

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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

REVISED 2/10/2012

February 9, 2012

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: February 15, 2012 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item	File	Page
5 & 6	12-0039 Lease, Sublease and Transfer Agreement Amendment – Court Facility – 575 Polk Street	
	12-0040 Real Property Lease Expansion – Mattison Family Trust – 555 Polk Street.....	5 & 6 – 1
7	12-0049 Appropriating \$1,000,000 for Small Business Revolving Loan Fund Program – Office of Economic and Workforce Development.....	7 – 1
8 & 9	12-0127* Approving the 34 th America’s Cup Project and Related Transactions	
	12-0128* Resolution of Intention to Form Waterfront Infrastructure Financing District.....	8 & 9 – 1

***The attachment to these items was revised.**

Items 5 & 6
Files 12-0039 and 12-0040

Department:
 Real Estate
 Department of Public Health (DPH)
 Superior Court

EXECUTIVE SUMMARY

Legislative Objectives

- **File 12-0039:** The proposed resolution would approve (a) a new lease of approximately 9,000 square feet at 575 Polk Street between the City, as lessee, and the Mattison Family Trust, as lessor, for \$25,597 per month for use by the San Francisco Superior Court; (b) a sublease at the same 575 Polk Street Superior Court facility between the City, as sublessor, and the State of California, Judicial Council of California—Administrative Office of the Courts (AOC), as sublessee;; (c) an amendment to the Transfer Agreement for the court facility at 575 Polk Street; and (d) other actions in furtherance of this resolution.
- **File 12-0040:** The proposed resolution would (a) approve exercising a lease expansion option of approximately 9,000 square feet at 555 Polk Street between the City, as lessee and the Mattison Family Trust, as lessor, for \$16,100 per month, for use by the Department of Public Health (DPH) as a Community Justice Center, and (b) authorize other actions in furtherance of this resolution.

Key Points

- In 1990, the Board of Supervisors approved an initial ten year, and three month lease for approximately 9,000 square feet of ground floor space at 575 Polk Street for additional court rooms and administrative offices for the San Francisco Superior Court (Resolution 960-90). In 2001, the Board of Supervisors approved an option to extend this initial lease through June 30, 2011, with the Mattison Family Trust, the current lessor (Resolution 297-01). Since July 1, 2011, this lease has continued on a holdover month-to-month basis, at a rental cost of \$28,157 per month, or ten percent more than the \$25,597 per month rent paid in June of 2011.
- On October 28, 2008, the Board of Supervisors approved a Transfer Agreement between the City and the State AOC for (a) the transfer of the Polk Street Court Facility at 575 Polk Street from the City to the State AOC, including the maintenance and management responsibilities (Ordinance 249-08), (b) the City's payment of annual County Facility Payments to the State AOC, (c) the City's obligation to continue the lease with the Mattison Family Trust that extended through June 30, 2011, and (d) the City's use of Courthouse Construction Funds to make the annual County Facility Payments to the AOC.
- In 2008, the Board of Supervisors retroactively approved a separate 9,000 square foot five year sublease (Resolution 348-08) at 555 Polk Street between the California Culinary Academy, as sublessor, and the City, on behalf of DPH, as sublessee, for the City's new Community Justice Center at \$16,100 per month , from March 15, 2008 through March 15, 2013. The Community Justice Center, located at 555 Polk Street, is on the second floor of the same building housing the Superior Court facility, located at 575 Polk Street, on the ground floor.

Fiscal Impacts

- Under the proposed 575 Polk Street lease (File 12-0039), rent would remain at \$25,597 per month for the nine year, five month term, or approximately \$2.84 per square foot per month for the 9,000 square feet of space, a total of \$307,164 per year. Total annual operating expenses are estimated at approximately \$92,500. Therefore, total annual lease and operating costs total \$399,664. Over the nine year, five month term, total lease and operating costs for the 575 Polk Street court facility is \$3,882,466.
- The entire \$399,664 575 Polk Street annual lease and operating costs would continue to be funded from the City's Courthouse Construction Fund. However, the previously available surplus in the Courthouse Construction Fund has been depleted and the annual revenues of approximately \$3,000,000 accruing to the Courthouse Construction Fund are less than the annual expenses of approximately \$4,600,000, to primarily cover the debt service on the 400 McAllister Street court facility, such that the FY 2010-11 ending balance in the Courthouse Construction Fund was a negative \$1,096,000. The City's General Fund is the source of funding for the Courthouse Construction Fund shortfalls.
- The proposed sublease and amendment to the Transfer Agreement (File 12-0039) between the City and the State AOC allow the City to continue to reduce the annual County Facility Payments owed to the State AOC by an amount equal to the Polk Street lease payments and related operating expenses made by the City to the Mattison Family Trust. The FY 2011-12 County Facility Payment owed by the City to the State AOC is \$375,505, such that based on a current State allowable reduction of \$351,043 for the existing 575 Polk Street lease and operating costs, the City is currently obligated to pay the State the remaining \$24,462 in FY 2011-12, with Courthouse Construction Funds.
- The proposed 555 Polk Street Expansion Option (File 12-0040) for the existing 9,000 square foot sublease for the Community Justice Center, would be combined with the existing 9,000 square foot Superior Court lease, for a total lease of 18,000 square feet between the City and the Mattison Family Trust. The monthly rent for the Community Justice Center would be the same as the current rent of \$16,100 per month, through July 31, 2021, or \$1.79 per square foot per month for the 9,000 square feet of space, or \$193,200 per year. Over the eight year and four month term, the total rent cost to DPH would be \$1,610,000. Annual operating expenses are estimated at approximately \$95,096. Based on annual rent of \$193,200 plus operating expenses of approximately \$95,096 per year, results in total annual costs of approximately \$288,296 for DPH. Over the eight year and four month term, total expenses for DPH at 555 Polk Street would be \$2,496,000, to be funded with City General Fund revenues, subject to Board of Supervisors appropriation approval in DPH's annual budget.

Recommendations

- Amend the proposed resolution (File 12-0039) on page 2, line 5 to change the correct date of when the City transferred maintenance and management responsibilities for the Polk Street court facility to the AOC from December 31, 2009 to December 31, 2008.
- Amend the proposed resolution (File 12-0039) on page 2, line 13 to change the correct date of when the 575 Polk Street lease expired from July 31, 2011 to June 30, 2011.
- Approve the proposed resolution (File 12-0039), as amended.
- Approval of the proposed resolution (File 12-0040) is a policy decision for the Board of Supervisors.

MANDATE STATEMENT

In accordance with Sections 23.26 and 23.27 of the City's Administrative Code, leases of \$5,000 or more per month that extend for more than one year are subject to Board of Supervisors approval by resolution.

BACKGROUND

In 1990, the Board of Supervisors approved an initial lease between the City, as lessee, and Pasquan and Giraud¹, as lessor, for approximately 9,000 square feet of ground floor space at 575 Polk Street for additional court rooms and administrative offices for the San Francisco Superior Court (Resolution 960-90). This initial ten year and three month lease extended from April 1, 1991 through June 30, 2001. In 2001, the Board of Supervisors approved an option to extend this initial ten-year, three month lease for an additional ten years, or through June 30, 2011, with the Mattison Family Trust, the successor to the original lessor (Resolution 297-01). According to Ms. Sue Wong, Chief Financial Officer of the Superior Court, this leased space is used by the Superior Court for two courtrooms, two judges' chambers, two holding cells, three administrative offices, and one conference room primarily used for training purposes.

Since July 1, 2011, this lease has continued on a holdover month-to-month basis, at a rental cost of \$28,157 per month, or ten percent more than the \$25,597 per month rent paid in June of 2011. Mr. Charlie Dunn, Senior Real Property Officer in the Real Estate Division advises that the City has been in negotiations with the Mattison Family Trust and the State since the spring of 2011, or for approximately a year, regarding this lease and the related agreements discussed below.

In 2002, the State of California approved the Trial Court Facilities Act of 2002, which required that California cities and counties transfer their existing court facilities to the State's Administrative Office of the Courts (AOC) and make ongoing, fixed County Facility Payments (CFP) to the State of California. Under these arrangements, the AOC would assume the ongoing maintenance and management responsibilities for these transferred court facilities, which would be funded with the annual County Facility Payments paid by the City to the State AOC. In accordance with the Trial Court Facilities Act of 2002, if a transferred court facility was originally leased by a city or county, then rather than assuming the lease in the AOC's name, the city or county was permitted to retain the lease and continue to make the required lease payments and related operating costs and then deduct such ongoing lease payments and costs from the County Facility Payments that the county would otherwise have to pay to the State AOC for that court facility, until the lease terminated. Once the lease terminated, the AOC was authorized to permit one five-year extension on the court facility's lease term, unless the AOC Managing Director approved a longer lease extension.

¹ This original lease was between the City and County of San Francisco as lessee and Stephen L. Pasquan, Pamela Pasquan, Joseph J. Giraud and Beverly J. Giraud, as lessor.

On October 28, 2008, the Board of Supervisors approved a Transfer Agreement between the City and the AOC for the transfer of the Polk Street Court Facility at 575 Polk Street from the City to the State AOC, including the maintenance and management responsibilities (Ordinance 249-08), subject to the City's obligation to continue the lease with the Mattison Family Trust that extended through June 30, 2011. This Transfer Agreement also provided that an initial annual County Facility Payment of \$322,190² would be made by the City to the State's AOC in perpetuity, as adjusted annually for the 575 Polk Street Court Facility, but allowed the City to reduce these annual County Facility Payments by an amount equal to the Polk Street lease payments and related operating expenses made by the City to the Mattison Family Trust totaling \$290,925 in FY 2008-09, for a net payment of \$31,265 in FY 2008-09. In addition, this Transfer Agreement between the City and the State AOC permitted the City to use Courthouse Construction Funds to make such County Facility Payments to the State AOC. On December 31, 2008, the City transferred the 575 Polk Street court facility to the State AOC.³

In 1992, the Board of Supervisors established a Courthouse Construction Fund, as a Category Four Fund⁴, as authorized under Sections 76238 , 76000 and 76100 of the California Government Code, to receive revenues from various penalty assessments in criminal and parking cases, including court filing fees and surcharges on parking fees and fines, traffic violations and interest earnings. Courthouse Construction Funds are authorized for use to acquire, rehabilitate, construct or finance courtrooms or buildings necessary or incidental to the operation of the justice system, as well as for any lease rental payments or debt service payments for such courthouse facilities. In accordance with Section 10.100-353 of the City's Administrative Code, the Courthouse Construction Fund is maintained by the Controller's Office.

In May of 2008, the Board of Supervisors retroactively approved a separate 9,000 square foot sublease (File 08-0484; Resolution 348-08) at 555 Polk Street between the California Culinary Academy, as sublessor, which leases the space from the Mattison Family Trust⁵, and the City and County of San Francisco, on behalf of the Department of Public Health (DPH), as sublessee, for the City's new Community Justice Center. According to Ms. Sue Wong, Chief Financial Officer for the Superior Court, the Community Justice Center, which commenced operations in March of 2009, is a criminal court and social service center that serves the Tenderloin, Civic Center, Union Square and South of Market neighborhoods to provide Court authorized alternatives to incarceration, including drug treatment programs, housing and employment assistance and mental and physical health programs. Community Justice Center defendants are

² According to Ms. Michelle Allersma of the Controller's Office, the County Facility Payments was determined based on the court facilities' operating expenses incurred by the City, including janitorial and maintenance costs, parking, utilities, insurance and lease payments between FY 1995-96 and FY 1999-2000, subject to both an initial inflation adjustment and annual increases based on the annual rent increases under the existing lease.

³ In addition to the 575 Polk Street court facility, in accordance with Trial Court Facilities Act of 2002, the City also transferred the 400 McAllister Street court facility, the Hall of Justice court facility and the Youth Guidance Center's court facility to the AOC in 2008, and in FY 2011-12 will pay the AOC a total of \$1,697,716 of County Facility Payments for the AOC to maintain and manage these court transferred facilities.

⁴ In accordance with Section 10.100-1 of the City's Administrative Code, a Category Four Fund accumulates interest provided that the balance in the fund exceeds \$50,000 and any unexpended and unencumbered balances are carried forward each fiscal year.

⁵ The California Culinary Academy, as lessee, entered into a nine year and eight month lease with the Mattison Family Trust, as lessor, on July 28, 2003, which extends through March 31, 2013, at which time this lease will terminate.

typically homeless, substance dependent, mentally ill, and/or frequent users of emergency services and police resources, who have proven difficult to serve at the Hall of Justice. The Community Justice Center, located at 555 Polk Street, is on the second floor of the same building housing the Superior Court facility, located at 575 Polk Street, on the ground floor. The initial Community Justice Center sublease was for five years, from March 15, 2008 through March 14, 2013, with no options to extend the term. The DPH, as sublessee, currently pays the California Culinary Academy, as sublessor, \$16,100 per month for this 9,000 square foot sublease for the Community Justice Center, which includes a public area and counter, seven offices and 31 workstations and two large meeting rooms.

DETAILS OF PROPOSED LEGISLATION

File 12-0039: The proposed resolution (File 12-0039) would approve (a) a new lease of approximately 9,000 square feet on the ground floor at 575 Polk Street between the City, as lessee, and the Mattison Family Trust, as lessor, for use by the San Francisco Superior Court at \$25,597 per month, from approximately March 1, 2012⁶ through July 31, 2021, with one five-year option to extend, or through July 31, 2026; (b) a sublease of the 575 Polk Street premises between the City, as sublessor, and the State of California, Judicial Council of California, Administrative Office of the Courts (AOC), as sublessee; (c) an amendment to the Transfer Agreement between the City and the State AOC for the court facility at 575 Polk Street; and (d) other actions in furtherance of this resolution.

The proposed resolution would approve a lease at 575 Polk Street between the City, on behalf of the Superior Court, and Mattison Family Trust, which includes the following specific provisions:

- Lease of approximately 9,000 square feet for the Superior Court would commence on approximately March 1, 2012 and extend for nine years and five months through July 31, 2021, and include one five-year option to extend, or through July 31, 2026.
- Rent would be paid by the City to Mattison Family Trust at the same monthly rent under the previous lease, which expired on June 30, 2011, of \$25,597 per month for the duration of the nine years and five months. For the five-year option period, rent would be based on 95 percent of the then prevailing market rate for comparable age, quality and sized properties located in the Civic Center/Van Ness Corridor.
- City would be required to pay its pro rata share of Property Taxes, and other operating expenses. City would be required to pay its own costs for utilities, refuse removal, security and other direct costs incurred.
- Mattison Family Trust, as lessor, would be responsible for normal repairs and maintenance of the facility. Any additional services provided by Mattison Family Trust to the City would be paid by the City to Mattison Family Trust, plus a ten percent administrative fee.

⁶ According to Mr. Dunn, the proposed lease would commence, upon final approval by the Board of Supervisors and the Mayor, and subsequent to execution of the final documents by all parties.

