

File No. 110955

Committee Item No. 10  
Board Item No. 12

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 9/15/11

Board of Supervisors Meeting

Date 10/4/11

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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- |                                     |                                     |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Settlement Agreement and Mutual Release **</u> |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | _____   |

Completed by: Linda Wong

Date 9/12/11

Completed by: L.W.

Date 9/20/11

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Settlement of Lawsuits - Mitchell Engineering; Authorization of Bonds and Appropriation of  
2 Funds]

3  
4 **Ordinance (1) authorizing settlement of all claims arising out of nine lawsuits involving**  
5 **Mitchell Engineering and the City and County of San Francisco; (2) declaring the intent**  
6 **of the San Francisco Public Utilities Commission to reimburse certain expenditures for**  
7 **settlement costs from proceeds of future bonded indebtedness for purposes of**  
8 **complying with Section 147(f) of the Internal Revenue Code of 1986, as amended; (3)**  
9 **authorizing the issuance of Settlement Bonds in connection therewith, as well as the**  
10 **associated financing cost to issue; (4) appropriating \$15,750,000, including insurance**  
11 **proceeds in the total amount of \$750,000, project construction funds in the total**  
12 **amount of \$920,207, and proceeds of Settlement Bonds in the amount of \$14,079,793;**  
13 **and (5) authorizing the use of substitute fund balance as a source in lieu of Settlement**  
14 **Bonds if available.**

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings. The Board of Supervisors (the "Board") of the City hereby finds  
17 and declares as follows:

18 A. The San Francisco Public Utilities Commission ("SFPUC") desires to settle the  
19 cases below, to wit:

- 20 • *City and County of San Francisco ("CCSF") v. Mitchell Engineering, ("Mitchell")*  
21 *San Francisco County Superior Court, Case CGC-07-465520 ("Summit");*  
22 • *CCSF v. Mitchell, San Francisco County Superior Court, Case No. CGC-07-*  
23 *465522, ("Clarendon");*  
24 • *CCSF v. Mitchell, San Francisco County Superior Court, Case No. CGC-07-*  
25 *465524 ("Lincoln");*

- 1 • *Mitchell v. CCSF, San Francisco County Superior Court, Case No. CGC-07-*  
2 468361 ("Dewey");
- 3 • *Mitchell v. CCSF, Alameda County Superior Court, Case No. RG07339056,*  
4 ("Central");
- 5 • *Mitchell v. CCSF, et al., United States District Court for the Northern District of*  
6 *California, Case No. 3:08-CV-04022-SI ("Federal I");*
- 7 • *Mitchell v. CCSF, United States Ninth Circuit Court of Appeals, Appellate Case*  
8 *No. 11-15630 ("San Francisco Appeal");*
- 9 • *Mitchell v. CCSF, United States Ninth Circuit Court of Appeals, Appellate Case*  
10 *No. 11-15778 ("Mitchell Appeal");*
- 11 • *Mitchell, et al. vs. Arch Insurance Company, United States District Court for the*  
12 *Northern District of California, Case No. CV-10-4558-CW ("Federal II");*

13 Each case arises from construction and/or related disputes regarding the SFPUC and  
14 other construction projects for which Mitchell Engineering ("Mitchell") served as the prime  
15 contractor, and calling for a total payment of \$15,750,000 ("Settlement") by the SFPUC to  
16 Mitchell's bonding company, Arch Insurance Company ("Arch"), including other material terms  
17 of said settlement.

18 B. The SFPUC intends to incur indebtedness in the form of revenue bonds in an  
19 amount not to exceed \$17,000,000 (the "Settlement Bonds") issued in accordance with the  
20 Charter and the laws of the State to finance the costs of the Settlement.

21 C. The Board has determined that the moneys advanced and to be advanced (through  
22 internal borrowing or other available moneys) to pay certain expenditures of the Settlement are  
23 or will be available only for a temporary period and it is necessary to reimburse all such  
24 expenditures made on and after the date hereof with respect to the Settlement from the  
25 proceeds of the Settlement Bonds.

1 D. Section 1.150-2 of the Treasury Regulations requires the Board to declare its  
2 reasonable official intent to reimburse prior expenditures for the Settlement with proceeds of a  
3 borrowing.

4 Section 2. The City Attorney is hereby authorized to settle the above-referenced  
5 actions, on the following terms:

6 **Monetary Payments:**

- 7 1) Payment of \$15,750,000 by the SFPUC to Arch;
- 8 2) Payment of \$500,000 by Lumbermans Mutual Casualty Company to SFPUC;
- 9 3) Payment of \$250,000 by National Union Fire Insurance Co. of Pittsburgh, PA to  
10 SFPUC;
- 11 4) Release of \$920,207 of money earned by Mitchell to SFPUC from escrow  
12 accounts.

13 **Non-monetary Terms**

- 14 5) Terms that allow Mitchell to bid on SFPUC public work projects for which it meets  
15 the technical qualifications;
- 16 6) Complete releases of all claims against all parties, and dismissal with prejudice  
17 of all lawsuits.

