

**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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February 26, 2021

**TO:** Budget and Finance Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** March 3, 2021 Budget and Finance Committee Meeting

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| <p><b>Item 1</b><br/> <b>File 20-0947</b><br/> <i>(Continued from February 17, 2021)</i></p>  | <p><b>Department:</b><br/> Municipal Transportation Agency</p> |
| <p><b>EXECUTIVE SUMMARY</b></p>   |  |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Administrative Code Chapters 6 (public works procurement), 14B, (Local Business Enterprise and non-discrimination), and Chapter 21 (procurement of commodities and services) for the Potrero Yard Modernization Project.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The SFMTA is proposing a Joint Development Services project to replace the bus storage and maintenance facility at Bryant and Mariposa Streets, and potentially construct housing. SFMTA would select a master developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including replacement the bus storage and maintenance facility and the residential and commercial development. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an agreement with SFMTA.</li> <li>• The proposed ordinance does not waive certain prevailing wage, First Source Hiring, Local Business Enterprise (LBE), and State Apprenticeship Program requirements. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services in one procurement, as required for joint development projects.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million, of which \$39.6 million is included in the SFMTA CIP.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed ordinance request that (1) the term sheet referenced in Section 3 (c) of the proposed ordinance be submitted to the Board of Supervisors at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.</li> <li>• Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.</li> </ul> |  |

**MANDATE STATEMENT**

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

**BACKGROUND**

**Potrero Yard Modernization Project**

Potrero Yard, a 4.4-acre site located at Bryant Street and Mariposa Street, is a 100-year old facility that currently serves as a storage yard and trolley bus maintenance facility. SFMTA proposes to construct a modern maintenance facility to improve worker safety, enhance worksite efficiency, and align the worksite with City policy objectives related to environmental sustainability. According to SFMTA, the layout of the maintenance facility does not conform to current design standards that would optimize worksite efficiency, and the structural condition of the facility could impede restoration of Muni service after a major earthquake.

In addition to the construction of a modern storage and maintenance facility and to leverage the construction opportunity to address Citywide goals for housing production, the SFMTA plans to solicit proposals for the bus facility and joint development atop the bus facility as a mixed-use residential development with ground floor community-serving uses. The SFMTA estimates that the Potrero Yard Modernization Project could support the construction of between 525 and 575 new housing units. While no agreement is yet in place, the SFMTA has proposed an initial target of 50 percent of the housing units being affordable (or 262 to 288 units) to low- to moderate-income residents.

To pursue these objectives, SFMTA is asking the Board to approve the procurement framework that will allow the Agency to enter into Joint Development Services agreements with a private development team to design, build, finance, maintain, and perform asset management services for the proposed new Potrero Yard storage and maintenance facility.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would grant the SFMTA exemption from certain procurement and contracting requirements of Chapter 6 of the Administrative Code, which contains policies for the City’s public works procurements, Chapter 14B of the Administrative Code, which contains policies for Local Business Enterprise and non-discrimination in the City’s contracting processes, and Chapter 21 of the Administrative Code, which contains policies related to the City’s contracting process for commodities and professional services, with the exception of the provisions below. The exemptions would only apply to SFMTA contracting related to Joint Development Services.

The proposed ordinance would not waive the following Administrative Code provisions:

- Prevailing Wages: All construction work related to any space of project development will be required to pay prevailing wages in accordance with the provision outlined in Section 6.22(e) of the Administrative Code.
- State Apprenticeship Program Requirements: All construction work related to any space of project development will be required to comply with state apprenticeship hiring requirements in accordance with the provision outlined in Section 6.22(n) of the Administrative Code.
- Local Hiring / First Source Policies: The legislation states that the SFMTA will require that all construction, asset management, or related work performed under any Development Agreement be in compliance with the City's Local Hiring Policy, per Chapter 82 of the Administrative Code, or the City's First Source Hiring Program, per Chapter 83 of the Administrative Code.
- Local Business Enterprise: The SFMTA would work with the Contract Monitoring Division to develop a Local Business Enterprise program for the project that is "consistent" with Chapter 14B of the Administrative Code and would require selection of the majority of LBEs after the Board of Supervisors approves the Project Agreement that would obligate the developer to build the Project.