- City would have an Expansion Option to expand the leased premises to include approximately 9,000 square feet of space on the second floor of the building for the City's Community Justice Center at 555 Polk Street, and could exercise this option with written notice to the Mattison Family Trust no later than March 15, 2012, subject to termination of the existing lease between the Mattison Family Trust and the California Culinary Academy. Mr. Dunn advises that if the proposed resolution (File 12-0039) and the accompanying resolution (File 12-0040) are approved by the Board of Supervisors, the Board of Supervisors would not be required to approve a subsequent resolution to exercise the expansion option.
- After July 1, 2016, the City would have the right to require Mattison Family Trust, as lessor, to provide leasehold improvements at the lessor's expense of up to \$54,000, or up to \$108,000 if the City exercises the above-noted Expansion Option, adjusted annually by the Bay Area Consumer Price Index. Any leasehold improvements above these amounts would be paid by the City to the lessor, plus a ten percent administrative fee.

The proposed resolution would also approve a sublease between the City and the State of California, Judicial Council of California, Administrative Office of the Courts (AOC) for the continued use of the 9,000 square foot space on the ground floor at 575 Polk Street by the San Francisco Superior Court. The term of this sublease would commence at the same time as the proposed lease, or approximately March 1, 2012 and extend through July 31, 2021, with one five year option to extend this sublease through July 31, 2026. Under the terms of this sublease:

- All applicable terms and conditions in the above-noted lease between the City and Mattison Family Trust would be incorporated into this sublease between the City and the AOC.
- The AOC would be required to provide the City with an Extension Notice, or notice of the AOC's intent to extend the term of the sublease, prior to the City exercising the five-year option to extend the above-noted lease.
- The City would reserve the right to access and use two holding cells in the subleased space to facilitate the operations of the City's Community Justice Center.
- The AOC would authorize the City to use the Courthouse Construction Fund to pay all base rent and additional charges, excluding janitorial or security expenses, during the initial nine-year and five month term of the sublease. If the State AOC does not authorize the City to use its Courthouse Construction Fund to pay base rent and charges during the five -year option period, then commencing on August 1, 2021, the State AOC would be responsible for paying the City the sublease monthly expenses.

The proposed resolution (File 12-0039) would also approve the First Amendment to the Transfer Agreement between the Judicial Council of California, Administrative Office of the Courts (AOC) and the City and County of San Francisco for the court facility at 575 Polk Street in order to allow the City, as lessee, to continue to use the Courthouse Construction Fund to pay rent to the Mattison Family Trust, as lessor, and to offset the County Facility Payments to be paid by the City to the State AOC during the proposed nine year and five month term of the lease, or through July 31, 2021.

The proposed resolution (File 12-0039) states that on December 31, 2009, the City transferred City's maintenance and management responsibilities for the Polk Street Court Facility to the AOC on page 2, line 5. In fact, the City transferred the City's maintenance and management responsibilities for the Polk Street Court Facility to the AOC on December 31, 2008. In addition, the proposed resolution (File 12-0039) states that the Polk Street lease expired on July 31, 2001 on page 2, line 13. The Polk Street lease actually expired on June 30, 2011.

Therefore, in order to provide for the correct dates, the proposed resolution should be amended on page 2, line 5 to change the December 31, 2009 date to December 31, 2008, and on page 2, line 13 to change the July 31, 2011 date to June 30, 2011.

File 12-0040: The proposed resolution (File 12-0040) would (a) approve exercising the above-noted Expansion Option by March 15, 2012 to expand the above-noted lease at 575 Polk Street by approximately 9,000 square feet at 555 Polk Street on the second floor between the City, as lessee, and the Mattison Family Trust, as lessor, for \$16,100 per month, for the continued use by the Department of Public Health (DPH) as a Community Justice Center through July 31, 2021, and (b) authorize other actions in furtherance of this resolution.

As noted above, the City, as sublessee, currently has a sublease with the California Culinary Academy, as sublessor, which expires on March 15, 2013, to use the second floor of the 555 Polk Street space for the Community Justice Center at a cost of \$16,100 per month.

If the proposed Expansion Option resolution is approved by the Board of Supervisors, Mr. Dunn advises that this Expansion Option would need to be formally exercised by the City with Mattison Family Trust by March 15, 2012, one year before the sublease between the California Culinary Academy and the City expires. Although the existing sublease between the California Culinary Academy and the City expires on March 15, 2013, given that and the lease between the California Culinary Academy and Mattison Family Trust for the space at 555 Polk Street expires on March 31, 2013, or two weeks later, Mr. Dunn advises that the City will extend its existing sublease for an additional two week holdover period, in order to coincide with the expiration of the lease. If the proposed resolution is approved by the Board of Supervisors, such that the option to expand the new lease is exercised and approved by March 15, 2012, the 9,000 square feet of space on the second floor of 555 Polk Street used by the Community Justice Center would then be automatically added on March 31, 2013 to the existing 9,000 square foot lease on the first floor of 575 Polk Street used by the Superior Court for courtrooms and administrative offices and extended for eight years and four months from March 31, 2013 through July 31, 2021, which would coincide with the expiration of the 575 Polk Street lease.

FISCAL IMPACTS

File 12-0039: Under the proposed nine year and five month lease between the City, as lessee, on behalf of the Superior Court, and the Mattison Family Trust, as lessor, the rent would remain at the same \$25,597 per month, or approximately \$2.84 per square foot per month for the 9,000 square feet of space at 575 Polk Street, or \$307,164 per year, as the City was paying under the previous lease, which expired on June 30, 2011. As noted above, since July 1, 2011, this lease has continued on a holdover month-to-month basis, at a cost of \$28,157 per month, or ten

percent more than the \$25,597 per month rent paid in June of 2011, when the previous lease expired. Therefore, the proposed monthly rent of \$25,597 would result in a \$2,560 monthly reduction from the \$28,157 monthly rent that the City has been paying to Mattison Family Trust since July 1, 2011. The rent would remain at this same \$25,597 monthly rate over the nine-year, five month term of the proposed 575 Polk Street lease, or through July 31, 2021.

If the City exercises the option to extend the lease by an additional five years, the monthly rent would be based on 95 percent of the then prevailing market rate for comparable age, quality and sized properties located in the Civic Center/Van Ness Corridor.

Under the proposed lease, the City would continue to pay for its own utilities, refuse removal and security costs. Under the proposed lease, the lessor would continue to provide janitorial, pest control, heating, ventilation and air conditioning (HVAC), and property management services, as well as pay annual Property Taxes and insurance expenses, which the City would reimburse the lessor for one-half of all such costs, based on 50 percent occupancy of the building. As shown in Table 1 below, total operating expenses for the City are estimated at approximately \$92,500, excluding security costs, during the first year. As shown in Table 1 below, the total costs for the Superior Court during the first year of the proposed lease for 575 Polk Street includes annual rent of \$307,164 (12 months x \$25,597 per month) plus annual operating expenses of approximately \$92,500, for a total of \$399,664.

According to Mr. Dunn, assuming a three percent annual increase, the total operating expenses over the nine year, and five month lease term will be approximately \$990,000. In accordance with the proposed lease, the annual rent will stay at the same \$307,164 over the nine year and five month term or a total cost of \$2,892,461. As shown in Table 1 below, the total costs of the proposed 575 Polk Street lease to the City would be \$3,882,466 for the continued operations of the Superior Courts leased courtrooms and administrative offices. As noted above, since July 1, 2011, this lease has continued on a holdover month-to-month basis, at a rental cost of \$28,157 per month, or ten percent more than (a) the \$25,597 per month rent paid in June of 2011 and (b) the \$25,597 per month rent to be paid under the proposed lease.

Table 1: Rent and Operating Expenses for 575 Polk Street

Expenses	Monthly	Annual	Nine Year, Five Month Lease Term
Rent for 575 Polk Street	\$25,597	\$307,164	\$2,892,461
Operating Expenses⁷ for 575 Polk Street	7,709	92,500	990,000
Total Rent and Operating Expenses for 575 Polk Street	\$33,305	\$399,664	\$3,882,466

⁷ Operating Expenses shown in Table 1 do not include the projected FY 2011-12 security costs of \$522,000 for 575 Polk Street provided by the Sheriff's Department, which is funded with separate State Trial Court Security Account funds, according to Ms. Wong.

The entire \$399,664 575 Polk Street annual lease and operating costs would continue to be funded from the City's Courthouse Construction Fund.

As noted above, court filing fees and surcharges on parking fees and fines, traffic violations and interest earnings are the source of revenue for the Courthouse Construction Fund, which generates approximately \$3,000,000 annually. Ms. Allersma advises that annual payments from the Courthouse Construction Fund currently include approximately (a) \$4,200,000 of debt service for the courthouse at 400 McAllister Street, and (b) \$400,000 (\$399,664) for the subject 575 Polk Street lease and related operating expenses, or a total of approximately \$4,600,000 in FY 2011-12. Ms. Allersma notes that the annual debt service payments for the 400 McAllister Street courthouse will decrease substantially in FY 2016-17 from \$4,200,000 to approximately \$2,000,000, and this debt will be fully repaid in FY 2020-21. However, the previously available surplus in the Courthouse Construction Fund has been depleted and the annual revenues of approximately \$3,000,000 accruing to the Courthouse Construction Fund are less than the annual expenses of approximately \$4,600,000, such that the FY 2010-11 ending balance in the Courthouse Construction Fund was a negative \$1,096,000. According to Ms. Allersma, the City's General Fund is the source of funding for the Courthouse Construction Fund shortfalls. Ms. Allersma advises that the City is in discussions with the State regarding potential future reimbursements from the Courthouse Construction Fund to the City's General Fund in future years, as the debt service for the 400 McAllister Street court facility is retired.

In addition, the proposed sublease and amended Transfer Agreement between the City and the State AOC allow the City to continue to reduce the annual County Facility Payments owed to the State AOC by an amount equal to the Polk Street lease payments and related operating expenses made by the City to the Mattison Family Trust. Ms. Allersma advises that the FY 2011-12 County Facility Payment owed to the State AOC is \$375,505, such that based on a current allowable reduction of \$351,043⁸ for the existing 575 Polk Street lease and operating costs, the City is currently obligated to pay the State the remaining \$24,462 in FY 2011-12, which is funded with Courthouse Construction Funds.

File 12-0040: Under the proposed resolution, the City would exercise its Expansion Option to include the 9,000 square foot sublease between the City, on behalf of DPH, and the California Culinary Academy for the Community Justice Center, with the existing 9,000 square foot lease on the ground floor between the City, on behalf of the Superior Court, and the Mattison Family Trust, for a total lease of 18,000 square feet of space between the City and the Mattison Family Trust. The monthly rent for the 9,000 square feet of additional space for the Community Justice Center on the second floor would be the same as the current rent of \$16,100 per month or approximately \$1.79 per square foot per month for the 9,000 square feet of space, or \$193,200 per year, as shown in Table 2 below.

⁸ The State AOC allowable reduction of \$351,043 is less than the total lease costs of \$307,164 plus the total operating expenses of \$92,500 because janitorial and pest control expenses are not included. According to Mr. Michael Yuen of the Superior Court, janitorial and pest control costs are covered under the State Trial Court funding for the Superior Court.

The rent would remain at this same \$16,100 monthly rate over the eight year and four month term of the proposed 555 Polk Street lease, or through July 31, 2021. Over the eight year and four month term, the total rent cost to DPH would be \$1,610,000.

Under the proposed Expansion Option, the City and the lessor would continue to pay for all of the same costs, with such costs passed through to the City based on 50 percent occupancy of the building, as discussed above for the existing lease. Based on these lease provisions, as shown in Table 2 below, total operating expenses for the City are estimated at approximately \$95,096 during the first year. Based on annual rent of \$193,200 plus operating expenses of approximately \$95,096 per year, results in total costs of approximately \$288,296 for DPH during the first year of the proposed extended lease for the Community Justice Center at 555 Polk Street, as shown in Table 2 below.

Table 2: Rent and Operating Expenses for 555 Polk Street Lease

Expenses	Monthly	Annual	Eight Year, Four Month Term of Lease
Rent for 555 Polk Street	\$16,100	\$193,200	\$1,610,000
Operating Expenses for 555 Polk Street	7,925	95,096	886,000
Total Rent and Operating Expenses for 555 Polk Street	\$24,025	\$288,296	\$2,496,000

Based on an estimated three percent annual increase in operating expenses, total costs are estimated at \$886,000 over the eight year and four month lease term. As shown in Table 2 above, over the eight year and four month term, the rent and operating expenses for DPH at 555 Polk Street would be \$2,496,000 for the continued operations of the Community Justice Center.

The subject 555 Polk Street lease for the Community Justice Center on the second floor is currently funded with City General Fund revenues, under the DPH annual budget. According to Mr. Craig Murdock of the Department of Public Health, if the proposed lease for the Community Justice Center at 555 Polk Street is approved, the ongoing lease and operating costs would continue to be funded with City General Fund revenues in DPH's annual budgets.

As noted above, the rent for 575 Polk Street for the Superior Court on the ground floor would be \$25,597 per month, or approximately \$2.84 per square foot per month for the 9,000 square feet of space, or \$307,164 per year. In comparison, under the proposed 555 Polk Street lease for the Community Justice Center on the second floor, the rent would be \$16,100 per month or approximately \$1.79 per square foot per month for 9,000 square feet of space on the second floor of the same building, or \$193,200 per year. According to Mr. Dunn, because rents on upper floors are generally less expensive than ground floor leases, although the square footage is the

same in both of these leases in the same building, the rent on the ground floor at \$307,164 per year for the Superior Court will be \$113,964, or approximately 59 percent more per year than the \$193,200 annual rent for the Community Justice Center on the second floor of the building.

POLICY CONSIDERATIONS

According to Mr. Murdock, there are currently a total of 11.5 full-time equivalent (FTE) staff working at the 555 Polk Street Community Justice Center, including five from DPH, two from Adult Probation, two from Human Services Agency, one from the Public Defender, one from the District Attorney's Office, and one part-time administrative assistant from the Superior Court. Mr. Murdock advises that DPH's FY 2011-12 budget for the Community Justice Center is approximately \$1,500,000 in General Fund expenditures.

Ms. Wong advises that since March of 2009, the Community Justice Center has heard over 6,000 cases involving 4,200 defendants. According to Ms. Wong, in FY 2010-11, the Community Justice Center received 1,786 cases. However, as of the writing of this report, disposition of all of these cases is not available. Ms. Wong further advises that in 2011, the Superior Court entered into a \$200,000⁹ two-year sole source agreement with the RAND Corporation, a nonprofit organization, to conduct an independent evaluation of the Community Justice Center. According to Ms. Wong, the final results of this study will be available in late 2013.

Given that this independent evaluation of the Community Justice Center will be completed in late 2013, the Budget and Legislative Analyst questions whether the Board of Supervisors should approve exercising an option at this time, which would result in continuing the 555 Polk Street lease for the Community Justice Center for an additional eight years and four months, which would commence in March of 2013 and extend through July 31, 2021. However, according to Mr. Dunn, entering into a shorter-term lease for the 555 Polk Street facility would result in significantly higher monthly lease costs. However, Mr. Dunn advises that Mattison Family Trust, the lessor, only agreed to continue the lease at the same monthly rent of \$16,100 per month, if the lease would be continued for a the longer term of eight years and four months. Therefore, the Budget and Legislative Analyst considers approval of the proposed resolution (File 12-0040) to exercise the option to continue the lease for eight years and four months at 555 Polk Street for the Community Justice Center to be a policy decision for the Board of Supervisors.

