, extending the term by one year through July 1, 2024, and increasing the not-to-exceed amount by $1,000,000 for a total not to exceed $35,857,691, with an option to extend the term by one year through July 1, 2025, and increase the not-to-exceed amount by $1,000,000 to $36,857,691 (File 23-0776).

The Central Subway Fixed Guideway and Station Enhancement Project includes closeout tasks from Central Subway construction as well as further enhancements to improve the Central Subway as a new SFMTA infrastructure asset. The project includes mitigation of persistent water seepage (particularly at the Chinatown Station), ensuring automatic door openings, additional railings, safety fencing, cameras, lighting, and any identified ADA requirements or other regulatory requirements. Engineering and design tasks to be completed by CSDG and HNTB include project management, preparation of bid documents, reviewing and responding to contractor submittals, requests for information (RFIs), requests for substitution, and contract claims, and updating design drawings and specifications as needed to memorialize approved project changes.

According to SFMTA staff, the water seepage control and automatic doors were part of Central Subway construction project but not adequate and now needs additional work. The other tasks, such as safety fencing, additional security cameras and lights and ADA improvements were identified after completion of the Central Subway project.

FISCAL IMPACT

The proposed amendments would increase the not-to-exceed amounts of the CSDG and HNTB contracts by $1,000,000 each, for a total added cost to SFMTA of $2,000,000. If the one-year options to extend are executed, each contract would be increased by an additional $1,000,000, for a total added cost of SFMTA of $4,000,000. Estimated expenditures by task for each contract are shown in Exhibit 1 below.

[3] The resolution in 23-0775 contains a resolved clause that states the MTA Board of Directors approves the amendment to the CSDG contract, however that is an error and should say that the Board of Supervisors approves the amendment. MTA staff plan to request an amendment to correct the language.

Exhibit 1: Estimated Contract Expenditures by Task

CSDG Tasks	Amount
Design Team Support	$84,000
RFIs, Submittals, & Other Consultations	205,600
Project Management/Administration During Construction	165,000
Other Consultation	166,000
Field Visits/Meetings	389,600
CSDG Total	**$1,010,200**

HNTB Tasks	Amount
4th Street Trees & Irrigation	$10,200
Portal Fence Design	77,400
Bulkhead Drainage	4,800
4th Street Curbs	14,400
Portal Axe Counter Boxes	36,600
Standpipe Pressurization	160,000
Track As-Built Drawings	72,000
VPI at 6th & King	161,700
Traffic Control Cabinet Relocation at 4th & King	49,200
Additional Scope/Support	263,000
Project Management	156,000
HNTB Total	**$1,005,300**
Total Expenditures (Both Contract Amendments)	**$2,015,500**

Source: SFMTA

The contracts are funded by the SFMTA Capital Improvement Program budget for the Fixed Guideway and Station Enhancement Project. The total Central Subway Fixed Guideway and Station Enhancement Project budget is approximately $34 million, including soft costs. According to Albert Hoe, SFMTA Senior Engineer, approximately $7 million in funding is available in the FY 2023-24 budget to fund 23 priority tasks of the project. Approximately $2.4 million has been allocated, with the remainder of the $7 million anticipated to be available later in the fiscal year. SFMTA plans to award job order contracts to complete the priority tasks, which are shown in Attachment 1 to this report. If funding is available in FY 2024-25, SFMTA would consider exercising the options to extend the engineering and design contracts.

POLICY CONSIDERATION

Performance Management

Despite delays and cost overruns of the Central Subway project, SFMTA has never completed performance evaluations of either contactor. In addition, SFMTA did not provide any documentation of policies to regularly evaluate the performance of its contractors. The lack of

regular contractor performance evaluations is a financial and operational risk to public transit and we recommend the Board of Supervisors hold a hearing on this topic in September 2023.

Board of Supervisors Approval

The proposed resolutions would approve two-extensions of each contract: one 1-year extension and one 1-year option to extend, subject to approval of the SFMTA Board of Directors. The Board should consider amending the resolutions to require Board of Supervisors' approval of each contract's option to extend, to be consistent with the SFMTA Board of Directors authority and also because the budget for each contract only describes one year of spending.

RECOMMENDATION

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

Attachment 1: 23 Priority Project Tasks

Task Number	Station	Description	Estimated Cost
008	YBM	Fall protection at ledge near artwork at surface level	$25,000
009	YBM	Measures to control public access to exposed beams at Concourse Level	175,000
029	UMS	Enhanced lighting Main Electrical Annex CN07 UMS 1461/1647	104,768
030	UMS	Enhanced lighting Unassigned "Scott's" Room Platform Sector 5 UMS 1469	52,384
035	UMS	Additional UPS needed to share load on unit 1	92,974
046	UMS	Additional CCTV cameras	421,885
051	STS	Bulkhead drainage at CTS North Limits	450,000
062	CTS	Art glass panels installation - 3 locations (Plaza parapet, north train platform, south train platform).	1,000,000
069	CTS	Extend railing at southern end of platform on the catwalk to protect people accessing the bathrooms.	19,269
075	All Stations	UPS battery replacement for Train Control Room – Signal (P.O.) - CTS, UMS, YBM	97,005
004	YBM	Plexiglass water shield for Traction Power Room eye wash station	15,261
006	YBM	Additional artwork lighting on Concourse	181,550
016	YBM	Caulking is needed along the bottom of the glass railing to prevent debris and liquid from falling down the gap and staining the glass	3,000
034	UMS	Weight limit/loading information should be labeled on glass floors	3,000
041	UMS	Additional FCU and Outlets needed for future conversion to shop space in Unassigned Room MZ27	90,000
042	UMS	Mechanical & Plumbing Room MZ22 and Unassigned Room MZ27 need double doors	30,000
044	UMS	Per Sonny Cadubla in Main Electrical Room there is an electrical panel board cover that needs to be changed to splash proof, and an outlet near the eye wash station should be GFCI type	32,350
045	UMS	Architectural metal screens along platform scallop walls at Platform level	1,500,000
057	STS	Harrison to Bryant St OCS Repair	250,000
060	STS	Remove 6 embedded metallic axle counter head boxes in use in Bryant Portal area. Pour/form concrete with perimeter ledge for non-metallic cover using threaded inserts.	400,000
061	STS	Track curb demo at Brannan and Bryant	50,000
068	CTS	Inspector's booth on platform: inspectors do not have a dedicated space to monitor service. Will require design assistance from CSDG architect.	175,000
070	All Stations	"Bird Abatement - Phase 2 (Work not implemented yet) - Phase 0 & 1 work has been completed."	1,121,315
Total			**$6,289,761**

Source: SFMTA. YBM is Yerba Buena-Moscone Station. UMS is Union Square/Market Street Station. STS is the Surface, Track, and Systems Package. CTS is Chinatown Station.