### **Other Code Provisions**

According to the City Attorney's Office, certain City contracting requirements as well as all State licensing requirements and various provisions of the Administrative Code related to the approval and ongoing monitoring and oversight of City contracts will continue to apply despite exemptions granted through the pending ordinance. Chapters 12B and 12C of the Administrative Code pertaining to non-discrimination in contracts will remain in effect and binding on the Potrero Yard procurement and contracting framework, and to all agreements executed through this procurement process. Chapter 25 of the Environmental Code outlining requirements for Public Works projects to meet clean construction requirements will remain in effect under the proposed ordinance. The Local Business Enterprises (LBE) certification process specified in Sections 14B 3(A)-(E) of the Administrative Code will continue to regulate the certification requirements for LBEs from whom services are procured under any agreement for Joint Development Services. Finally, the Potrero Yard agreements will remain subject to the provision of the City's Surveillance Technology Ordinance Administrative Code Section 19B.

### **Proposed Procurement Process**

#### *Selection and Exclusive Negotiating Agreement*

According to the proposed ordinance, the SFMTA may pre-qualify and solicit proposals from private developers for Joint Development Services for the Project. In August 2020, the SFMTA issued a Request for Qualifications (RFQ) and received four responses in November 2020. The SFMTA selected three developers to participate in a Request for Proposals (RFP) in early 2021 to develop the Project:

- Potrero Mission Community Partners, led by John Laing Limited and Edgemoor Infrastructure & Real Estate LLC;
- Potrero Neighborhood Collective, led by Plenary Americas US Holdings Inc.; and
- Potrero Yard Community Partners, led by Fengate Asset Management and Emerald Fund, Inc.

SFMTA will select one developer to enter into the first Joint Development Services agreement, the Pre-Development Agreement, which will be used to negotiate the Project Agreement and the developer's Joint Development Services.

#### *Joint Development Services*

According to Section 1 (c) of the proposed ordinance, Joint Development Services could include procurement and management of contractors for pre-development, design-build contractors, and asset management contractors for joint housing and bus facility development. Section 3 (b) (5) states that the SFMTA may enter into one or more agreements with the selected developer for Joint Development Services, including pre-development, early works, design-build, asset management, lease-purchase, lease-leaseback, development, project, direct, and other agreements to deliver the project.

#### *Compensation to Other Proposers*

The proposed ordinance provides the SFMTA the option to compensate the two proposers who are not selected for exclusive negotiations for the Project for their work product on terms and conditions and in such an amount as determined by the Director of Transportation. Such compensation would be contingent upon their proposals' being responsive to the RFP and the SFMTA's having the right to own the work products included in the proposals. According to discussions with SFMTA staff, payment of stipends to unsuccessful shortlisted proposers (in this case, two of three proposers) is a standard practice for this type of project, where the RFP requires that the proposing teams invest considerable expense for an approximately five-month proposal preparation period.

#### *California Environmental Quality Act (CEQA)*

According to the SFMTA, the Planning Department is currently conducting a California Environmental Quality Act review of the proposed bus storage and maintenance facility and potential housing development. The Administrative Draft Environmental Impact Report is expected to be released in April 2021. According to the proposed ordinance, approval of the proposed ordinance does not constitute an approval of the project, and no project approval will occur until completion of CEQA review.

If the SFMTA and the selected developer successfully negotiate a Project Agreement that is approved by the Board of Supervisors, construction of the Potrero Yard Modernization Project is expected to occur in calendar years 2023 through 2026.

**FISCAL IMPACT**

The proposed ordinance states the development and modernization of the bus storage facility and maintenance facility will cost approximately \$500 million. Of that, \$39.6 million is included in the SFMTA Five-Year Capital Improvement Program for FY 2021 – FY 2025, the Agency’s 5-year program of projects. According to Jonathan Rewers, SFMTA Building Progress Program Manager, \$20.6 million of that amount is included in the Agency’s 2-Year Capital Budget for Fiscal Years 2021 and 2022, which is supported by appropriations. Given the early stages of project planning, final funding sources for the construction phase have not yet been identified.