⁹ Ms. Wong advises that \$150,000 was provided by the Controller's Office, with Proposition C funds, and \$50,000 was provided by DPH from prior year unexpended funds for the Community Justice Center evaluation.

RECOMENDATIONS

1. Amend the proposed resolution (File 12-0039) on page 2, line 5 to change the correct date of when the City transferred maintenance and management responsibilities for the Polk Street court facility to the AOC from December 31, 2009 to December 31, 2008.
2. Amend the proposed resolution (File 12-0039) on page 2, line 13 to change the correct date of when the 575 Polk Street lease expired from July 31, 2011 to June 30, 2011.
3. Approve the proposed resolution (File 12-0039), as amended.
4. Approval of the proposed resolution (File 12-0040) is a policy decision for the Board of Supervisors because although the results of an independent evaluation of the Community Justice Center will not be known until such evaluation is completed in late 2013, the proposed resolution would exercise an option to continue the 555 Polk Street lease for the Community Justice Center for an additional eight years and four months, which would commence in March of 2013 and extend through July 31, 2021.

Item 7
File 12-0049

Department:
Office of Economic and Workforce Development (OEWD),

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would appropriate \$1,000,000 of General Fund prior year fund balance for the Small Business Revolving Loan Fund Program managed by TMC Development Working Solutions (Working Solutions), through the Office of Economic and Workforce Development (OEWD).

Key Points

- The Small Business Revolving Loan Fund Program is a City funded loan program, to generate additional economic activity by providing greater access to capital for small and micro-businesses in San Francisco that have had difficulty accessing regular credit markets. Loans are up to \$25,000 for startup companies and \$50,000 for existing businesses. To qualify, businesses must be (a) in San Francisco, (b) unable to get a bank loan, and (c) able to create or retain at least one full-time job for a low- to moderate-income person.
- In 2009, the City provided Working Solutions, a non-profit organization, \$800,000 of unused Community Development Block Grant and Title IX Economic Development Administration (EDA) funds, of which \$680,000, or 85 percent, was for loan capital and \$120,000, or 15 percent, was for administrative costs to fund staff to process the loans and provide technical assistance.
- Between July 13, 2009 and January 25, 2012, the Small Business Revolving Loan Fund Program, through Working Solutions, provided loans to 27 businesses totaling \$665,585, which has resulted in the creation of 73 jobs. As of January 25, 2012, a total of \$244,260 has been repaid back to the Small Business Revolving Loan Fund, including \$202,289 in principal and \$41,971 in interest. To date, there have been no loan defaults.

Fiscal Impacts

- The proposed ordinance would be funded with \$1,000,000 from the General Fund prior year fund balance.
- As of January 25, 2012, the Small Business Revolving Loan Fund has a balance of \$258,675 including \$202,289 in principal repayments, \$41,971 in interest payments, and \$14,415 not yet loaned monies.
- In addition, the City is providing (a) \$77,000 of repayments from previous Economic Development Administration Title IX loans, and (b) \$432,500 of previously approved loan funds from Wells Fargo, such that together with the proposed \$1,000,000 supplemental appropriation, a total of \$1,509,500 would be provided to the Small Business Revolving Fund. Of the total \$1,509,500, \$226,425 would be for Working Solutions administrative expenses and \$1,283,075 would be for available capital for small business loans.

Policy Issue

- Given that there has not yet been an evaluation of this program, and that there is currently a total of \$768,175 of funds available to continue the Small Business Revolving Loan Program, the Budget and Legislative Analyst considers approval of an additional \$1,000,000 of General Fund revenues at this time, to be a policy decision for the Board of Supervisors.

Recommendation

- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Under Section 9.103 of the City's Charter, the Board of Supervisors is responsible for amending and approving the Annual Appropriation Ordinance.

Background

The Small Business Revolving Loan Fund Program is a City-funded loan program, which commenced in April of 2009, through the Office of Economic and Workforce Development (OEWD), to generate additional economic activity by providing greater access to capital for small San Francisco businesses. In 2009, based on a Request for Proposals (RFP) process conducted by the OEWD, the City awarded an agreement for a total of \$800,000 (\$550,000 of unused Federal Housing and Urban Development (HUD) Community Development Block Grant funds and \$250,000 of unused Title IX Economic Development Administration funds¹) to TMC Development Working Solutions (Working Solutions), a non-profit organization, specializing in providing micro-financing and related services to small businesses, to administer the Small Business Revolving Loan Fund Program.

The Program is targeted to small and micro-businesses² that have had difficulty accessing regular credit markets. Small Business Revolving Loans are up to \$25,000 for startup companies and \$50,000 for existing businesses and can be used for working capital, inventory purchase, equipment purchase, startup costs, and tenant improvements. The terms of the loans are up to five years with fixed interest rates ranging from four to six percent depending on the level of risk. To qualify, businesses must be (a) located in San Francisco, (b) unable to get a bank loan, and (c) able to create or retain at least one full time job for a low- to moderate-income person³.

Of the total \$800,000 awarded to Working Solutions \$680,000, or 85 percent, was for loan capital and \$120,000, or 15 percent, was for Working Solutions' administrative costs to fund approximately 1.0 full-time equivalent (FTE) position for the first two years and ten months to process the loans and provide technical assistance to the small-business owners. Under the existing Small Business Revolving Loan Fund Program, loans are to be repaid to Working Solutions with interest.

According to Ms. Emily Gasner, Executive Director for Working Solutions, OEWD tracks the previously issued loans and any new loans issued through the Small Business Revolving Loan Fund Program through bi-monthly Loan Committee Meetings and through monthly reports submitted by Working Solutions. Working Solutions also (a) meets with each business that has an outstanding loan every three months, (b) reviews each business's annual tax returns and bi-monthly financial statements and (c) provides five years of business coaching, mentoring, and support services to each business.

¹ The Economic Development Administration Title IX funds were from a \$1,100,000 grant given to the City in 1980 that was matched with \$1,136,787 in City funds at that time. Over the last 32 years, those funds have provided 151 loans totaling \$7,046,269. The \$250,000 in EDA Title IX funds used to fund the Small Business Revolving Loan Fund Program in 2009 were from loan repayments from that original \$1,100,000 EDA Title IX grant.

² Small businesses are defined as businesses with less than 100 employees while micro-businesses are defined as businesses with five or fewer employees, including the owner.

³ A low to moderate income person is defined as a single person making \$62,200 or less per year, or a family of four making \$88,800 or less per year.

According to Ms. Jennifer Matz, Director of OEWD, between July 13, 2009 and January 25, 2012, the Small Business Revolving Loan Fund Program, through Working Solutions, has provided loans to 27 businesses totaling \$665,585 which has resulted in the creation of 73 jobs.⁴ As of January 25, 2012, a total of \$244,260 has been repaid to the Small Business Revolving Loan Fund, including \$202,289 in principal and \$41,971 in interest. As of the writing of this report, there have been no loan defaults.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would appropriate \$1,000,000 of General Fund prior year fund balance for the Small Business Revolving Loan Fund Program through the Office of Economic and Workforce Development (OEWD), to be allocated to Working Solutions to provide additional loans for San Francisco small and micro businesses.

FISCAL IMPACTS

Source of Funding

The proposed ordinance would appropriate \$1,000,000 of monies from the unassigned prior year-end General Fund balance to the Small Business Revolving Loan Fund Program, to be managed by Working Solutions. The unassigned prior year-end General Fund balance represents the surplus fund balance from FY 2010-11 that is greater than the amount assumed in the FY 2011-12 Annual Appropriations Ordinance. According to Mr. Leo Levenson, Budget and Analysis Director in the Controller's Office, although the Controller's Office working with the Mayor's Office make updated projections regarding the year-end General Fund balance, how much the year-end General Fund balance actually will be is not known until all revenue accruals and other year-end analysis is complete, which is usually not until November of each year, or four months after the budget is approved by the Board of Supervisors. The City ended FY 2010-11 with \$168,451,129 in unassigned General Fund balance. Of that amount, \$159,390,028 was projected and assumed in the FY 2011-12 Annual Appropriation Ordinance, resulting in an actual surplus unassigned prior year-end General Fund balance of \$9,061,101. Of the original \$9,061,101, \$1,000,000 has been appropriated by the Board of Supervisors in FY 2011-12 for the Mirant Potrero LLC settlement related to the Potrero Power Plan closure, leaving a current remaining balance of \$8,061,101.

If the proposed \$1,000,000 supplemental appropriation ordinance is approved by the Board of Supervisors, the remaining General Fund prior year-end fund balance would be \$7,061,101 (\$8,061,101 less \$1,000,000). At the end of FY 2011-12, all remaining funds in the General Fund prior year-end fund balance would be closed out and used as a source for funding the FY 2012-13 General Fund budget.

⁴ All businesses that receive a loan from the Small Business Revolving Loan Fund must have their employees fill out employee family income verification forms. This data is aggregated to sum the total jobs created. Working Solutions did not have the breakdown of how many jobs were low- to moderate-income jobs but were working to get that information to OEWD.

Balance of the Small Business Revolving Loan Fund

As shown in Table 1 below, as of January 25, 2012, the Small Business Revolving Loan Fund had an available balance of \$258,675 including \$202,289 in principal repayments, \$41,971 in interest payments, and \$14,415 in funds that have not yet been loaned to businesses that remains from the original \$800,000 of grant funds.

Table 1: Current Balance in the Small Business Revolving Loan Fund

Principal Repayments	\$202,289
Interest Payments	41,971
Remaining Funds Not Yet Loaned from Original \$800,000	14,415
Subtotal Available Funds as of January 25, 2012	\$258,675

In addition, according to Ms. Matz, and shown in Table 2 below, the City is using additional funding to further supplement the Small Business Revolving Loan Fund, including:

- (a) \$77,000 of repayments from previous Economic Development Administration Title IX loans⁵, and
- (b) \$432,500 of previously approved loan funds from Wells Fargo.⁶

Table 2: The Proposed Funding for Small Business Revolving Loan Fund Program

Proposed \$1,000,000 of General Fund Monies (<i>Proposed Ordinance</i>)	\$1,000,000
Wells Fargo Funds	432,500
Repayments from Previous Small Business Loan Program	77,000
Subtotal	\$1,509,500
Working Solutions Administrative Fees (15%)	226,425
Available Capital	\$1,283,075

As shown in Table 2 above, if the proposed \$1,000,000 supplemental appropriation ordinance is approved, coupled with the additional \$432,500 Wells Fargo loan funds and \$77,000 of previous small business loan repayments, the Small Business Revolving Loan Fund would have a total of

⁵ The source of these funds was repayment of the same EDA Title IX loans granted to the City in 1980 as described in footnote 1.

⁶ The \$432,500 is part of a \$500,000 loan from Wells Fargo to the City previously approved by the Board of Supervisors (File 04-1685). The terms of the loan established annual interest rates of two percent. The outstanding principal balance of the loan and accrued but unpaid interest is due and payable by the City to Wells Fargo on March 4, 2018. The original loan to the City was intended to be issued to businesses, in the form of loans, for facade and tenant improvements in the Bayview neighborhood. Due to a lack of interest on behalf of the businesses, in 2011, OEWD and Wells Fargo decided to redeploy the funds for microfinance loans through the Small Business Revolving Loan Fund. \$432,500 of the original \$500,000 loan to the City by Wells Fargo will be provided to Working Solutions as a loan to be repaid to the City at two percent annual interest over five years. Based on terms from the original loan agreement between Wells Fargo and the City, the funds are targeted, but not limited to neighborhoods representing distressed or underserved areas of the City, including the Mission District, South of Market, Tenderloin, Chinatown, Bayview, Mid-Market, Excelsior (Outer Mission) and Ocean Avenue.

\$1,509,500 of new funding available, including \$226,425 for Working Solutions administrative expenses and \$1,283,075 in additional loan capital.

According to Ms. Gasner, 15 percent of the total funds provided to Working Solutions would be for expenses to administer the Small Business Revolving Loan Fund, which are designed to be one-time payments and are not intended to fund the administration of the Small Business Revolving Loan Fund in perpetuity. The \$226,425 in administrative costs would fund approximately 3 FTE for the first year as shown in Table 3 below:

Table 3: FTE Positions for Working Solutions Administrative Costs

Position	FTE
Executive Director	0.25
Operations and Marketing Manager	0.25
Post Loan Technical Assistance Staff Manager	0.50
Business Development Manager	0.50
Client Intake Specialist	0.50
Loan Officer and Pre-Loan Technical Assistance Staff	0.50
Business Development Officer	0.50
Total FTE	3.00

According to Ms. Gasner, Working Solutions will leverage additional funding from the U.S. Treasury Department and private corporations to continue the same level of services after the first year to continue to administering the new loans. Ms. Matz and Ms. Gasner are currently discussing entering into a Memorandum of Understanding (MOU) that would grant Working Solutions the use of the interest payments, from the loans, which have remained unused as of the writing of this report, to cover Working Solutions' future administrative costs.

According to Ms. Gasner, currently the average small and micro-business loan is \$25,000, such that the additional available capital of \$1,283,075, shown above in Table 2, would fund approximately 51 loans, each of which, by the requirements of the loan, would generate at least one job for low or moderate income workers, or a total of at least 51 new jobs in San Francisco.

POLICY ISSUE

As of the writing of this report, there has not been an overall evaluation of the existing Small Business Revolving Loan Fund Program. In addition, as of the writing of this report, as noted above, neither the OEWD nor Working Solutions knew the number of low or moderate income jobs that have been created under this Program. As discussed above, since 2009, the Small Business Revolving Loan Fund Program has been administered by the OEWD, through an agreement with Working Solutions, which was previously funded with \$550,000 of unused Federal Housing and Urban Development (HUD) Community Development Block Grant funds and \$250,000 of unused Title IX Economic Development Administration funds, for a total of \$800,000.

As shown in Table 1 above, there is currently \$258,675 of repaid loans from these original funds. In addition, the City is providing \$432,500 of previously approved loan funds from Wells Fargo

and \$77,000 of repayments from previous Economic Development Administration Title IX loans to the Small Business Revolving Loan Program. Together, these three funding sources would provide \$768,175 of immediate funding for the Small Business Revolving Loan Program.

Given that there has not yet been an evaluation of this program, and that there is currently a total of \$768,175 of funds available to continue the Small Business Revolving Loan Program, the Budget and Legislative Analyst considers approval of an additional \$1,000,000 of General Fund revenues at this time, to be a policy decision for the Board of Supervisors.

