

File No. 100386

Committee Item No. 9

Board Item No. 13

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: April 28, 2010

Board of Supervisors Meeting

Date: May 4, 2010

Cmte Board

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

OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea S. Ausberry

Date Thursday, April 23, 2010

Completed by: Andrea S. Ausberry

Date Thursday, April 29, 2010

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

FILE NO. 100386

1 [Approval to award a fifteen and one-half years (plus five-year extension option) restaurant
2 lease between the Port of San Francisco and D & G Company, LLC, doing business as Lou's
3 Pier 47 (Lease No. L-14630), for premise at 300 Jefferson Street located in Fisherman's
4 Wharf.]

4 **Resolution approving Port Commission Lease No. L-14630 with D & G Company, LLC,**
5 **doing business as Lou's Pier 47, for certain real property at 300 Jefferson Street**
6 **located in Fisherman's Wharf in the City and County of San Francisco for a term of 15**
7 **1/2 years (plus a 5 year extension option)**

8 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and the San
9 Francisco Charter Section 4.114 and B3.581 empower the San Francisco Port Commission
10 with the power and duty to use, conduct, operate, maintain, manage, regulate and control the
11 lands within Port Commission jurisdiction; and

12 WHEREAS, Under Port Resolution No. 93-52 the Port's Retail Leasing Policy, it is the
13 policy of the Port Commission to competitively bid retail opportunities by the issuance of a
14 Request for Proposal ("RFP"), and

15 WHEREAS, the Retail Leasing Policy does allow for direct negotiations of retail leases
16 with existing tenants if: (I) the Tenant is a tenant in good standing, (II)) the Tenant's existing
17 lease term does not support its business plan and strategy for significant capital investment
18 into Port property, (III) the direct and indirect benefits exceed the benefits of a public offering,
19 (IV) the investment will benefit the Port, and if the benefits of direct negotiation outweigh the
20 benefits of competitive bidding, (V) if the Tenant has a good record of non-discrimination in its
21 hiring and retail practices and its committed to adhering to a program of non-discrimination
22 during the term of the proposed lease; and

23 WHEREAS, The Port Commission determined that Lou's Pier 47 met the criteria for
24 direct negotiations: (I) D & G Company is a tenant in good standing, (II) D & G Company's
25 current lease term does not support its business plan and strategy for significant capital

1 investment into Port property in the amount of Seven Hundred Fifty Thousand Dollars
2 (\$750,000.00), (III) D & G Company's investment will benefit the Port, and these benefits
3 outweigh the benefits of competitive bidding, (IV) D & G Company is the highest and best use
4 for the property located a 300 Jefferson Street since they have a proven track of success and
5 successful restaurant formula in the competitive restaurant-rich Fisherman's Wharf area,
6 (V) D & G Company affirmatively states its commitment to non-discrimination in its hiring and
7 retail practices and its committed to adhering to a program of non-discrimination during the
8 term of the proposed lease; and

9 WHEREAS, The Port Commission pursuant to Resolution No. 10-13, approved a 15
10 and one half year lease with one five-year (5) extension option for certain real property
11 located at 300 Jefferson Street in the City and County of San Francisco for rent based on the
12 greater amount of either the minimum monthly rent of \$11,954.62 or 6.75% of gross sales
13 which represents a 80% increase over the existing minimum rent. The minimum rent shall be
14 increased by 2% per year and the percentage rent shall be increased to 7% in the tenth year
15 of the lease term. The lease provides a fair market rent adjustment to the minimum base rent
16 upon the exercise of the option. These terms meet or exceed the fair market value for like
17 situated restaurants of similar size and location; and

18
19 WHEREAS, A copy of the form of lease is on file with the Clerk of the Board of
20 Supervisors in File No. 100386 and is hereby declared to be part of this Resolution
21 as if fully at forth herein (the "Lease"); and