**Fiscal Feasibility**

Because the proposed modernization of the Potrero Yard facility qualifies as a transit improvement project, the project is exempt from the finding of fiscal feasibility requirement under Chapter 29 of the Administrative Code. However, the proposed ordinance states that, if after further review the housing and commercial component of the project is not deemed to be financially feasible, as defined by the SFMTA, then the Agency would not proceed with that component of the project and would only proceed with the transit component.

**POLICY CONSIDERATION****Development Approach**

According to the proposed ordinance, the Federal Transit Administration (FTA) defines joint development projects as projects that involve: (1) integrated development of transit and non-transit improvements, with transit projects physically or functionally related to commercial, residential, or mixed-use development; (2) public and private investments that are coordinated between transit agencies and developers to improve land owned by a transit agency or related to a transit improvement; and (3) mutual benefit and shared cost among all parties involved. According to discussions with SFMTA staff, if the SFMTA and developer successfully negotiate a Project Agreement, the Project Agreement would require the developer to assume full development responsibility for all components and phases of the Potrero Yard Modernization Project, including the bus storage and maintenance facility and the residential and commercial component. The SFMTA would retain ownership of the land and bus storage and maintenance facility, and the private developer would lease the housing and commercial development through an air-rights lease with the SFMTA, or an alternate agreement as negotiated by the parties. The form of agreement for the developer’s use of the housing and commercial development would specify the affordability requirements.

**Administrative Code Waivers**

As noted above, the proposed ordinance waives procurement and contracting requirements under Chapters 6, 14B, and 21 of the Administrative Code for the Potrero Yard Modernization Project, for which key provisions are summarized below. According to the proposed ordinance, the Joint Development Services required for the Project will likely span the subject matter of Chapters 6, 14B, and 21, but none of these chapters contemplate the acquisition of these services

in one procurement, as required for joint development projects. According to SFMTA staff, a Project Agreement will contain similar provisions to those being waived.

#### *Competitive Procurement Procedures*

Section 6.20 of the Administrative Code generally requires formal competitive procurement for public works contracts above \$706,000. Section 21.1 of the Administrative Code generally requires competitive solicitations for procurement of commodities and professional services. Both of these provisions would be waived under the proposed ordinance, with the ordinance proposing an alternate framework that provides for a best-value competitive solicitation.

#### *Lowest Bid for Construction Contracts*

Section 6.20 of the Administrative Code, which requires public works contracts valued above \$706,000 be awarded to those bids that demonstrate the ability meet all project specifications at lowest possible cost. Section 6.61 of the Administrative Code allows for “best-value” criteria to be used for design-build contracts, which are evaluated based upon responsibility and qualifications, stated subjective criteria, and project and/or financing costs. The proposed ordinance would authorize SFMTA to select the development team based on the overall best value to the City. Best value evaluation criteria include but are not limited to the qualifications of respondents, their projected construction and financing costs for the Project, life cycle cost savings to the City, design quality, and the extent to which the proposal or proposals meet the Project Objectives.

#### *Not-to-Exceed Amounts*

Section 21.19 of the Administrative Code requires professional service and commodities contracts contain a maximum not-to-exceed amount. The proposed ordinance waives this requirement. According to discussions with SFMTA staff, SFMTA intends to include a not-to-exceed amount in the Project Agreement, which is likely the final Joint Services Development agreement, and which would be subject to Board of Supervisors approval.

#### **Board of Supervisors Approval and Reporting**

False Claims. Section 6.80 of the Administrative Code requires written notification to the Board of Supervisors if a public works contractor submits false claims to the City. The proposed ordinance waives this Code section, Administrative Code Chapter 28.3 (which is not a subject of this ordinance) also includes submission of false information as grounds for disbarment of a contractor.

Collusion with City Officials. Section 6.81 of the Administrative Code allows the Board of Supervisors, on the recommendation of the Mayor, Department Head or the board or commission concerned, to nullify of a public works contract if contractors are found to have colluded with City officials. The proposed ordinance, as written, waives this requirement.