RECOMMENDATION

Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

Items 8 and 9 Files 12-0127 and 12-0128	Department: Port of San Francisco Office of Economic and Workforce Development
--	---

EXECUTIVE SUMMARY

Background

The 34th America's Cup is a series of international sailing races between the Golden Gate Yacht Club, the defender of the America's Cup, and the challengers, to be hosted by the City in 2012 and 2013. On December 14, 2010, the Board of Supervisors approved the original 34th America's Cup Host and Venue Agreement between the America's Cup Event Authority (Event Authority), the America's Cup Organizing Committee (ACOC), and the City, to host the 34th America's Cup and related events (Event) in San Francisco. At the same time, the Board of Supervisors found the 34th America's Cup Event to be fiscally feasible, as required by Administrative Code Chapter 29 (File 10-1259).

Subsequent to the Board of Supervisors approval of the original Host and Venue Agreement, the Mayor's Office and other City officials agreed to modifications to the Host and Venue Agreement, which are discussed further in this report.

San Francisco was selected as the host city for the 34th America's Cup on December 31, 2012, and the Mayor, Event Authority, and ACOC executed the modified Host and Venue Agreement on January 4, 2011. The Host and Venue Agreement obligated the City, as host city for the Event, to conduct environmental review of the Event, provide waterfront venues for the Event at no cost to the Event Authority, and provide or facilitate the provision of certain services required to host a successful Event.

The proposed Development and Disposition Agreement (DDA) is subject to Board of Supervisors approval because it replaces Sections 5, 6, 7, and 15 of the Host and Venue Agreement, as modified. Under the proposed DDA, the Event Authority is granted long-term development rights to certain Port properties in exchange for the Event Authority's financing infrastructure and site preparation work for certain Port properties in advance of the 34th America's Cup Event. Under the proposed DDA, the Event Authority will be granted long-term leases or transfer rights, together with development rights, for Piers 26, 28, 29, and 30-32, and Seawall Lot 330.

Fiscal Impact

Estimated costs for Authority Infrastructure Work and Additional Work performed by the Event Authority prior to the Event are \$111,306,520, which is \$56,306,520, or more than 102 percent over the previously estimated costs of \$55,000,000 under the original Host and Venue Agreement. The entire amount of \$111,306,520 is fully reimbursable by the Port to the Event Authority through the Port's granting of long term leases and development rights to the Event Authority.

Under the proposed DDA, the Port will also reimburse the Event Authority for Pre-Match Authority Infrastructure Work of \$55,000,000 through the 66-year rent-free lease for Piers 30-32 and transfer of title to Seawall Lot 330. The Port will reimburse the Event Authority for Authority Infrastructure Work of the remaining estimated \$56,306,520 (\$111,306,520 less \$55,000,000) through infrastructure financing bond proceeds, and rent credits for 10-year leases for Piers 26, 28, and 29, and a 66-year lease for Pier 29. These provisions represent a change from the original Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, which allowed for Port reimbursement only through rent credits on long term leases for Piers 30-32 and Piers 26 and 28, and transfer of title to Seawall Lot 330. The modified Host and Venue agreement extended long term development rights to the short term venues, which included Piers 19 and 19 ½, Pier 23, and Pier 29.¹ Piers 19, 19 ½, and 23 were subsequently removed as long term lease sites under the proposed DDA, leaving Pier 29 as one of the main venues for which the Event Authority has long term development rights.

The proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 to the Event Authority for up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port if the Port has not fully reimbursed the Event Authority. Interest accrues on the value of the Event Authority's expenditures at 11 percent per year.

The Budget and Legislative Analyst estimates that the City's costs for hosting the Event may exceed (a) contributions from the America's Cup Organizing Committee (ACOC), and (b) Sales Tax, Hotel Tax, Parking Tax, and Payroll Tax revenues generated by the Event, which could result in an estimated net loss to the City of up to \$21,715,881.

The City's costs for hosting the 34th America's Cup are estimated to be \$51,750,810, which is \$20,329,331, or 64.7 percent more, than the previously estimated costs of \$31,421,479 included in the Budget and Legislative Analyst's December 13, 2010 report to the Board of Supervisors Budget and Finance Committee on the fiscal feasibility of the 34th America's Cup project (File 10-1259). The City's estimated costs for hosting the Event of \$51,750,810 are based on an estimated 5.4 million visitor days.

The estimated City costs of \$51,750,810 will be offset by (a) additional Hotel Tax, Payroll Tax, Sales Tax, and Parking Tax revenues generated by the 34th America's Cup activities, of an estimated \$22,034,929² and (b) the potential contribution of \$32,000,000 from the ACOC over three years as specified in the Host and Venue Agreement.

As shown in the table below, the City will realize an estimated net benefit from hosting the Event of \$2,284,119 if the ACOC contributes the full \$32,000,000, which the ACOC has pledged to

¹ Although Piers 27 and 80 were short term venues but were subject to limitations due to the construction of the Cruise Terminal on Pier 27 and the Port's breakbulk cargo operations on Pier 80. Under the modified Host and Venue Agreement, the City had sole discretion over long term leases for Piers 19 and 19 ½ and Pier 23 but not over a long term lease for Pier 29.

² The Budget and Legislative Analyst's November 18, 2010 memorandum to the Board of Supervisors provided a range of tax revenue estimates, based on the number of race days and visitors, from a low of \$17.3 million to a high of \$30.4 million. \$22.0 million represents the base scenario, based on approximately 55 days of racing and 3.6 million visitor days.

raise to offset the City's costs, and the Event generates the expected level of tax revenues. However, if the ACOC contributes only \$8,000,000, which is the amount currently estimated by the Controller, the City will incur an estimated net loss from hosting the Event of \$21,715,881.

It should be noted that the \$8,000,000 from the ACOC represents largely pledged monies, and not cash payments.

	If ACOC Contributes \$32,000,000	If ACOC Contributes \$8,000,000
Estimated Sales Tax, Hotel Tax, and Other Revenues	\$22,034,929	\$22,034,929
ACOC Contribution	32,000,000	8,000,000
Total Revenues to Offset City Costs	<u>54,034,929</u>	<u>30,034,929</u>
Estimated City Costs	<u>(51,750,810)</u>	<u>(51,750,810)</u>
Surplus/(Deficit)	\$2,284,119	(\$21,715,881)

The estimated loss of \$21,715,881 compares to the Budget and Legislative Analyst's prior estimate of \$11,959,846, an increase of \$9,756,035 or 81.6 percent.

Under the Host and Venue Agreement, the City may terminate the Agreement if the ACOC fails to meet its year one fundraising target of \$12,000,000 by seven days after the completion of the environmental review, which was January 31, 2012. The Budget and Legislative Analyst notes that, if the Board of Supervisors approves the proposed DDA, the City waives its rights to terminate the Host and Venue Agreement, even though the ACOC has not provided the \$12,000,000, as specified in the Agreement.

Recommendations of the Budget and Legislative Analyst

The Board of Supervisors should request the Executive Director of the Port to negotiate with the Event Authority to revise the proposed DDA to:

- For purposes of controlling the City's costs, require that reimbursement for all Authority Infrastructure Work and Additional Work is based on estimates provided by a third-party engineer rather than on actual expenditures.
- Require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.
- Eliminate the provisions, not included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, in which the Port must pay participation to the Event Authority of 50 percent on revenues from subsequent leases for Piers 30-32 and Piers 26 and 28 up to 15 years after the termination of the 66-year leases and return of Piers 30-32 and Piers 26 and 28 to the Port.
- Impose a cap on the Event Authority's total expenditures that are reimbursable by the Port.

- Reinstated the provision, included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, to require (i) a transfer fee equal to 1 percent of the sale price for the resale of condominiums (after the initial sale) constructed on Seawall Lot 330, and (ii) Port participation of 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's, or successor party's, interest in long-term leases from the Event Authority, or successor party, to other parties, excluding the first transfer.
- Require the return of short-term venues (Piers 19, 19 ½, 23, and 29 ½) to the Port immediately after the conclusion of the Event.
- Require the return of Pier 29 to the Port immediately after the conclusion of the Event if the Event Authority's Pre-Match Authority Infrastructure Work does not qualify for longer term leases for Pier 29.
- Require the Event Authority to retain Piers 26 and 28 unless the Event Authority's Pre-Match Authority Infrastructure Work or Deferred Additional Work does not qualify for longer term leases for Piers 26 and 28.
- Escalate the initial base rents for Piers 26 and 28 by the CPI prior to the start date of the longer term leases.

Approval of the proposed resolutions (File 12-0127 and File 12-0128) is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

Section 9.118 of the San Francisco Charter requires Board of Supervisors approval for entering into any agreement with a term of more than 10 years or expenditures of \$10,000,000 to the City or more, and to any amendments of such an agreement requiring Board of Supervisors approval. The Disposition and Development Agreement is an amendment to the 34th America's Cup Host and Venue Agreement, which requires Board of Supervisors approval under Section 9.118.

BACKGROUND

The 34th America's Cup is a series of international sailing races between the Golden Gate Yacht Club, the defender of the America's Cup, and the challengers, to be hosted by the City in 2012 and 2013.

On December 14, 2010, the Board of Supervisors approved the original 34th America's Cup Host and Venue Agreement between the America's Cup Event Authority ("Event Authority"), the America's Cup Organizing Committee (ACOC), and the City, to host the 34th America's Cup and related events ("Event") in San Francisco. At the same time, the Board of Supervisors found the 34th America's Cup Event to be fiscally feasible, as required by Administrative Code Chapter 29 (File 10-1259). Subsequent to the Board of Supervisors approval of the original Host and Venue Agreement, the Mayor's Office and other City officials agreed to modifications to the Host and Venue Agreement, which are discussed further in this report. San Francisco was selected as the host city for the 34th America's Cup on December 31, 2012, and the Mayor, Event Authority, and ACOC executed the modified Host and Venue Agreement on January 4, 2011. The Host and Venue Agreement obligated the City, as host city for the Event, to conduct environmental review of the Event, provide waterfront venues for the Event at no cost to the Event Authority, and provide or facilitate the provision of certain services required to host a successful Event.

On March 16, 2011, the Board of Supervisors approved a resolution (File 10-1564), which approved a Memorandum of Understanding (MOU) between the City and the Port, authorizing General Fund support to replace lost Port revenues due to the Event. Under the proposed MOU, the City agreed to reimburse the Port approximately \$6.38 million in General Fund monies to replace lost rent payments due to the Event. The ACOC had previously committed to raising \$32 million to offset the City's expenses, including the estimated \$6.38 million in General Fund monies, as discussed further below.

On December 15, 2011, the Planning Commission certified the final Environmental Impact Report (EIR) for the 34th America's Cup, Pier 27 Cruise Terminal, and Northeast Wharf Plaza projects. On December 16, 2011, the Port Commission approved the proposed Disposition and

Development Agreement (DDA) between the City, acting by and through the Port Commission, and the Event Authority.

On January 24, 2012, the Board of Supervisors heard the appeal to the EIR, and upheld the Planning Commission's certification of the EIR.

DETAILS OF LEGISLATION

File 12-0127 would (1) adopt the CEQA findings; (2) waive certain termination rights by the City under the Host and Venue Agreement; (3) approve the Development and Disposition Agreement (DDA) between the City and the Event Authority; (4) approve a Memorandum of Agreement regarding the City's and the Event Authority's respective obligations for certain mitigation measures contained in the Mitigation Monitoring and Reporting Program required by CEQA; and (5) authorize further actions and ratify prior actions consistent with the terms of the resolution.

File 12-0128 is a resolution of intent to establish an infrastructure financing district, consisting of eight project areas, on Port property. The proposed DDA requires the Port to submit the resolution of intent to establish an infrastructure financing district to the Board of Supervisors for approval. As discussed below, the Port will submit the financing plan for each project area in future legislation.

The proposed DDA provides more specific, and in some instances, modified terms and conditions, compared to the original Host and Venue Agreement previously approved by the Board of Supervisors on December 14, 2011. Under the Host and Venue Agreement, the Event Authority was granted long-term development rights to certain Port properties in exchange for the Event Authority's financing infrastructure and site preparation work for certain Port properties in advance of the 34th America's Cup Event. Under the proposed DDA, the Event Authority will be granted long-term leases or transfer rights, together with development rights, for Piers 26, 28, 29, and 30-32, and Seawall Lot 330 ("long term venues"), as discussed in detail below. The Attachment, provided by the Port, compares the original and modified Host and Venue Agreements and the proposed DDA.

Board of Supervisors approval of the proposed DDA is required because it replaces Sections 5, 6, 7, and 15 of the Host and Venue Agreement, as modified. These sections addressed:

- (a) The venue leases between the Port and Event Authority;
- (b) Infrastructure work to be performed by the Port or the Event Authority for the Event;
- (c) The Event Authority's long term development rights; and
- (d) Indemnity.

Event Venues

The proposed DDA defines the venues that the City must make available to the Event Authority for the 34th America's Cup Event. According to the Port Executive Director's report presented to the Port Commission at its December 16, 2011 meeting, Port Commission approval is required for the venue leases or licenses between the Port and the Event Authority because these leases will give the Event Authority rent-free access to the Port properties. These venue leases or licenses do not require Board of Supervisors approval. According to the Executive Director's report, the Port will submit the venue leases or licenses to the Port Commission for approval after the Board of Supervisors' final decision on the proposed DDA.

Short term venues

The Event Authority will have exclusive and non-exclusive use of the short term venues, which include Piers 19 and 19 ½, 23, 27, 29 and 29 ½, and 80. The Event Authority has use of piers and water areas generally for up to six months after the final series of races for the America's Cup in September 2013. Two short term venues have more defined uses and earlier return dates:

- Pier 27, for which the Event Authority has exclusive use for race viewing and team hospitality berths along the northern apron from March 1, 2013 through September 30, 2013. The Port will have the right to berth cruise ships from March 1, 2013 through May 31, 2013, with the Event Authority's consent.
- Pier 80, for which the Event Authority will have exclusive and non-exclusive use for storage, race operations and staging, and facilities for Event competitors and officials, with an obligation to make best efforts to return the venue to the Port's possession as soon as practical after the final series of races. The Port will continue its maritime operations along Pier 80.

Long term venues

The Event Authority has exclusive use of Piers 26, 28, 30-32, and Seawall Lot 330 for variable periods, from Spring 2012 up to six months after the final series of races. After that date, the Event Authority will be entitled to a 66-year lease for Piers 30-32, 26, and 28, and permanent title to Seawall Lot 330, assuming that the Event Authority has met certain spending threshold on infrastructure improvements, as discussed below.

Table 1 below compares the short term and long term venues contained in the Host and Venue Agreement and the proposed DDA.

Table 1
Short and Long Term Venues
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
<u>Short Term Venues</u> ¹	<u>Short Term Venues</u> ¹
Piers 19 and 19 ½, 23, 27, 29, 80	Piers 19, 19 ½, 23, 27, 29, 80 <i>Adds: Pier 29 ½</i>
Brannan Street Wharf	Brannan Street Wharf
Water areas surrounding: Piers 14 – 22 ½ Piers 32-38	Water areas surrounding: Pier 14 North and South Pier 32 to the edge of Pier 38 Pier 9 (subject to termination or renegotiation of existing tenancies)
<u>Long Term Venues</u> ²	<u>Long Term Venues</u> ²
Pier 26	Pier 26
Pier 28	Pier 28 Pier 29 ³
Piers 30-32	Piers 30-32
Seawall Lot 330	Seawall Lot 330

¹ Short term venues: Event Authority has exclusive and non-exclusive use up to six months after the final series of races.