18 Section 3. The sources of funding outlined below are herein appropriated for use by the  
19 SFPUC for purposes of this settlement: (1) insurance proceeds in the amount of \$500,000 paid  
20 to SFPUC by Lumbermans Mutual Casualty Company; (2) insurance proceeds in the amount  
21 of \$250,000 paid to SFPUC by National Union Fire Insurance Co. of Pittsburgh, PA; (3)  
22 \$920,207 of project construction funds earned by Mitchell and held in CCSF escrow accounts;  
23 and (4) \$14,079,793 from Settlement Bonds. The SFPUC is hereby authorized to substitute  
24 fund balance as a source of payment in lieu of settlement bonds if available.  
25

1 Section 4. The Board hereby approves the issuance and sale of the Settlement Bonds,  
2 as well as appropriating the associated financing costs to issue by the SFPUC pursuant to the  
3 Charter, in an aggregate principal amount not to exceed \$17,000,000 to pay the costs of the  
4 Settlement, inclusive of financing costs, at a maximum rate or rates of interest of not to exceed  
5 twelve percent (12%) per annum. The SFPUC is hereby authorized to determine the timing,  
6 amount and manner of sale of each series of Settlement Bonds issued pursuant to this  
7 authorization; provided however, the SFPUC shall return to the Board prior to the issuance of  
8 any such Settlement Bonds to obtain approval by ordinance or resolution of the Board of any  
9 related financing or disclosure documents prepared in connection with the issuance of such  
10 obligations.

11 Section 5. The Board of Supervisors adopts this Ordinance for, among other purposes,  
12 of establishing compliance with the requirements of Section 1.150-2 of the Treasury  
13 Regulations.

14 Section 6. The Board of Supervisors hereby declares its official intent under Treasury  
15 Regulations Section 1.150-2 and declares its intent to use proceeds of indebtedness to  
16 reimburse all future expenditures incurred in connection with the Settlement; provided,  
17 however, that the SFPUC will reimburse itself no later than 3 years after making the judgment  
18 or settlement payments.

19 Section 7. On the date of the expenditure to be reimbursed, all reimbursable costs of  
20 the Settlement will be of a type which constitute extraordinary nonrecurring items that are not  
21 customarily payable from current revenues, and properly chargeable to a capital account under  
22 general federal income tax principles. The SFPUC has not established or maintained a  
23 reserve or otherwise set aside money for payment of all or a portion of the Settlement.

24 Section 8. The maximum principal amount of debt expected to be issued for the  
25 Settlement is \$17,000,000.

1 Section 9. The officers and employees of the City, including the Controller, the  
2 Treasurer, and the General Manager or the Assistant General Manager of Business Services  
3 and Chief Financial Officer of the SFPUC, and other officers of the City and their duly  
4 authorized deputies and agents are hereby authorized and directed, jointly and severally, to  
5 take such actions and to execute and deliver such certificates, agreements, requests or other  
6 documents, as they may deem necessary or desirable to facilitate the issuance, sale and  
7 delivery of the Settlement Bonds, to obtain bond insurance or other credit enhancements with  
8 respect to the Settlement Bonds, and otherwise to carry out the provisions of this Ordinance.

9 Section 10. Ratification of Prior Actions. All actions authorized and directed by this  
10 Ordinance and heretofore taken are hereby ratified, approved and confirmed by this Board.

11 Section 11. File Documents. All documents referred to as on file with the Clerk of the  
12 Board are in File Nos. 110955.

13 Section 12. Effective Date for Settlement and Appropriation of Funds. Section 2 of  
14 this Ordinance authorizing settlement of the above-referenced actions, and Section 3 of this  
15 Ordinance authorizing the appropriation of funds for use by the SFPUC for purposes of this  
16 settlement, shall become effective immediately upon the adoption of this Ordinance.

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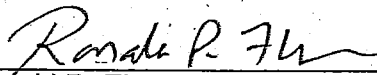
1 Section 13. Effective Date for Bond Authorization. Sections 3 through 9 of this  
2 Ordinance authorizing the issuance of bonds shall take effect thirty (30) days after the date of  
3 the adoption of this Ordinance, pursuant to Section 14.102 of the Charter.

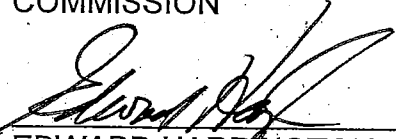
4 APPROVED AS TO FORM AND  
5 RECOMMENDED:

RECOMMENDED:

6 DENNIS J. HERRERA  
7 City Attorney

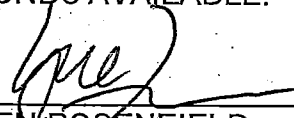
SAN FRANCISCO PUBLIC UTILITIES  
COMMISSION

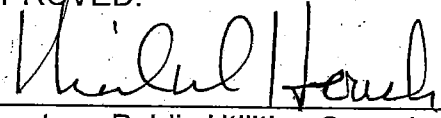
8   
9 \_\_\_\_\_  
10 Ronald P. Flynn  
11 Deputy City Attorney

  
12 \_\_\_\_\_  
13 EDWARD HARRINGTON  
14 General Manager  
15 Public Utilities Commission

16 FUNDS AVAILABLE:

APPROVED:

17   
18 \_\_\_\_\_  
19 BEN ROSENFELD  
20 Controller

  
21 \_\_\_\_\_  
22 Michael Houch  
23 Secretary, Public Utilities Commission