Labor Standards Enforcement and Prevailing Wage Requirements. Section 6.24 authorizes, subject to approval by the Mayor and Department of Administrative Services, the Office of Labor Standards Enforcement (OLSE) to develop and administer a plan to insure that all work contracted related to public works and public improvements will be conducted in manner

consistent with Section 6.22(e) of the Administrative Code. While this provision would be waived, the proposed ordinance states that all Project work would be required to comply with applicable certified payroll requirements, and that the OLSE would continue to enforce prevailing wage.

Public Works Contractor Performance. Section 6.26 of the Administrative Code requires public works contractors' performance be monitored and evaluated in a database maintained by the awarding Departments and report performance to the Board of Supervisors. According to discussions with SFMTA staff, the proposed ordinance waives this requirement because the master developer, and not SFMTA would have the contractual relationship with Project contractors, but would set up oversight and monitoring requirements in the Project Agreement.

LBE Reporting and Enforcement. Section 14B.15 requires the Contract Monitoring Division to provide quarterly reports, and relevant City Departments to provide annual reports, to the Board of Supervisors regarding progress towards meeting Local Business Enterprise and non-discrimination goals set forth in Chapter 14 of the Administrative Code. Section 14.B17 authorizes the Director of the Contract Monitoring Division to review and enforce the provisions of Chapter 14B as they related to LBE contract procurements. While the proposed ordinance waives this requirement, the proposed ordinance states that SFMTA shall work with the Contract Monitoring Division to develop an LBE program that is consistent with the policy goals and purpose of Chapter 14B to ensure participation by LBEs and non-discrimination in the design, construction, and ongoing asset management of the Project.

### **Inspection of Records**

Administrative Code Section 21.34 allows the City to audit books and records of professional service and commodities contractors. Both of these provisions would be waived under the proposed ordinance.

### **Summary**

According to discussions with SFMTA staff, the intent of the proposed ordinance, which waives Administrative Code Chapters 6, 14B, and 21, is to provide for the procurement of a master developer to develop the proposed Potrero Yard Modernization Project through a Joint Development Services agreement. Although the proposed ordinance states that the SFMTA will submit a term sheet for any proposed management or use agreements for the Project to the Board of Supervisors before requesting its final approval of those agreements pursuant to Charter Section 9.118, the Budget and Legislative Analyst recommends amending that the proposed ordinance be amended to request that (1) the term sheet referenced in Section 3 (c) of the proposed ordinance be submitted to the Board of Supervisors at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.

**RECOMMENDATIONS**

- Amend the proposed ordinance to request that (1) the term sheet referenced in Section 3 (c) of the proposed ordinance be submitted to the Board of Supervisors at the beginning of negotiations for a proposed Project Agreement; and (2) the term sheet will provide that the proposed Project Agreement (a) include certain provisions contained in Administrative Code Chapters 6, 14B, and 21, including false claims, collusion with City officials, enforcement of prevailing wage and LBE participation requirements, and inspection of records and audit provisions; and (b) provide for a not-to-exceed amount in the proposed Project Agreement.
- Approval of the proposed ordinance as amended is a policy matter for the Board of Supervisors.

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| <b>Item 2</b><br><b>File 20-0934</b>  | <b>Department:</b><br>Public Utilities Commission (PUC) |
| <b>EXECUTIVE SUMMARY</b>  |   |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would authorize the San Francisco Public Utilities Commission (SFPUC) General Manager to execute Amendment No. 1 to the New Headworks Facility Construction Management Staff Augmentation Services Agreement with HDR Engineering, Inc., increasing the not-to-exceed amount of the contract by \$10,000,000 for a total not to exceed \$27,000,000, and extending the term one year through June 14, 2024.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The SFPUC Sewer System Improvement Program (SSIP) includes several facility upgrades at the Southeast Treatment Plant, including the replacement of the headworks facilities, which provide the first step in the wastewater treatment process. The New Headworks Facility project would consolidate two existing headworks facilities, modify the pump station, and construct a new odor control structure.</li> <li>• The Board of Supervisors approved the original agreement with HDR Engineering in 2017 to provide construction management services to the New Headworks Facility project. At the time of the agreement approval in 2017, the total project budget was \$244.6 million. Subsequently, SFPUC staff determined that the project scope required significant reconfigurations, resulting in an increase in the project budget to \$490,251,749.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Estimated agreement expenditures through December 2020 total approximately \$9,702,000. Sufficient funding for the proposed agreement amendment is available in the SFPUC Wastewater Enterprise Capital Budget. According to SFPUC staff, SFPUC would not likely have to increase the HDR agreement amount if the total project amount is further increased but an extension of the project completion date could result in an increase in the costs for construction management services.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• The New Headworks Facility project cost increase is included in the Wastewater Enterprise 10-Year Capital Plan. The cost increase will be funded through the existing \$750 million Wastewater Enterprise commercial paper program. This funding covers project spending until the next Wastewater Enterprise revenue bond sale, which is anticipated in FY 2021-22. Due to the cost increase, SFPUC staff is evaluating the priority and schedule of other projects.</li> </ul> <p style="text-align: center;"><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>• Amend the proposed resolution to request the SFPUC General Manager to report to the Board of Supervisors during the Board review of the SFPUC budget on the status of the New Headworks Facility project, including actual and projected construction costs, impact of construction cost increases on the SSIP, and procedures to contain construction cost increases.</li> <li>• Approve the proposed resolution as amended.</li> </ul> |   |