² Long term venues: Event Authority has exclusive use for variable periods from Spring 2012 up to six months after the final series of races. Event Authority would (a) have the option of 66-year leases for Piers 26, 28, and 30-32, and (b) receive title for Seawall 330, as discussed in detail below.

Infrastructure Work to be Performed by the Port and Event Authority

Port Infrastructure Work

The proposed DDA requires the following infrastructure work to be performed by the Port:

- Demolish and remove Pier 36 shed by January 1, 2013. The Port entered into an agreement with the Army Corps of Engineers to demolish and remove Pier 36 for this purpose.
- Construction of Brannan Street Wharf by no later than June 30, 2013. The Port has entered into an agreement with a contractor for this purpose.
- Relocate Pier 27 shoreside power⁴. The Port has entered into an agreement for this purpose. Although this is a Port obligation, the proposed DDA requires the Event Authority to pay up to \$2 million for shoreside power relocation.

³ The Event Authority has long term development rights to Pier 29 if this site is necessary to reimburse investments, as noted below.

- Demolish the Pier 27 shed. This had been the responsibility of the Event Authority under the Host and Venue Agreement, but according to Port staff, was changed at the Port's request to accommodate the Port's construction schedule for the Pier 27 Cruise Terminal project.
- Completion of Pier 27 Improvements by the Port. Under the proposed DDA, if construction of Phase I of the Pier 27 Cruise Terminal falls behind schedule, the Port must present a plan to the Event Authority to expedite construction, such as funding additional construction shifts. If the Port has insufficient funds for that purpose, the Event Authority may fund the expedited construction, with reimbursement as part of Authority Infrastructure Work.

Infrastructure Work to be Performed by the Event Authority

Under the proposed DDA, the Event Authority must make certain infrastructure improvements to Port properties prior to the Event (or "Pre-Match Authority Infrastructure Work"), and has the option to make certain infrastructure improvements to Port properties after the Event ("Deferred Authority Infrastructure Work"). Infrastructure improvements to Port properties made by the Event Authority are fully reimbursable by the Port through the granting of long term leases and development rights to the Event Authority.

The Event Authority's infrastructure obligations under the proposed DDA are classified as:

- Pre-Match Authority Infrastructure Work;
- Dredging for spectator vessels prior to the Event (considered to be "Additional Work");
- Deferred Authority Infrastructure Work to Piers 30-32 performed up to ten years after the Event; and
- Deferred Additional Work to Piers 26 and 28 performed up to ten years after the Event.

Pre-Match Authority Infrastructure Work and Dredging for Spectator Vessels prior to Event

The proposed DDA requires the Event Authority to spend at least \$55 million on Pre-Match Authority Infrastructure Work, all of which is fully reimbursable by the Port through the granting of long-term leases and development rights to Port property and other reimbursement mechanisms. Pre-Match Authority Infrastructure Work includes:

- Improvements to Piers 30-32, including pile replacements, substructure strengthening (which may include seismic strengthening) and deck repairs necessary to use the venue for the Event, consistent with the Host and Venue Agreement.
- Construction of a new Pier 29 end wall, previously included in the Host and Venue Agreement, and Pier 29 substructure repairs, which were not specifically included in the Host and Venue Agreement.

⁴ Cruise ships can connect to shoreside power at Pier 27, using electricity generated by the Public Utilities Commission, rather than generate power on ship using diesel or other generators.

- Up to \$2 million payment to the Port for relocation of Pier 27 shoreside power.
- Pile replacement, substructure strengthening, deck repairs, or superstructure strengthening or other improvements deemed necessary for the Event by the Event Authority at its discretion. This work must be pre-approved by the Port and is fully reimbursable.
- Dredging to accommodate the races and the racing boats (the “regatta”).

In addition, the Pre-Match scope of work under the proposed DDA includes dredging and pile removal adjacent to Pier 9, Pier 14 North and South, and in the Brannan Street Open Water Basin to accommodate spectator vessels. The Event Authority’s expenditures for such work generates rent credits that can be applied to offset rent at proposed marina leases between Piers 14 and 22 ½ and between Piers 30-32 and Pier 38 (Brannan Street Open Water Basin).

The proposed DDA includes the following work within the definition of Authority Infrastructure Work, which was not specifically listed in the Host and Venue Agreement, including:

- Improvements to Port property imposed as a regulatory condition of approval by the Bay Conservation and Development Commission (BCDC) or other non-City agencies.
- Mitigation measures, which result in improvements to Port property, and are included in the Mitigation Monitoring and Reporting Program, adopted by the Port Commission and proposed to be adopted by the Board of Supervisors, in accordance with the California Environmental Quality Act (CEQA).
- Pier 29 substructure repairs. According to Port staff, in the course of due diligence inspection, several pilings were found to be deteriorated or missing, requiring repairs prior to the Event.

Deferred Authority Infrastructure Work and Additional Work to be Performed by the Event Authority after the Event

The proposed DDA provides for:

- Deferred Authority Infrastructure Work for Piers 30-32, determined by the Event Authority to not be necessary to complete prior to the Event, up to 10 years after the Event. Authority Infrastructure Work deferred until after the Event is not included in the required \$55 million expenditures by the Event Authority for infrastructure work prior to the Event, noted above. Any Event Authority expenditures for Deferred Authority Infrastructure Work to Piers 30-32 after the Event is in addition to the \$55 million and is fully reimbursable by the Port through the granting of long term leases, development rights, and other reimbursement mechanisms.
- Deferred Additional Work for Piers 26 and 28, with estimated costs of \$15 million and \$10 million respectively. This work may be deferred up to 10 years after the Event. If any Piers 26 and 28 infrastructure work is conducted prior to the Event, costs for any part of this work will be included in the Event Authority’s \$55 million pre-Match expenditure for Authority

Infrastructure Work, and excluded when considering the Event Authority’s post-Match investment at Piers 26 and 28.⁵

Table 2 compares the proposed DDA and Host and Venue Agreement requirements for infrastructure work to be performed by the Port and the Event Authority.

Table 2
Event Authority and Port Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
<u>Port Work</u>	<u>Port Work</u>
Demolition of Pier 36 by January 1, 2013	Same
Completion Brannan Street Wharf by June 30, 2013	Same
Pier 27 shoreside power relocation with \$2 million Event Authority contribution	Same
	<i>Adds: demolition of Pier 27 shed</i>
<u>Authority Infrastructure Work prior to Event</u>	<u>Authority Infrastructure Work prior to Event</u>
Piers 30-32 piles, substructure, decks	Same
Demolish portions of Pier 27 and Pier 29, including Pier 27 shed	<i>Removes: demolition of portions of Pier 27 shed</i>
Payment of \$2 million for Pier 27 shoreside power relocation	<i>Adds: repair of Pier 29 substructure</i>
	Same
	<i>Adds: BCDC and other non-City regulatory conditions of approval, resulting in improvements to Port property</i>
Other work required to host the Event	<i>Adds: CEQA Mitigation Monitoring and Reporting Program, , resulting in improvements to Port property</i>
Dredging and pier improvements to accommodate the regattas	Same
Other repairs to Event venues with the Port's permission, excluding marinas; may include Piers 26 and 28	Same
Dredging and pile removal between Pier 14 and 22 1/2; and Piers 30-32 and 38 for marinas to accommodate spectator vessels	Dredging and pile removal adjacent to Pier 9, Pier 14 North and South, and between Pier 32 and Pier 38 (Brannan Street Open Water Basin) to accommodate spectator vessels

⁵ Although the proposed DDA provides for infrastructure improvements to Piers 26 and 28 prior to the Event, and includes the Event Authority’s expenditures for such work to be included in the reimbursement plan for Event Authority expenditures of at least \$55 million prior to the Event, the proposed scope of work to be performed by the Event Authority prior to the Event does not include infrastructure improvements to Piers 26 and 28.

Table 2 (continued)
Event Authority and Port Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
<p><u>Additional Work to Piers 26 and 28</u> Repair, replace, and improve Piers 26 and 28 Additional Work to Piers 26 and 28 counted toward \$55 million Authority Infrastructure Work if conducted before Event</p> <p><u>Deferred Work to Piers 30-32 and Piers 26-28</u> Allows Piers 30-32 work to be deferred up to 5 years Allows Piers 26 and 28 work to be deferred up to 10 years</p>	<p><u>Additional Work to Piers 26 and 28</u> Same Same</p> <p><u>Deferred Work to Piers 30-32 and Piers 26-28</u> Allows Piers 30-32 work to be deferred up to 10 years Same</p>

Long Term Leases and Development Rights

The proposed DDA gives the Event Authority long-term development rights to Port property in exchange for making infrastructure investments to Port properties. Tables 3 and 4 below compare the Host and Venue Agreement and proposed DDA provisions for long term leases and development rights.

Long Term Leases and Development Rights for Pre-Match Authority Infrastructure Work and Deferred Authority Infrastructure Work to Piers 30-32

Under the proposed DDA, in exchange for the \$55 million in Pre-Match Authority Infrastructure Work, as well as dredging for spectator vessels or Piers 26 and 28 infrastructure work completed prior to the Event, the Port will:

- Enter into a rent-free 66-year lease with the Event Authority for Piers 30-32. The Port and Event Authority will negotiate a term sheet for the Piers 30-32 lease, which will be submitted to the Board of Supervisors for endorsement.⁶ The final lease will be subject to Board of Supervisors approval under Charter Section 9.118.
- Transfer title to Seawall Lot 330, a 2.8 acre lot at the corner of Bryant Street and the Embarcadero, to the Event Authority with no cash contribution to the Port. According to the proposed DDA, the Port intends to submit the transfer of title to Seawall Lot 330 and

⁶ In the Budget Analyst's 2004 *Management Audit of the Port of San Francisco*, we recommended that term sheets for development projects with costs greater than \$10 million to be submitted to the Board of Supervisors for endorsement in order for the Board of Supervisors to consider the financial goals of the project prior to approval of the final lease.

approval of the formation of the infrastructure financing district (see below) to the Board of Supervisors for approval prior to September 30, 2012.⁷

If the Event Authority's investment in Pre-Match Authority Infrastructure Work exceeds \$55 million, the Port will reimburse the Event Authority exclusively from the following sources in order of priority, until the rent credits or other reimbursements have fully reimbursed the Event Authority's investment:

- (a) Infrastructure financing district tax-increment bond proceeds for these specific sites;
- (b) 10 year leases for Piers 26 and 28 with rent credits;
- (c) 10 year lease for Pier 29 with rent credits;
- (d) 66-year lease for Pier 29 with rent credits; and
- (e) Participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port.

These provisions represent a change from the original Host and Venue Agreement, as approved by the Board of Supervisors on December 14, 2010, which allowed for Port reimbursement only through rent credits on long term leases for Piers 30-32 and Piers 26 and 28, and transfer of title to Seawall Lot 330. Subsequent to the Board of Supervisors' approval of the Host and Venue Agreement, the Mayor and City officials modified the agreement to extend long term development rights to the short term venues, which included Piers 19 and 19 ½, Pier 23, and Pier 29.⁸ Piers 19, 19 ½, and 23 were subsequently removed as long term lease sites under the proposed DDA.

⁷ In September 2011, the State Legislature finally approved Assembly Bill (AB) 418, removing certain State restrictions from Seawall Lot 330, allowing for the transfer of title to the Event Authority.

⁸ Although Piers 27 and 80 were short term venues but were subject to limitations due to the construction of the Cruise Terminal on Pier 27 and the Port's breakbulk cargo operations on Pier 80. Under the modified Host and Venue Agreement, the City had sole discretion over long term leases for Piers 19 and 19 ½ and Pier 23 but not over a long term lease for Pier 29.

Table 3
Development and Transfer Rights: Pre-Match Authority Infrastructure Work
Comparison of the Host and Venue Agreement, as Modified, and the Proposed DDA

Host and Venue Agreement	Proposed DDA
<p><u>Piers 30-32 and Seawall Lot 330</u></p> <p>66-year lease for Piers 30-32 and transfer of Seawall Lot 330 free of public trust restrictions, contingent on \$55 million investment in Pre-Match Authority Infrastructure Work</p> <p>Long-term leases for Piers 26, 28, and 29, marina leases, rent credits, and infrastructure financing in if Event Authority invests if Authority Infrastructure Work and Additional Work in excess of \$55 million</p> <p>If value of these leases, rent credits, and infrastructure financing are less than the Event Authority's investment in Authority Infrastructure Work and Additional Work in excess of \$55 million, the balancing options are:</p> <p>(a) reduce the scope of work,</p> <p>(b) receive increased rent credits,</p> <p>(c) revise the financial terms of the long-term leases subject to Port approval,</p> <p>(d) obtain long-term leases for some of the short-term venues (to which rent credits would apply),</p> <p>(e) obtain 66-year leases for Piers 26 and 28 without performing the required infrastructure work (estimated at \$15 million and \$10 million respectively), or</p> <p>(f) obtain shorter-term leases for Piers 26 and 28 in which the value of the Port's parameter rents for the leased properties equals the outstanding rent credits owed to the Event Authority</p>	<p><u>Piers 30-32 and Seawall Lot 330</u></p> <p>Same</p> <p>Authority Infrastructure Work in excess of \$55 million would be credited to the Event Authority exclusively from the following sources in order of priority:</p> <p>(a) tax increment bond proceeds from the proposed infrastructure financing district for Piers 30-32 and Seawall Lot 330⁹,</p> <p>(b) short-term leases up to 10 years for Piers 26 and 28 with the rent credits against base rent starting at the Port's parameter rents with annual CPI adjustments,¹⁰</p> <p>(c) short-term lease up to 10 years for Pier 29 with the rent credits against base rent starting at the Port's parameter rents with annual CPI adjustments,</p> <p>(d) 66-year lease for Pier 29 with rent against base rent commencing at \$6 per square foot escalated to the lease commencement date with periodic CPI adjustments and reset to market rate after rent credits are exhausted, and</p> <p>(e) If needed to reimburse the Event Authority, participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port</p>

Leases and Development Rights for Deferred Additional Work to Piers 26 and 28

Under the proposed DDA, if the Event Authority performs Deferred Additional Work, the Port will reimburse the Event Authority for those costs through 66-year leases for Piers 26 and 28, with payment of rent credits up to the amount of the Deferred Additional Work. Term sheets for long-term leases will be submitted to the Board of Supervisors for endorsement. Leases will be subject to Board of Supervisors approval under Charter Section 9.118.

⁹ The Port estimates that the tax-increment bonds would be issued in approximately 2021.

¹⁰ The Port Commission annually approves a schedule of rents (parameter rents) for each type of Port property and use.