22 WHEREAS, San Francisco Charter Section 9.118 requires Board of Supervisors
23 approval of leases having a term of ten (10) or more years or having anticipated revenue to
24 the City of One Million Dollars (\$1,000,000.00) or more; and
25

1 WHEREAS, This Lease has a lease term that exceeds ten (10) years or more and the
2 revenue likely to meet or exceed One Million Dollar (\$1,000,000.00) threshold; now, therefore,
3 be it

4 RESOLVED, That the Board of Supervisors approves the Lease; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
6 Director of the Port (the "Executive Director") to execute the Lease in a form approved by the
7 City Attorney and in substantially the form of the lease on file; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
9 Director to enter into any additions, amendments or other modifications to the Lease
10 (including, without limitation, preparation and attachment of, or changes to, any or all of the
11 exhibits and ancillary agreements) that the Executive Director, in consultation with the City
12 Attorney, determines is in the best interest of the Port, do not alter the rent or the Port's
13 projected income from the Lease, do not materially increase the obligations or liabilities of the
14 Port or City or materially decrease the public benefits accruing to the Port, and are necessary
15 or advisable to complete the transactions contemplate and effectuate the purpose and intent
16 of this Resolution, such determination to be conclusively evidenced by the execution and
17 delivery by the Executive Director of any such documents; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors approves, and ratifies all prior
19 actions taken by the officials, employees and agents of the Port Commission, or the City with
20 respect to the Lease; and, be it

21 FURTHER RESOLVED, That the Port, at the end of the proposed lease, shall report
22 back to the Board of Supervisors, no later than 30 days after the termination of the lease term,
23 as to the Port's plan for the future status of this lease including (a) how long the Port
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

anticipates the lease will continue on a month-to-month basis with the existing lessee, and (b)
and when the lease will be subject to a future competitive process.

Item 9
File 10-0386

Department:
Port

EXECUTIVE SUMMARY

Legislative Objectives

- Resolution approving a new 15.5-year lease between the Port, as the lessor, and Lou's Pier 47, as the lessee, to rent restaurant space at 300 Jefferson Street in Fisherman's Wharf.

Fiscal Impact

- Under the proposed lease, Lou's Pier 47 would pay the Port total rental revenue of at least \$2,505,723 over the 15.5 year term of the lease agreement (June 1, 2010 through November 30, 2025).

Key Points

- The proposed lessee, Lou's Pier 47, is the current lessee at 300 Jefferson Street. On December 16, 1997, Lou's Pier 47 purchased an existing lease for the subject property during a bankruptcy court auction for the previous lessee, Lou's Blues (which has no relationship with Lou's Pier 47). The term of the purchased lease expired on January 31, 2007, and the lease has been extended by the Port under the holdover provisions of the lease, on a month-to-month basis for the last 39 months. Currently under the month-to-month lease, Lou's Pier 47 pays the greater of (a) 6.75 percent of gross sales, or (b) base rent of \$6,572 per month.
- The Port is proposing to award a new sole-source lease to Lou's Pier 47, without undergoing a competitive process, for (a) a term of 15.5 years, with (b) monthly rent equal to the greater of 6.75 percent of gross sales (increasing to 7.0 percent in the 11th year of the lease period) or a base rent of \$11,957 per month (with the base rent amount increasing by 2.0 percent per year). The proposed monthly rental payments provide for the same percentage of gross sales as is provided currently under the existing month-to-month lease, at 6.75 percent. However, the percentage rent under the new lease increases to 7.0 percent in the 11th year of the lease. Further, under the new lease, the monthly base rent would increase by \$5,383 per month, 81.9 percent, from \$6,572 to \$11,955.
- In accordance with the Port's Retail Leasing Policy, the Port did not competitively bid the proposed lease because (a) Lou's Pier 47 has been in "good standing" during its tenancy, with a record of making the required rent payments on a timely basis, and has complied with the Port's regulations, (b) Lou's Pier 47's business plan includes capital improvements of \$750,000 to the Port's property which Lou's Pier 47 has not yet begun because the month-to-month term of the existing lease does not provide sufficient time to recoup the capital investment, (c) the proposed monthly rent of 6.75 percent of gross sales for the first 10 years is fair market value for the lease, and (d) Lou's Pier 47 has a policy of non-discrimination in its hiring and operating practices and is committed to maintaining that policy throughout its tenancy with the Port.
- Although the proposed lease with Lou's Pier 47 meets the Port's Retail Leasing Policy