## 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's (SFPUC) Sewer System Improvement Program (SSIP) is a 20-year citywide investment to upgrade aging sewer infrastructure. SSIP Phase 1 is comprised of 70 projects totaling approximately \$2.9 billion. SSIP Phase I includes several facility upgrades at the Southeast Treatment Plant, including the replacement of the headworks facilities, which provide the first step in the wastewater treatment process. The New Headworks Facility project would consolidate two existing headworks facilities, modify the pump station, and construct a new odor control structure.

In 2014, SFPUC determined that the New Headworks Facility project required specialized construction management services augmenting in-house staff in constructing a new facility while maintaining an active wastewater treatment facility. In 2016, SFPUC conducted a Request for Proposals (RFP) to select a construction management firm. HDR Engineering, Inc. (HDR) was deemed the highest scoring responsive and responsible proposer and was awarded a contract. In May 2017, the Board of Supervisors authorized the SFPUC General Manager to execute a professional services agreement with HDR for an amount not to exceed \$17,000,000 and a term of approximately six years, from June 12, 2017 through June 14, 2023 (File 17-0343).

As the New Headworks Facility project design progressed, SFPUC staff determined that the project scope required significant reconfigurations. The total construction budget has increased from \$244,562,224 to \$490,251,749. SFPUC and HDR have agreed to increase the Construction Management Staff Augmentation Services Agreement to provide the level of effort needed to implement the construction contract and support the project through completion. In July 2020, the SFPUC Commission approved Amendment No. 1 to the agreement with HDR.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the SFPUC General Manager to approve Amendment No. 1 to the New Headworks Facility Construction Management Staff Augmentation Services agreement between SFPUC and HDR, increasing the not-to-exceed amount by \$10,000,000 for a total not to exceed \$27,000,000, and extending the term by one year through June 14, 2024. SFPUC would have the option to extend the term by an additional two years through June 14, 2026, for a total term of nine years. An increase in the agreement amount exceeding \$500,000 would require Board of Supervisors approval, pursuant to Charter Section 9.118(b).

According to Mr. John Scarpulla, SFPUC Policy and Government Affairs, the procurement process enabled SFPUC to onboard Sundt/Walsh as the general contractor between the 35 and 65 percent design phases. Based on comments from Sundt/Walsh and SFPUC staff, the project

design has undergone significant modifications. The SFPUC Commission has approved the following three modifications to the Sundt/Walsh construction contract:

1. Modification No. 1, approved in February 2017, added the construction of 12kV infrastructure, installation of seismic drilled piers, and installation of bar screens, increasing the contract amount by \$11,600,000, for a total of \$256,162,224;
2. Modification No. 2, approved in December 2018, increased the in-site preparation cost based on re-scoping during the pre-construction phase because of limited bids with higher than estimated bids from subcontractors and added a 50 million gallons per day influent pump station, piping, an electrical building, and odor control, increasing the contract amount by \$36,017,960, for a total of \$292,180,184; and
3. Modification No. 3, approved in December 2020, increased the project duration as a result of repackaging and rebidding work due to limited subcontractor response to early bid packages, added construction inspection support required for geotechnical work, and added overtime hours for inspection staff and additional inspector to cover a second shift, increasing the contract amount by \$106,321,923, for a total of \$398,502,107.