If rent credits for the 66-year leases for Piers 26 and 28 are not sufficient to reimburse the Event Authority for Deferred Additional Work, the Port will reimburse the Event Authority in the following order of priority:

- (a) Infrastructure financing district tax-increment bonds for these specific sites;
- (b) Historic preservation tax credits for these specific sites;
- (c) Marina leases for potential marina developments at Pier 54, Brannan Street Open Water Basin, or other locations (see below); and
- (d) If necessary to reimburse the Event Authority for Deferred Additional Work, participation of 50 percent of the proceeds of subsequent leases of Piers 26 and 28 payable by the Port to the Event Authority up to 15 years after the termination of the 66-year leases and return of Piers 26 and 28 to the Port.

Pier 54 and Marina Rent Credits

Under the proposed DDA, the Event Authority has conditional rights to rent credits for marinas to be located at Pier 54 and Brannan Street Open Water Basin, or another location in exchange for dredging for spectator vessels (noted above), and repairs or improvements to the Pier 54 substructure. Rent credits for dredging work may be used to offset rents for potential marina leases, or to offset rent for 66-year leases for Piers 26 and 28. Rent credits for Pier 54 substructure repairs or improvements may only be used for a marina lease at Pier 54.

**Table 4
Development Rights: Piers 26 and 28 and Marinas
Comparison of the Host and Venue Agreement and the Proposed DDA**

Host and Venue Agreement	Proposed DDA
<p><u>Piers 26 and 28</u></p> <p>66-year lease for Piers 26 and 28 contingent on investments in Additional Work of \$25 million;</p> <p>Event Authority reimbursed for Additional Work through rent credits</p> <p>Excludes any Piers 26 and 28 infrastructure work performed prior to the Event and reimbursed as part of the Authority Infrastructure Work (noted above)</p> <p>Additional Work would be credited to the Event Authority through (a) rent credits, (b) infrastructure district financing, (c) historic preservation tax credits, and (d) rent credits for proposed marinas</p>	<p><u>Piers 26 and 28</u></p> <p>Same</p> <p>Same</p> <p>Same</p> <p><i>Adds:</i> 50 percent participation rent payable by the Port to the Event Authority up to 15 years after the termination of the 66-year lease for Piers 26 and 28, or at the Port’s election, a funding source to rehabilitate historic resources at these site with an equal value</p>
<p><u>Piers 26 and 28</u></p> <p>Long-term leases and development rights to Piers 19, 23, and 29, and other short term venues, including, with some exceptions, Piers 27 and 80, in exchange for the Event Authority’s investment in Authority Infrastructure Work or Additional Work</p>	<p><u>Piers 26 and 28</u></p> <p><i>Removes:</i> development rights for all piers other than Piers 26 and 28 and marina leases, including Piers 19-19 ½, and 23</p>
<p><u>Marinas</u></p> <p>Exclusive negotiating agreements for long-term marina leases in the areas between Piers 14 and 22 ½, and between Piers 30-32 and Pier 38; dredging costs reimbursed through rent credits</p>	<p><u>Marinas</u></p> <p>Exclusive negotiating agreements for long-term marina leases for Pier 54 and Brannan Street Open Water Basin; Pier 54 substructure repair costs, and dredging costs reimbursed through marina lease rent credits at Pier 54 only</p>

Assignment of Long-term Leases

The Host and Venue Agreement allows the Event Authority to assign the long-term leases to Event Authority affiliates without further Port approval. The Port must approve the Event Authority’s assignment of long-term leases to parties other than Event Authority affiliates. No Port consent is required for subleases. The Port does not participate in any revenues received by the Event Authority for assigning the long-term leases to other parties. Under the original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010, the Port participated in 15 percent of the net proceeds of each assignment of the long-term leases after the first assignment.

Rents

Under the proposed DDA, the Event Authority has up to 10 years to enter into long-term leases for Piers 30-32, Piers 26 and 28, and if needed to offset the costs of Authority Infrastructure Work, Pier 29. Under the original Host and Venue Agreement approved by the Board of Supervisors on December 14, 2010, base rent for the long-term leases was to be set at a fair market rent established through an appraisal process. The modified Host and Venue Agreement and proposed DDA establish starting rents based on negotiated rates, as follows:

- \$4 per square foot per year of gross building area for Piers 30-32, although Piers 30-32 would be delivered to the Event Authority rent-free under the terms of the proposed 66-year lease in exchange for the Event Authority's investment in Authority Infrastructure Work prior to the Event.
- \$6 per square foot per year of gross building area for all other piers with long-term leases. Under the proposed DDA, rents may be adjusted every five years by the CPI with minimum increases of 10 percent and maximum increases of 20 percent.

The proposed DDA provides that if the lease commencement for Pier 29 is delayed for up to 10 years, the base rent for Pier 29 is increased by (or "indexed to") the CPI. No other leases covered under the proposed DDA provide for indexing base rents to the CPI if the lease commencement date is delayed up to ten years.

If applicable, rents in the 66-year leases for Piers 26, 28, and 29 are adjusted to fair market rental rates after 30 years or once rent credits have been fully applied, whichever is later.

Also, under the proposed DDA and consistent with the modified Host and Venue Agreement:

- The Event Authority does not pay construction period rent. According to Port staff, this provision is consistent with the original Host and Venue Agreement requirement that the long term leases be commercially reasonable, and provide terms comparable to other Port development leases, in which tenants do not pay construction period rent.
- The Port cannot collect participation rent. The original Host and Venue Agreement allowed the Port to collect transfer fees (a) equal to 1 percent of the sale price for the resale (i.e., excluding the first sale) of condominiums constructed on Seawall Lot 330, and (b) 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's interest in long-term leases from the Event Authority to other parties, excluding the first transfer.

Interim Leases

Under the proposed DDA, the Event Authority may retain exclusive use of any long-term development sites during the interim period up to 10 years after the expiration of the venue leases and commencement of long term leases. Interim uses allowed under the Host and Venue Agreement include any existing or prior use, such as parking, or other uses consistent with the Public Trust and CEQA.

Rent during the interim period is:

- \$910,225, adjusted by annual CPI increases, for Piers 30-32; and
- The Port's then-effective parameter rental rate for pier warehouse sheds for Piers 26 and 28.

During the interim period of up to 10 years, the Event Authority will receive rent credits for Authority Infrastructure Work greater than \$55 million, which can be used to offset the interim base rent at Piers 26, 28 and 29 but not Piers 30-32, as shown in Table 3.

Transferring Long Term Sites to the City

Under the proposed DDA, consistent with the modified Host and Venue Agreement, although the Event Authority retains rights to the long-term development sites, the Event Authority may return some or all of the long-term development sites to the Port at any time in the ten-year period after the Event. The Port must return these long-term development sites to the Event Authority within 180 days if the Event Authority requests the return.

This provision was not included in the original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010. According to the Budget and Legislative Analyst's report, dated March 16, 2011, this provision would result in previously unanticipated costs to the Port and a likely loss of base rent revenue (or drawing down of rent credits owed to the Event Authority). After the venue leases expire, the Port would have to attract new tenants to the properties transferred back from the Event Authority to the City for an uncertain amount of time, cover maintenance cost on the properties during that period, and cause tenants to be moved of the properties upon request of the Event Authority. The Port would be unlikely to collect the same level of rent from tenants for these properties that the Port would otherwise have received from the Event Authority.

Infrastructure Financing and Community Facilities Districts

The Host and Venue Agreement and proposed DDA require creation of infrastructure financing districts to issue tax increment¹¹ bonds that will reimburse the Port and the Event Authority for (a) infrastructure repairs, replacement, and improvement costs not previously reimbursed by rent credits; (b) public improvements such as environmental remediation, shoreline improvements; and (c) substructure and other improvements to the piers. The State Legislature authorized San Francisco to establish infrastructure financing districts on Port property (SB 1085 in 2005, modified by AB 664 in 2011). Approval of the proposed resolution (File 12-0128) would confirm Board of Supervisors intent to establish an infrastructure financing district on Port property, which would designate initially eight project areas, covering Piers 30-32, Seawall Lot 330, Pier 26, Pier 28, Pier 48, Pier 70, Seawall Lot 337 and Seawall Lot 351. The Port will submit future legislation to the Board of Supervisors to approve financing plans for each project area.

¹¹ Tax increment is the increase in Property Tax due to the development of Piers 30-32 and Seawall Lot 330.

The Host and Venue Agreement and proposed DDA obligate the Event Authority and City to form a community facilities district comprising Piers 30-32 and Seawall Lot 330, and levy maintenance taxes to fund ongoing maintenance costs for the Brannan Street Wharf.

Successor Events

If the Golden Gate Yacht Club successfully defends the 34th America's Cup, and the City and the Golden Gate Yacht Club enter into a new host and venue agreement to host the 35th America's Cup, the Event Authority may extend its use of the venues. The proposed DDA adds a provision allowing either the Event Authority or the City to terminate further negotiations if they have not agreed to the terms of a new host and venue agreement, despite good faith negotiations, within six months after the Event.

Indemnity

Section 15 of the Host and Venue Agreement provided for the City and Event Authority to negotiate over mutual indemnity provisions to be included in the DDA. The proposed DDA includes provisions consistent with the Host and Venue Agreement. Section 2.6 of the proposed DDA states that the Event Authority and the City "must indemnify" each other for any losses resulting from the Event, unless the losses were caused by negligence or willful misconduct. According to the proposed DDA, the venue leases and licenses between the Port and the Event Authority for use of the Port's property will govern the Event Authority's and City's indemnification obligations relating to hazardous materials affecting any Port venue. According to Ms. Joanne Sakai, Deputy City Attorney, these provisions, along with each party's insurance requirements, as described in Section 2.7 of the DDA, are still under review and subject to further negotiations.

FISCAL IMPACT

The proposed DDA does not sufficiently cap the Event Authority's reimbursable costs for Authority Infrastructure Work or Additional Work. As a result, the Port could potentially reimburse the Event Authority for such costs up to 91 years after the Event.

Authority Infrastructure Work

Estimated Costs

Estimated costs for Authority Infrastructure Work and Additional Work performed by the Event Authority prior to the Event are approximately \$111,306,520, which is \$56,306,520 or 102 percent more than the original estimated costs of \$55,000,000 under the original Host and Venue Agreement, as shown in Table 5 below.

Table 5
Pre-Match Authority Infrastructure Work, Dredging for Spectator Vessels, and Deferred Authority Infrastructure Work

	Host and Venue Agreement	Proposed DDA	Increase
<u>Pre-Match Authority Infrastructure Work</u>			
Piers 30-32 infrastructure repairs and seismic upgrades	At least	\$59,400,000	
Demolition of portions of Pier 27 and 29	\$55,000,000,	n/a	
Piers 19, 23, 27 and 29 improvements as necessary	including	1,850,000	
	\$2,000,000		
	for Pier 27		
	shoreside		
Pier 27 shoreside power relocation	<u>power</u>	<u>2,000,000</u>	
Subtotal	55,000,000	63,250,000	8,250,000
BCDC and other regulatory conditions of approval	0	5,200,000	
CEQA Mitigation Monitoring, and Reporting Program	0	700,000	
Piers 32-36 dredging for regattas	0	2,500,000	
Fees, permitting, contingencies, design, engineering	<u>0</u>	<u>3,856,250</u>	
Subtotal		12,256,250	12,256,250
Subtotal Pre-Match Authority Infrastructure Work	55,000,000	75,506,250	20,506,250
<u>Dredging for Spectator Vessels</u>			
Pier 9, Piers 14 North and South, Pier 28 South, and portions of Piers 32-38 Basin dredging for spectator vessels	0	3,700,000	
Subtotal Dredging	0	3,700,000	3,700,000
Pre-Match Authority Infrastructure Work/ Dredging	55,000,000	79,206,250	24,206,250
<u>Estimated Authority Infrastructure Work after the Event</u>			
Seismic upgrades to Piers 30-32	0	32,100,000	32,100,000
Deferred Authority Infrastructure Work		32,100,000	32,100,000
Total	\$55,000,000	\$111,306,250	56,306,250

According to Port staff, estimated costs under the proposed DDA, compared to the Host and Venue Agreement, have increased due to more detailed cost information and inclusion of new Event Authority costs that were not specifically included in the Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2012.

- Seismic piles and joints to Piers 30-32 prior to the Event; transfer of responsibility for demolishing the Pier 27 shed from the Event Authority to the Port; and substructure improvements to Pier 29 (\$8,250,000);
- Improvements to Port property due to BCDC and CEQA requirements; and Piers 30-32 dredging for regattas included in the modified Host and Venue Agreement, which are costs that were not explicitly provided for in the previously approved Agreement. (\$12,256,250);
- Dredging for spectator vessels, which according to Port staff, would result in long term benefits to the Port through development of new marina leases (see “Pier 54 and Marina Rent Credits” above) (\$3,700,000); and

- Future seismic upgrades to Piers 30-32 to accommodate the Event Authority's long-term development, for which, according to Port staff, costs are currently being assessed, and which will require future seismic design and engineering work (\$32,100,000).

The original Host and Venue Agreement, approved by the Board of Supervisors on December 14, 2010, provided for the Event Authority to make all pile replacement, substructure strengthening, and deck repairs on Piers 30-32, as may be required by applicable laws, and other work for staging of the Event, or as the Event Authority otherwise deems necessary or appropriate under the applicable venue leases. According to Port staff, improvements to Port property due to BCDC and CEQA requirements are consistent with this provision.

Reimbursement

The Port will reimburse the Event Authority for Pre-Match Authority Infrastructure Work of \$55,000,000 through the 66-year rent free lease for Piers 30-32 and transfer of title to Seawall Lot 330, as shown in Table 6 below. The Port will reimburse the Event Authority for Pre-Match Authority Infrastructure Work and dredging for spectator vessels prior to the Event, which exceeds \$55,000,000, through infrastructure financing bond proceeds, and rent credits. Interest accrues on the balance of the Event Authority's reimbursements owed through rent credits, at 11 percent per year.

Table 6
Reimbursement to Event Authority for Authority Infrastructure Work and Deferred Authority Infrastructure Work

	Net Present Value ¹²
66-Year Lease for Piers 30-32 (rent free)	\$31,000,000
Transfer of Title to Seawall Lot 330	24,000,000
Subtotal	55,000,000
Infrastructure Financing District Bond Proceeds	10,400,000
10-Year Lease Piers 26 and 28 (rent credits)	11,000,000
10-Year Lease Pier 29 (rent credits)	4,700,000
66-Year Lease for Pier 29 (rent credits)	7,600,000
Subtotal	33,700,000
Total	\$88,700,000

If the value of the Pre-Match Authority Infrastructure Work, and Deferred Authority Infrastructure Work are greater than the value of the rent credits and other reimbursements shown in Table 6 above, the proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds of a subsequent lease of Piers 30-32 to the Event Authority up to 15 years after the termination of the 66-year lease and return of Piers 30-32 to the Port.¹³

¹² Net present value discounts lease payments in future years to reflect the time value of money (i.e., the value of a dollar in the future is less than the value of a dollar in the present).

¹³ If the scope of work prior to the Event were to include infrastructure work to Piers 26 and 28, defined as Additional Work, the expenditures for this work would be included.