(

(

(

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

criteria for awarding a lease on a sole-source basis through direct negotiations rather than through a competitive process, and the proposed lease would result in a 81.9 percent increase in the base rent payable to the Port, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors because (a) the Port's Retail Leasing Policy has not previously been approved by the Board of Supervisors, (b) the subject restaurant space at 300 Jefferson Street has never been subject to a competitive process by the Port, and (c) the Port could conduct a competitive process which (1) considers proposals from other firms which have a track record for paying rents on a timely basis, (2) would make capital improvements of \$750,000 or more, and (3) would maintain non-discrimination policies.

- The proposed new lease includes a holdover provision wherein the Port could allow the lessee, Lou's Pier 47, to continue to lease the premises indefinitely on a month-to-month basis after the lease expires. In that event, the monthly base rent would increase by \$8,045, or 50 percent, from \$16,090 to \$24,135

Recommendations

- Approval of the proposed resolution is a policy matter for the Board of Supervisors because the proposed new lease, which was awarded on a sole-source basis, was not subject to a competitive process.
- If the Board of Supervisors approves the proposed resolution, amend the proposed resolution to require that the Port, at the end of the proposed lease, report back to the Board of Supervisors, no later than 30 days after the termination of the lease term, as to the Port's plan for the future status of this lease including (a) how long the Port anticipates the lease will continue on a month-to-month basis with the existing lessee, and (b) when the lease will be subject to a future competitive process.

MANDATE STATEMENT & BACKGROUND

Mandate Statement

Section 23.33 of the Administrative Code requires that leases of City property in excess of \$2,500 per month in lease revenue be awarded through a competitive process, unless such a competitive process would be "impractical or impossible." The terms impractical and impossible are not defined in the Administrative Code.

The proposed new lease would be awarded, on a sole-source basis, to the existing lessee through direct negotiations rather than conducting a competitive process for the new lease.

Holdover Lease Project

In January of 2008, the Port implemented a Holdover Lease Project, to reduce the number of Port leases which had expired and continued on a month-to-month basis under the "holdover" provisions of their leases. According to Mr. Brad Benson, Special Projects Manager for the Port:

"Since the beginning of the Port's Holdover Lease Project, forty (46) agreements have been renewed, entered into or amended with existing Port tenants, which have resulted in an increase of \$221,338.61 in monthly revenues. When tenants chose not to enter a new term lease, Port staff increased rents consistent with rental rate charges approved by the Port Commission. Fifty-seven (57) rent increase letters have been sent, which have resulted in an increase of \$37,416.45 in monthly revenues. Finally, thirty-six (36) agreements have been terminated (largely because tenants refused new term leases), resulting in a decrease of \$9,796.93 in monthly revenues.

As of April 14, 2010, twenty-two (22) additional holdover and month-to-month agreements requiring new term leases were assigned to various Port leasing staff for renewal. Fifty-one (51) agreements have not yet been assigned; of these, eighteen (18) agreements are at or above market rents approved by the Port Commission. The Port continues to dedicate 1.6 FTE leasing staff provided by the Department of Real Estate for this project, in addition to its own leasing staff."