A proposed Modification No. 4 is scheduled to be considered by the SFPUC Commission on March 9, 2021, which would increase the contract amount by \$91,749,642, for a total of \$490,251,749. Modification No. 4 would include revised design components related to the rehabilitation of the existing Southeast Treatment Plant Lift Station and odor control facility and an increase to the Main Headworks trade bid packages. According to Mr. Scarpulla, the construction cost may potentially further increase when design has been completed and the results of competitive bids are received for the remaining bid packages.

HDR's scope of services includes pre-construction services, construction contract administration, construction inspection, construction contracts management, project controls, and building information modeling. Under the proposed Amendment No. 1, HDR would add a special inspector to cover the contractor's planned multiple work shifts, an office engineer to assist with multiple work scopes, an assistant field contract administrator to support increased construction manager/general contractor contract administration, as-needed material testing services, and inspector overtime based on the contractor's planned multiple work shifts.

Under the service agreement, HDR also provides an environmental justice community benefits commitment. HDR is providing a direct financial contribution, volunteer hours, and in-kind contributions for a total value of approximately \$288,500. The contribution is provided by HDR and does not come from SFPUC funds. The proposed Amendment No. 1 would not augment this contribution.

## **FISCAL IMPACT**

The proposed Amendment No. 1 would increase the not-to-exceed amount of the HDR contract by \$10,000,000, for a total not to exceed \$27,000,000. According to Mr. Scarpulla, estimated contract expenditures through December 2020 total approximately \$9,702,000. Actual and projected expenditures are shown in Table 1 below.

**Table 1: Estimated Actual and Projected Expenditures**

| <b>Actual Expenditures (through December 2020)</b>   |                     |
|--|---------------------|
| <b>Task</b>  | <b>Amount</b>       |
| Scope I Cost Estimating                              | \$425,000           |
| Scope II Cost Estimating                             | 201,000             |
| Pre-Construction                                     | 168,000             |
| Construction Contract Administration                 | 583,000             |
| Construction Inspection                              | 409,000             |
| Construction Contract Management                     | 7,065,000           |
| Construction Project Controls                        | 162,000             |
| Building Information Modeling                        | 3,000               |
| Subcontractor Markup                                 | 18,000              |
| Other Direct Costs                                   | 38,000              |
| <i>Subtotal – Actual Expenditures</i>                | <i>\$9,072,000</i>  |
| <b>Future Projected Expenditures</b>                 |                     |
| <b>Task</b>  | <b>Amount</b>       |
| Construction Contract Administration                 | \$5,700,000         |
| Construction Contract Administration During Closeout | 1,100,000           |
| Construction Inspection                              | 8,766,000           |
| Construction Contract Management                     | 700,000             |
| Construction Project Controls                        | 1,200,000           |
| Other Direct Costs                                   | 462,000             |
| <i>Subtotal – Projected Expenditures</i>             | <i>\$17,928,000</i> |
| <b>Total Not-to-Exceed Amount</b>                    | <b>\$27,000,000</b> |

Sufficient funding for the proposed Amendment No. 1 is available in the SFPUC Wastewater Enterprise Capital Budget. According to Mr. Scarpulla, SFPUC would not likely have to increase the HDR contract amount if the construction contract amount is further increased.<sup>1</sup> However, if there is an increase in the contract duration of the Headworks project due to differing site conditions, errors and omissions by the designer, or difficulties in starting the treatment process, there is the possibility of a corresponding increase in construction management costs to manage the extended duration.

### **POLICY CONSIDERATION**

According to Mr. Scarpulla, the project cost increase is included in the Wastewater Enterprise 10-Year Capital Plan. The cost increase will be funded through the existing \$750 million Wastewater Enterprise commercial paper program. This funding covers project spending until the next

<sup>1</sup> Under the original agreement, construction management costs of \$17 million are approximately 6.6 percent of original construction costs of \$256 million. Under the proposed amendment, construction management costs of \$27 million are approximately 5.5 percent of estimated construction costs of \$490 million.