The Port's Opportunity Costs

The long term leases for Piers 26, 28, and 29 result in opportunity costs of approximately \$5,400,000¹⁴ to the Port because the value of the rent credits to reimburse the Event Authority are less than the rents that the Port would otherwise receive from Piers 26, 28, and 29.

Deferred Additional Work to Piers 26 and 28

The proposed DDA grants the Event Authority 66-year leases for Piers 26 and 28 in exchange for infrastructure investments estimated to be approximately \$15 million and \$10 million respectively. These investments may be made up to 10 years after the Event. The Event Authority's actual expenditures for this work will be based on the scope of work approved by the Port. While the proposed DDA deems infrastructure work to Piers 26 and 28 to be "Authority Infrastructure Work" if it is necessary for and performed prior to the Event, the approved scope of work for the Event does not currently include this work.

Table 7
Reimbursement to Event Authority for Additional Work

	Net Present Value
66-Year Leases Piers 26 and 28 (rent credits)	\$15,100,000
Infrastructure Financing District Bond Proceeds	3,700,000
Historic Preservation Tax Credits	20,000,000
Total	\$38,800,000

If the value of the Additional Work performed is greater than the value of the rent credits and other reimbursements, shown in Table 8 above, the proposed DDA provides for the Port to pay a participation of 50 percent of the proceeds from a subsequent lease for Piers 26-28 to the Event Authority up to 15 years after the termination of the 66-year leases and return of Piers 26 and 28 to the Port. Interest accrues on the value of the Event Authority's expenditures, reimbursable by rent credits and other reimbursement mechanisms, at 11 percent per year.

No-Fault Termination of DDA

If for any reason, other than a Port Event of Default or Event Authority Event of Default (such as major casualty), the DDA is terminated, the Event Authority will be able to recover its investment costs from the following exclusive sources, to the extent available:

- (a) Insurance proceeds, including any FEMA (Federal Emergency Management Act) funds;
- (b) 10-year (or longer if legally permitted) interim lease of Piers 30-32 for parking;
- (c) 66-year lease of Piers 30-32 with base rent beginning at \$4 per square foot, indexed every 5 years, and adjusted to fair market rent at the later of the date the rent credits are exhausted or 30 years; and
- (d) Portion of infrastructure district financing proceeds from future development of Piers 30-32.

¹⁴ Net present value of the difference between the value of the rent credits over 76 years (10 year leases plus 66 year lease) and the rents that the Port would otherwise have received.

Limits on Reimbursement Imposed by the DDA

According to Port staff, the proposed DDA better protects the Port financial interests than the Host and Venue Agreement because the Event Authority has defined long-term development rights to fewer Port properties. Under the proposed DDA, the Event Authority only has long-term development rights to Piers 30-32, 26, 28, and 29, while under the Host and Venue Agreement, the Event Authority also had long-term development rights to Piers 19, 19 ½, 23, and other short term venues, as well as non-exclusive repayment options. However, under the proposed DDA, the Event Authority receives rent credits or participation rent from the Port for up to 91 years after the Event, as discussed above.

Additionally, the proposed DDA contains a provision that allows the Port and the City to pay directly for or purchase improvements that exceed \$55 million if the Port and City exercise this option within 180 days of the Port's approval Event Authority's scope of work. The Port has five years to after completion of the infrastructure work to pay the purchase price for the infrastructure work, but the purchase price increases by 11 percent per year. The Port can also directly pay the contractors performing the infrastructure work. The value to the Port and the City to exercise this option is unclear and depends on (a) the Port's costs to borrow funds to pay for the work; and (b) the Event Authority's actual expenditures for the work and the amount of rent credits owed to the Event Authority.

The City's costs for hosting the Event may exceed (i) contributions from the America's Cup Organizing Committee (ACOC), and (ii) sales tax, hotel tax, and other revenues generated by the Event

The City's costs for hosting the 34th America's Cup are estimated to be approximately \$51,670,810, as shown in Table 9 below. These costs include planning, environmental review, lost rent and other Port expenses, City departments' costs during the Event, and reimbursement to regional transit agencies. As of the writing of this report, City department expenditures are \$3,576,298.

Memorandum of Agreement

The proposed resolution approves a Memorandum of Agreement (MOA) between the City and the Event Authority, allocating the respective responsibilities of the City and the Event Authority under the Mitigation Monitoring and Reporting Program. The Mitigation Monitoring and Reporting Program contains measures to be performed by the City and Event Authority to mitigate the environmental impacts of the Event and long term development projects. Under the MOA, the City is responsible for all mitigation measures directed to the City and the Event Authority is responsible for all mitigation measures directed to the Event Authority. In some instances, mitigation measures are directed to both the City and the Event Authority.

Under the proposed DDA, the Event Authority is only reimbursed by the Port for mitigation measures that result in improvements to Port property. These reimbursable costs of approximately \$700,000 are shown in Table 5 above.

The MOA defines shared costs for (a) implementing shoreside power at Pier 70, for which legislation is pending before the Board of Supervisors, (b) protection of recreational and natural resources, including the National Park Service and the Recreation and Parks Department, and (c) providing information to visiting boaters. Under the MOA, the City is responsible for the Pier 70 shoreside power project; reducing City vehicle emissions; providing traffic coordinators and shuttle buses at Marina Green and National Park Service sites; and certain responsibilities for the public safety plan, water and air traffic plan, and waste management plan. The City's costs for these responsibilities are included in City department, regional transit, and waste management costs in Table 8 below.

Table 8
Estimated City Costs to Host the 34th America's Cup

Cost Category	Budget
<u>Costs to Plan Event, Including City Staff</u>	
Office of Economic and Workforce Development Project Management	\$1,400,000
Environmental Review under CEQA	3,000,810
National Environmental Policy Act Compliance	2,200,000
Permitting	1,700,000
City Attorney and Other Legal	400,000
Other Federal Legislation	100,000
Subtotal, Planning	8,800,810
<u>Port Costs</u>	
Tenant Relocation	1,100,000
Lost Rent	6,380,000
Temporary Staffing, Security, Other	1,460,000
Subtotal, Port	8,940,000
<u>Operational Fixed Costs</u>	
Event Insurance	500,000
Communications	300,000
Bicycle Plan	600,000
Subtotal, Operational Fixed Costs	1,400,000
<u>Operational Variable Costs</u>	
Police	7,400,000
Fire	1,300,000
Emergency Medical Service	1,100,000
Muni	5,110,000
Parking and Traffic	3,200,000
Department of Public Works Clean Up	350,000
Reimbursement to Regional Transit	5,250,000
Waste Management	2,400,000
Subtotal, Operational Variable Costs	26,110,000
Total	45,250,810
Pier 27 Cruise Terminal General Fund Contribution	6,500,000
Total	\$51,750,810

Source: Port and OEWD

The Environmental Impact Report estimated 5.4 million visitor days during the Event. The Office of Economic and Workforce Development (OEWD) has estimated City costs for the Event of \$51,750,810, including City department, regional transit, and waste management costs during the Event, based on the EIR estimate of 5.4 million visitor days. City department, regional transit, and waste management variable costs of \$26,110,000, shown in Table 9, could be less if the Event has fewer than 5.4 million visitor days.

City costs of approximately \$51,750,810 will be offset by (a) additional hotel tax, payroll tax, sales tax, and parking tax revenues generated by 34th America's Cup activities, of approximately \$22,034,929¹⁵ and (b) potential contribution of \$32 million from the ACOC over three years under the Host and Venue Agreement. As shown below, the City will realize an estimated net benefit from hosting the Event of \$2,284,119 if the ACOC contributes the full \$32 million, which it has pledged to raise to offset the City's costs, and the Event generates the expected level of tax revenues. If the ACOC contributes only \$8,000,000, which is the amount estimated by the Controller to be currently available without further fundraising, the City will realize an estimated net loss from hosting the Event of \$21,715,881.

	If ACOC Contributes \$32,000,000	If ACOC Contributes \$8,000,000
Estimated Sales Tax, Hotel Tax, and Other Revenues	\$22,034,929	\$22,034,929
ACOC Contribution	32,000,000	8,000,000
Total Revenues to Offset City Costs	54,034,929	30,034,929
Estimated City Costs	(51,750,810)	(51,750,810)
Surplus/(Deficit)	\$2,284,119	(\$21,715,881)

The estimated loss of \$21,715,881 compares to the Budget and Legislative Analyst's estimates of potential net loss to the City from hosting the Event in the December 13, 2010 report to the Budget and Finance Committee of \$11,959,846.

POLICY CONSIDERATIONS AND ALTERNATIVES

The proposed DDA should be revised to reduce the impact on the Port's finances while continuing to reimburse the Event Authority for their risk and costs to improve Port properties

The proposed DDA should further cap the costs for Authority Infrastructure Work and Additional Work for which the Event Authority will be reimbursed by the Port. For the Port to retain Pier 29, the proposed DDA should be revised to limit reimbursement costs, as follows:

¹⁵ The Budget and Legislative Analyst's November 18, 2010 memorandum to the Board of Supervisors provided a range of tax revenue estimates, based on the number of race days and visitors, from a low of \$17.3 million to a high of \$30.4 million. \$22.0 million represents the base scenario, based on approximately 55 days of racing and 3.6 million visitor days.

- Under the proposed DDA, the Event Authority is reimbursed for Authority Infrastructure Work and Additional Work based on actual expenditures. This provision should be revised to require that reimbursement for Authority Infrastructure Work and Additional Work is based on estimates provided by a third party engineer.
- Estimated costs for approved seismic upgrades to Piers 30-32, to be performed as Authority Infrastructure Work up to 10 years after the Event, are \$32.1 million. The proposed DDA should be revised to require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.¹⁶

Additionally, the proposed DDA should be revised to eliminate the provisions in which the Port must pay participation rent of 50 percent up to 15 years after the termination of the 66-year leases for Piers 30-32, and 26 and 28 in order to reimburse the Event Authority for Authority Infrastructure Work and Additional Work that is not fully reimbursed by the respective leases. The net present value of these provisions is negligible, but these provisions will impact the Port up to 91 years into the future.

The Budget Analyst's 2004 Management Audit Recommendation

According to the Budget Analyst's 2004 Management Audit of the Port of San Francisco:

The Port enters into lease agreements that provide the developer a preferred return on equity (of approximately 11 to 12 percent) to encourage developers to make substantial capital investments in face of the large risks inherent in large, complex projects. Because the developer receives the preferred return on equity before the Port participates in the project's surplus income, the Port's financial return from the project is less certain....To reduce the uncertainty in rental revenues to the Port from large development projects.... there should be caps on the developer's equity contribution for calculating the developer's preferred return on equity.

According to Port staff and as noted above, the proposed DDA limits the number of Port properties for which the Event Authority has long-term development rights as reimbursement for expenditures for Authority Infrastructure Work and Additional Work, The Port Commission, in its December 16, 2011 approval action, approved Authority Infrastructure Work in an amount not to exceed \$75 million and spectator vessel dredging of \$3.7 million. The Port should continue to monitor proposed expenditures and the Board of Supervisors should consider imposing a cap on the Event Authority's total expenditures that are reimbursable by the Port.

¹⁶ For all proposed seismic work, the DDA requires the Event Authority to provide to the Port non-linear time history seismic analysis of Piers 30-32, to be peer-reviewed by the Port's consulting engineer. The Port's engineer must concur that the proposed upgrade meets, but does not substantially exceed, applicable code requirements, and the Chief Harbor Engineer must determine that the proposed work complies with the Port Building Code, before the work can proceed.

The Port should participate in the proceeds for future sales or property transfers

The original Host and Venue Agreement allowed the Port to collect transfer fees (a) equal to 1 percent of the sale price for the resale of condominiums constructed on Seawall Lot 330, and (b) 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's interest in long-term leases from the Event Authority to other parties, excluding the first transfer. These provisions do not significantly reduce the value of the Event Authority's investment in Port properties, are consistent with Port policy and industry standards, and would provide a fair return to the Port. The proposed DDA should be revised to restore these provisions.

The Event Authority should return short-term venues to the Port at the conclusion of the Event, but retain Piers 26 and 28 during the interim period between expiration of the venue leases and commencement of the longer term leases

The proposed DDA allows the Event Authority to retain use of Piers 19, 19 ½, 23, 29 and 29 ½ up to six months after the Event. The Event Authority does not have the right to longer term leases for Piers 19, 19 ½, and 23, and should return these venues to the Port immediately after the conclusion of the Event. This would reduce lost rent revenues to the Port, and reduce the City's potential General Fund reimbursement to the Port for lost rent revenues under the MOU between the City and the Port (File 10-1564).

Piers 29 and 29 ½ should also be immediately returned to the Port at the conclusion of the Event if the Event Authority does not incur Authority Infrastructure Work expenditures prior to the Event in an amount sufficient to enter into the 10-year lease for Pier 29, discussed above and shown in Table 6.

The proposed DDA allows the Event Authority to temporarily return 26 and 28 to the Port up to 10 years after the Event. If the Event Authority retains Piers 26 and 28, rent for these piers is based on the Port's parameter rents and will be offset by any rent credits owed to the Event Authority for Authority Infrastructure Work performed prior to the Event and exceeding \$55 million. Unless the Event Authority is not owed rent credits for Piers 26 and 28, and does not intend to perform additional work to Piers 26 and 28 in order to obtain long-term development rights, the Event Authority should retain Piers 26 and 28 during the interim period. Temporarily transferring Piers 26 and 28 to the Port during the interim period potentially results in a loss of rent to the Port, but requiring the Event Authority to retain Piers 26 and 28 during the interim period does not harm the Event Authority, who has the option of renting the properties to other tenants.

According to Port staff, the temporary transfer of Piers 30-32, which is used for parking, during the interim period does not necessarily result in lost revenue to the Port.

The proposed DDA should escalate base rents for Piers 26 and 28, based on the CPI

Under the proposed DDA, initial base rent for Pier 29 of \$6 per square foot per year is escalated by the CPI to the start date of the lease, then indexed every 5 years.. The proposed DDA should extend this provision, escalating initial base rents for Piers 26 and 28.

The ACOC has not met its fundraising target of \$12 million in the first year to reimburse the City for a portion of the City's costs

According to the Host and Venue Agreement:

The Committee (ACOC) will endeavor to raise up to \$32 million over a three year period from private sources, to reimburse the City for a portion of the City's costs...and lost revenues, and City expenditures required to meet its obligations...(including resources from police, and public works departments, the Port, DPT and MTA). The Committee's fundraising targets for the three year period are \$12 million for year one, and \$10 million for years two and three. The Committee will endeavor to meet its fundraising target of \$12 million for year one no later than seven working days after completion of the environmental review pursuant to CEQA.

According to the Controller's February 6, 2012 memorandum to the President of the Board of Supervisors, the ACOC has not paid the City any portion of the \$12 million in revenue that is assumed in the City's FY 2011-12 budget. According to the Controller, "Given reported and projected ACOC expenditures and pledges received to date, it would appear that the ACOC will be financially positioned to make a payment of approximately \$8 million to the City during the current fiscal year absent additional fundraising".