Wastewater Enterprise revenue bond sale, which is anticipated in FY 2021-22. Due to the cost increase, SFPUC staff is evaluating the priority and schedule of other projects.

According to Mr. Scarpulla, the project completed a cost reduction exercise that successfully reduced the cost overrun by approximately \$92 million. There is a procedure in place to limit any increase in scope which requires requested changes to be approved by the Infrastructure Bureau Managers.

## RECOMMENDATIONS

1. Amend the proposed resolution to request the SFPUC General Manager to report to the Board of Supervisors during the Board review of the SFPUC budget on the status of the New Headworks Facility project, including actual and projected construction costs, impact of construction cost increases on the SSIP, and procedures to contain construction cost increases.
2. Approve the proposed resolution as amended.

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| <b>Item 4</b><br><b>File 20-1179</b><br><i>(Referred to Committee from the 12/1/20 Board of Supervisors)</i>   | <b>Department:</b><br>Department of Technology (DT) |
| <b>EXECUTIVE SUMMARY</b>   |   |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution authorizes DT to enter into the Fifth Amendment to the City’s contract with AT&amp;T. The Amendment extends the term of the contract for one year until December 31, 2021, and increases the not to exceed amount of the contract by \$18,266,199 from \$122,429,557 to \$140,695,756.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The AT&amp;T contract provides for telephone services, such as voice over internet protocol (VOIP), legacy and circuit telephony, long distance, and toll-free service. The agreement also provides for internet connectivity. The proposed contract continues to rely on prices negotiated by the State’s California Network and Telecommunications (CALNET) Program.</li> <li>• On June 30, 2020, DT depleted the approved spending authority on the AT&amp;T contract, which expires at the end of the calendar year. Due to other priorities related to responding to the pandemic, DT did not bring this contract amendment forward prior to the depletion of the existing spending authority. The item was originally considered at the Budget &amp; Finance Committee on November 18, 2020.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Fifth Amendment provides \$18.3 million spending authority, which would cover the period from July 2020 through December 2021. Projected spending on the proposed Fifth Amendment is based on a three-year average of Citywide spending on the contract plus the Airport’s anticipated contract costs.</li> <li>• Except for Airport purchases, the Department of Technology makes AT&amp;T contract purchases on behalf of all City departments, which are then funded by DT’s service charges to City departments.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul> |   |

**MANDATE STATEMENT**

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

**BACKGROUND**

In May 2010, the Board of Supervisors authorized a not-to-exceed \$75,000,000 master contract between the Department of Technology (DT) and AT&T from February 26, 2010 to August 31, 2014 for the purchase of telecommunications services (File 10-0251). The master contract combined all AT&T services under one Citywide master contract as part of DT’s effort to consolidate information technology procurement and contracting on a Citywide basis.

The master contract allowed the City to purchase telecommunications services from AT&T under the best pricing provided by AT&T to other public entities through the State’s California Network and Telecommunications (CALNET) Program. The CALNET program secures competitively bid telecommunications contracts that can be used by both state and local agencies.<sup>1</sup> Table 1 below shows the history of the City’s existing agreement with AT&T.

**Table 1: History of DT Contract with AT&T**

|                   | Term                   | Not to Exceed Amount | Pricing  | Notes  |
|-------------------|------------------------|----------------------|----------|--|
| Original Contract | 2/26/2010 to 8/31/2014 | \$75,000,000         | CALNET 2 | Allowed the use of volume agreements from State of CA CALNET program and other local government. |
| Amendment 1       | 2/26/2010 to 8/31/2014 | \$75,000,000         | CALNET 2 | Allowed for project specific rates for special projects.   |
| Amendment 2       | 9/1/2014 to 12/31/2015 | \$97,953,700         | CALNET 2 | Authorized the migration of rates from CALNET 2 to CALNET3                                       |
| Amendment 3       | 1/1/2016 to 12/31/2019 | \$122,429,557        | CALNET 3 |  |
| Amendment 4       | 1/1/2020 to 12/31/2020 | \$122,429,557        | CALNET 3 | Added one year to term without additional spending authority.                                    |

Source: AT&T Agreements with City

<sup>1</sup> Administrative Code Section 21.16 allows the Departments to rely on the competitive procurement of other public agencies when purchasing commodities or services.

In February 2016, prior to approving the Third Amendment to the AT&T contract, and based on a recommendation from the Budget and Legislative Analyst, the City Administrator and the City Services Auditor division of the Controller's Office compared rates of AT&T and the other providers participating in the CALNET program. The analysis found that AT&T's CALNET rates were generally competitive with other CALNET providers.

### **Exhaustion of Contract Spending Authority in June 2020**

In December 2019, DT exercised an option year to extend the term of the agreement for one year without adding additional spending authority. At that time, the City's financial system showed sufficient spending authority for the rest of 2020 calendar year. DT later discovered that this was a system error and there was not sufficient spending authority for the remaining term of the existing contract, which expired at the end of calendar year (CY) 2020. DT reports that the data validity issues related to spending authority amounts have been resolved.

On June 30, 2020, DT depleted the approved spending authority on the AT&T contract, which expired at the end of CY 2020. Due to other priorities related to responding to the pandemic, such as emergency procurements to support remote work and preparing reduced budget proposals, DT did not bring this contract amendment forward prior to the depletion of the existing spending authority.

### **Original Consideration of Proposed Legislation**

The proposed legislation was originally considered at the Budget & Finance Committee on November 18, 2020, which referred the item to the Board of Supervisors with a positive recommendation. The Board of Supervisors later referred the item back to the Budget & Finance Committee to further consider questions about reducing the City's use of AT&T services in light of the pandemic and the possibility of switching providers. According to the Department of Technology, telephone and data costs have not decreased during the pandemic because the majority of telephone and data costs are fixed, rather than based on usage, which in any case has increased during the pandemic. The Department intends to work with the Controller's Office to evaluate the new pricing schedule from the State's CALNET rate negotiation, which is expected to be available later in 2021. The Department does not believe a transition to other telephone and data providers is feasible in the meantime.

## **DETAILS OF PROPOSED LEGISLATION**

The proposed resolution authorizes DT to enter into the Fifth Amendment to the City's contract with AT&T. The Amendment extends the term of the contract for one year until December 31, 2021, and increases the not to exceed amount of the contract by \$18,266,199 from \$122,429,557 to \$140,695,756. The AT&T contract provides for telephone services, such as voice over internet protocol (VOIP), legacy and circuit telephony, long distance, and toll-free service. The agreement also provides for internet connectivity.

According to Mr. Hao Xie, Strategic Sourcing Manager at the Department of Technology, the one-year contract extension through December 31, 2021 will align the end date of the City's contract with AT&T with the State's extension of the CALNET 3 contract with AT&T. The increase of

\$18,266,199 in the contract amount is expected to provide sufficient contract spending authority for actual and projected contract purchases for the 18-month period retroactive to July 2020 through December 2021.

## FISCAL IMPACT

Table 2 below shows actual and projected spending of \$18.3 million from July 2020 through December 2021 for the proposed Fifth Amendment to the AT&T contract. Pricing for the proposed contract extension would remain at or below CALNET 3 rates. Projected spending on the proposed Fifth Amendment is based on a three-year average of Citywide spending on the contract plus the Airport's anticipated contract costs.

**Table 2: Projected Spending on AT&T Contract**

|              | <b>FY 2020-21</b>   | <b>FY 2021-22*</b> | <b>Total</b>        |
|--------------|---------------------|--------------------|---------------------|
| Citywide     | \$11,177,466        | \$5,588,733        | \$16,766,199        |
| Airport      | 1,000,000           | 500,000            | 1,500,000           |
| <b>Total</b> | <b>\$12,177,466</b> | <b>\$6,088,733</b> | <b>\$18,266,199</b> |

Source: Department of Technology

Note: Values for FY 2021-22 represent six months of spending.

DT does not administer purchases for the Airport, which makes its own purchases on the AT&T contract. For the majority of the remaining spending, the Department of Technology makes AT&T contract purchases on behalf of all other City departments, which are then funded by DT's service charges to City departments.

## RECOMMENDATION

Approve the proposed resolution.