Under the Host and Venue Agreement, the City may terminate the Agreement if the ACOC fails to meet its year one fundraising target of \$12 million by seven days after the completion of the environmental review. The subject EIR was approved by the Board of Supervisors on January 24, 2012, resulting in a target date of January 31, 2012 to raise the \$12 million.

The proposed DDA would waive the City's termination rights

The proposed DDA includes a condition that all termination rights under Section 2 of the Host and Venue Agreement are waived. This includes the City's right to terminate the Host and Venue Agreement if the ACOC (a) fails to meet its year one fundraising target of \$12 million by January 31, 2012, and (b) does not obtain a \$32 million surety bond or other form of financial security required by the Host and Venue Agreement.

According to Ms. Sakai, under Section 9.3 of the Host and Venue Agreement, the ACOC is required to provide to the Event Authority a form of financial security satisfactory to the Event Authority in the amount of \$32 million, which was to protect the General Fund from liability by providing the exclusive source for the Event Authority's recovery (other than insurance proceeds) of any claims against the City for any alleged failure by the City to meet its obligations under the Host Agreement. As of the January 31, 2012 deadline, the financial instrument was not in place.

Mr. Mike Martin, America's Cup Project Manager, Office of Economic and Workforce Development, reports that ACOC has proposed to satisfy this requirement by providing the Event Authority with an escrow account in combination with an insurance product, but that

negotiations are ongoing as of the date of this report. Mr. Martin further reports that he has communicated the City's expectation that these negotiations are to be concluded prior to Board of Supervisors consideration of the Disposition and Development Agreement.

RECOMMENDATIONS

The Board of Supervisors should request the Executive Director of the Port to negotiate with the Event Authority to revise the proposed DDA to:

- For purposes of controlling the City's costs, require that reimbursement for all Authority Infrastructure Work and Additional Work is based on estimates provided by a third-party engineer rather than on actual expenditures.
- Require that the Port report to the Board of Supervisors prior to the future seismic upgrades to Piers 30-32 after the Event on the most fiscally effective options to perform such work, including whether the work should be performed by the Event Authority or the City.
- Eliminate the provisions, not included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, in which the Port must pay participation to the Event Authority of 50 percent on revenues from subsequent leases for Piers 30-32 and Piers 26 and 28 up to 15 years after the termination of the 66-year leases and return of Piers 30-32 and Piers 26 and 28 to the Port.
- Impose a cap on the Event Authority's total expenditures that are reimbursable by the Port.
- Reinstate the provision, included in the Host and Venue Agreement, as previously approved by the Board of Supervisors on December 14, 2010, to require (i) a transfer fee equal to 1 percent of the sale price for the resale of condominiums (after the initial sale) constructed on Seawall Lot 330, and (ii) Port participation of 15 percent of the net proceeds of each transfer or sublease of more than 55 percent of the Event Authority's, or successor party's, interest in long-term leases from the Event Authority, or successor party, to other parties, excluding the first transfer.
- Require the return of short-term venues (Piers 19, 19 ½, 23, and 29 ½) to the Port immediately after the conclusion of the Event.
- Require the return of Pier 29 to the Port immediately after the conclusion of the Event if the Event Authority's Pre-Match Authority Infrastructure Work does not qualify for longer term leases for Pier 29.
- Require the Event Authority to retain Piers 26 and 28 unless the Event Authority's Pre-Match Authority Infrastructure Work or Deferred Additional Work does not qualify for longer term leases for Piers 26 and 28.
- Escalate the initial base rents for Piers 26 and 28 by the CPI prior to the start date of the longer term leases.

Approval of the proposed resolutions (File 12-0127 and File 12-0128) is a policy matter for the Board of Supervisors.



Harvey M. Rose

cc: Supervisor Chu
Supervisor Avalos
Supervisor Kim
President Chiu
Supervisor Campos
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Mar
Supervisor Olague
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Controller
Rick Wilson

**KEY REAL ESTATE TERMS OF HOST AND VENUE AGREEMENT (HVA) COMPARED TO
 PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA)
 between
 CITY & COUNTY OF SAN FRANCISCO, THROUGH THE PORT COMMISSION (Port)
 &
 AMERICA'S CUP EVENT AUTHORITY, LLC (ACEA)
 for
 34TH AMERICA'S CUP EVENTS IN SAN FRANCISCO**

America's Cup World Series, August 11 - August 19 & August 27 - September 2, 2012
 Louis Vuitton Challenger Series, July 4 - September 1, 2013
 America's Cup Match (Match) September 7 - September 22, 2013
 Most Venue Leases expire 6 months after the Match

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
Long-Term (LT) Venues: <ul style="list-style-type: none"> Piers 26, 28 & 30-32; SWL 330 	Long-Term (LT) Venues: Same	Long-Term (LT) Venues: Same
Short-Term (ST) Venues: <ul style="list-style-type: none"> Piers 29, 27, 19-23, 80 Brannan Street Wharf Water areas: Piers 14-22½, Piers 32-38 	Short-Term (ST) Venues: Same	Short-Term (ST) Venues: Added Pier 29½ Water areas changed to: <ul style="list-style-type: none"> Pier 9, Pier 14N+S, Pier 32-edge of Pier 38 water area (Brannan Street OWB)
Successive Defense Option: ACEA option to extend use of Venues if: <ul style="list-style-type: none"> Successful defense at Match No HVA Breach New host agreement negotiated 	Successive Defense Option: Same	Successive Defense Option: Added: <ul style="list-style-type: none"> ACEA to provide notice of interest Good faith negot'ns for 6 months Mutual right to terminate if new HVA is not ready for Board approval in 6 months

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
<p>Authority Infrastructure Work (AIW):</p> <ul style="list-style-type: none"> Repairs to Piers 30-32 required by Law Other work required for Event Demo Pier 27 & other prep for cruise terminal (CT) project Up to \$2M of costs to relocate shoreside power at Pier 27 Additional repairs to prepare waterfront for the Event with City's prior approval (excluding spectator vessel dredging) 	<p>Authority Infrastructure Work (AIW):</p> <p>Clarified:</p> <ul style="list-style-type: none"> Dredging to accommodate regattas is work required for Event <p>Added:</p> <ul style="list-style-type: none"> Requirement to complete \$55M in AIW Pre-Match for guaranteed right to Legacy Lease of Piers 30-32 and fee transfer of SWL 330 	<p>Authority Infrastructure Work (AIW):</p> <p>Revised:</p> <ul style="list-style-type: none"> Trust lifted from SWL 330 by AB 418 Pier 27 work reduced to accommodate CT project <p>Clarified:</p> <ul style="list-style-type: none"> Regulatory Conditions of Approval (eg BCDC reqs.) is work required for Event MMRP measures assigned to ACEA is work required for Event
<p>Deferred AIW:</p> <ul style="list-style-type: none"> Piers 30-32 AIW not required by code for Event Election to defer up to 5 years after Venue Leases expire 	<p>Deferred AIW:</p> <p>Same</p>	<p>Deferred AIW:</p> <ul style="list-style-type: none"> Deferral extended to 10 years
<p>Additional Work (AW):</p> <ul style="list-style-type: none"> Repairs to Piers 26 & 28 for Legacy Option Leases \$25M Port estimate of total repairs assumes no seismic upgrade 	<p>Additional Work (AW):</p> <p>Added:</p> <ul style="list-style-type: none"> Election to defer to start of leases, up to 10 years 	<p>Additional Work (AW):</p> <p>Clarified:</p> <ul style="list-style-type: none"> AW may include proposed seismic work if justified by proposed uses likely to receive approval of Port Commission, with State Lands concurrence on trust consistency
<p>Dredging for Spectator Vessels (Dredging):</p> <p>Water areas:</p> <ul style="list-style-type: none"> Between Piers 14-22½ Brannan Street OWB 	<p>Dredging for Spectator Vessels (Dredging):</p> <p>Added:</p> <ul style="list-style-type: none"> Other areas w/Port consent 	<p>Dredging for Spectator Vessels (Dredging):</p> <p>Water areas changed to:</p> <ul style="list-style-type: none"> Pier 9 Pier 14N+S Brannan Street OWB Other areas w/Port consent

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
<p>Development Rights for AIW: Port reimbursement obligation includes:</p> <ul style="list-style-type: none"> • Unconditional obligation to remove trust from and convey SWL 330 or if not removed, 75-yr Legacy Lease • 66-yr Legacy Lease of Piers 30-32 • Other rights thru balancing • SWL 330 transfer agreement, Legacy Lease(s), Legacy Option Lease & term sheets subject to Board approval <p>Port has Legacy Value:</p> <ul style="list-style-type: none"> • FMV of development rights granted • IFD or other financing from Piers 26, 28, 30-32, SWL 330 • Value of HTC's • Amount of any City "buy-out" <p>ACEA receives Investment Value:</p> <ul style="list-style-type: none"> • Sum of AIW + AW based on 60% plans • Rent Credits in the amount by which Investment Value exceeds Legacy Value • Rent Credits increase by imputed rate of return of 11% per year from date of expenditure 	<p>Development Rights for AIW: Port reimbursement obligation unchanged</p> <p>ACEA receives for \$55MM pre-Match AIW (including pre-Match work on Piers 26 & 28):</p> <ul style="list-style-type: none"> • Legacy Lease of Piers 30-32 • Fee transfer of SWL 330 <p>Investment Value revised to:</p> <ul style="list-style-type: none"> • AIW above \$55M <p>For Investment Value ACEA receives:</p> <ul style="list-style-type: none"> • IFD proceeds from same sites • Balancing Rent Credits • Rent Credits increase by 11% annual rate of return, applied at beginning of each lease year • Transfer fees at SWL 330 removed • Participation in 2nd and subsequent lease assignments removed 	<p>Development Rights for AIW: Port reimbursement obligation unchanged</p> <ul style="list-style-type: none"> • \$55M AIW presumed based on Approved Scope, and will be included in Pre-Match AIW if completed by 10 years after Match

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
<p>Development Rights for AIW (cont'd): ACEA may apply Rent Credits to:</p> <ul style="list-style-type: none"> • FMV of Seawall Lot 330 • Legacy Lease(s) • Legacy Option Leases • Marina leases <p>If Investment Value/Rent Credits remain, either party may make proposal for long term development rights to "balance" – no limitation on Port sites available under balancing v</p>	<p>Development Rights for AIW (cont'd): ACEA may apply Rent Credits to:</p> <ul style="list-style-type: none"> • Legacy Option Leases • Marina leases • Pier 29 • Other Short Term Venues acceptable to the City in its sole discretion 	<p>Development Rights for AIW (cont'd): Investment Value reimbursed exclusively from the following sources, in order of priority:</p> <ul style="list-style-type: none"> • IFD from Piers 30-32, SWL 330 • Piers 26 & 28: interim leases at parameter rent • Pier 29: interim lease at parameter rent • Pier 29: 66-yr lease, rent begins @ \$6/sf escalated • Up to 50% of rent from subsequent lease at Piers 30-32 <p>Limited recovery after no-fault termination (e.g., casualty) from following:</p> <ul style="list-style-type: none"> • Insurance proceeds, including FEMA • Piers 30-32: interim lease for parking • Piers 30-32: 66-yr lease, rent begins @ \$4/sf • Portion of IFD proceeds from future development of Piers 30-32

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
<p>Development Rights for Piers 26 & 28 AW:</p> <ul style="list-style-type: none"> • Piers 26 & 28 AW offsets rent under Legacy Option Leases • Legacy Option Lease & term sheets subject to Board approval 	<p>Development Rights for Piers 26 & 28 AW:</p> <p>Same</p>	<p>Development Rights for Piers 26 & 28 AW:</p> <p>All post-Match work at Piers 26 & 28 will be repaid solely by:</p> <ul style="list-style-type: none"> • Piers 26 & 28: Legacy Option Leases, rent begins at \$6/psf (indexed after 5 years), adjusted to FMR at later of date that credits are used or 30 yrs • IFD from Piers 26 & 28 • Historic tax credit proceeds • Marina Leases at ACEA's election • Up to 50% of rent from subsequent leases at Piers 26 & 28 for up to 15 years • The Port may substitute the rent participation with a source for financing historic rehabilitation with an equal NPV
<p>Development Rights for Dredging:</p> <p>Marina sites:</p> <ul style="list-style-type: none"> • Between Piers 14-22½ • Brannan Street OWB <p>Marina Leases:</p> <ul style="list-style-type: none"> • Commercially reasonable Marina Lease terms negotiated thru ENAs • Rent Credits for Dredging to offset rent under Marina Leases 	<p>Development Rights for Dredging:</p> <p>Same</p>	<p>Development Rights for Dredging:</p> <p>Marina Lease sites changed to:</p> <ul style="list-style-type: none"> • Pier 54 • Brannan Street OWB or other site acceptable to parties • Commercially reasonable terms comparable to other West Coast marinas <p>Marina Rent Credit conditions:</p> <ul style="list-style-type: none"> • ENAs within 5 yrs after Match • Regulatory Approvals w/ 10 yrs • Close escrow on Marina Leases <p>Add'l Pier 54 Marina Lease terms:</p> <ul style="list-style-type: none"> • 66-yr term, beginning no sooner than 5 yrs after Match • ~425 recreational vessels • Rent credits for Pier 54 substructure repairs limited to Pier 54

HVA as of 12/14/10	HVA AS OF 12/31/10	PROPOSED DDA
<p>Port Sources & Financing:</p> <ul style="list-style-type: none"> • IFDs at Piers 26, 28, 30-32, SWL 330 • Rent Credits for unreimbursed Investment Value • Port buy-out election for AIW above \$55M, payable within 5 years, plus 11% interest <p>Additional benefit to Port:</p> <ul style="list-style-type: none"> • BSW maintenance CFD over Piers 30-32, SWL 330 	<p>Port Sources & Financing:</p> <p>Same</p>	<p>Port Sources & Financing:</p> <p>Added:</p> <ul style="list-style-type: none"> • Port right to form CFD that includes Piers 30-32 if needed to finance facilities to protect against sea level rise • Expanded buy-out election to all reimbursable work above \$55M
<p>Dispute Resolution:</p> <ul style="list-style-type: none"> • HVA disputes referred first to JAMS for mediation • Fees awarded only for failure to participate in mediation • If not resolved, referred to ICC Int'l Court of Arbitration • No attorneys' fees clause 	<p>Dispute Resolution:</p> <p>Same</p>	<p>Dispute Resolution for DDA:</p> <ul style="list-style-type: none"> • Limited right to arbitration of disputes • No right to damages in arbitration • No right to de novo review • Attorneys' fees only for failure to participate or frivolous action <p><u>Arbitrable Issues (Partial List)</u></p> <ul style="list-style-type: none"> • The Port's ability to meet the Pier 27 delivery date • Whether the Port wrongfully disapproved request to approve or amend a scope • Whether a replacement venue for a damaged venue is functionally equivalent • Repair estimates after casualty • Whether the Port wrongfully disapproved a construction drawing submittal • Whether ACEA costs are w/i an approved scope or commercially unreasonable