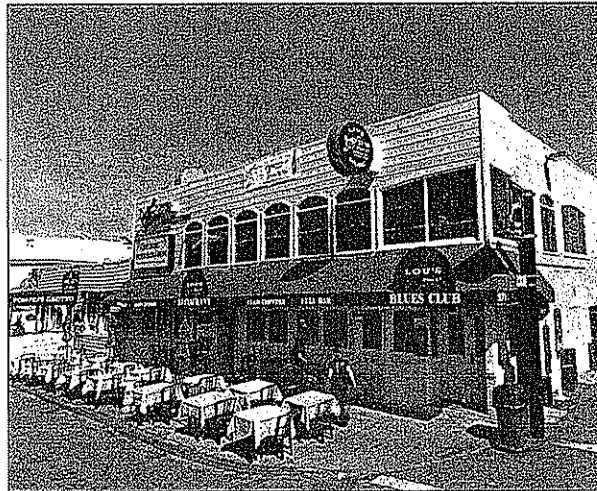
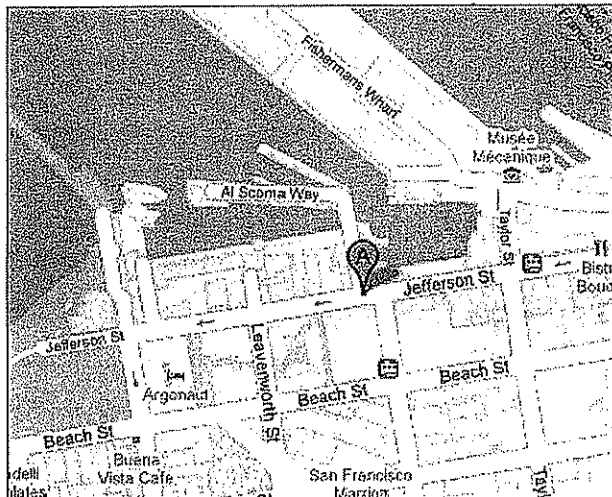
Port's Leasing Policies

The Port has adopted a Retail Leasing Policy, which was not subject to Board of Supervisors approval, to determine when it would be impractical or impossible to award a lease through a competitive process. The Port's Retail Leasing Policy states that the Port will conduct a competitive process for each lease opportunity unless the current lessee meets the following four criteria:

- 1) the tenant has a positive history of rental payments and regulatory compliance,
- 2) the tenant's business plan includes significant capital improvements which have not been constructed because the term of the tenant's current lease does not provide sufficient time to recoup the capital investment,
- 3) direct negotiations would result in fair market rental revenues, and
- 4) the tenant has a positive record of non-discrimination in its operating and hiring practices.

Existing Lease for 300 Jefferson Street

The subject retail space, shown in the map and photo below, totals 4,363 square feet of restaurant space over two floors (2,300 square feet on the first floor plus 2,063 on the second floor), and is located at 300 Jefferson Street, on the corner of Jefferson Street and Al Scoma Way.



The proposed lessee, Lou's Pier 47, is the current lessee at 300 Jefferson Street. On December 16, 1997, Lou's Pier 47 purchased the remaining six years and one month term of an existing 30-year lease which expired on January 31, 2007 for the subject premises during a Bankruptcy Court auction for the previous tenant, Lou's Blues. The Port approved the transfer of the lease to Lou's Pier 47, the current lessee, on December 18, 1997 under Port Commission Resolution 97-113.

Under the terms of the previously purchased lease, Lou's Pier 47 currently pays the Port the greater of (a) monthly base rent of \$6,572, or \$78,964 per year, or (b) 6.75 percent of gross sales. According to Mr. Jeff Bauer, Senior Commercial Leasing Manager for the Port, because 6.75 percent of monthly sales has exceeded the monthly base rent amount, Lou's Pier 47 has paid the Port total annual rents which have consistently exceed the annual base rent of \$78,964, with average rent paid to the Port of \$160,218 annually over the past three years.

The monthly base rent is based on a rental rate of \$3.10 per square foot. Although Lou's Pier 47 occupies both the first and second floors of the building located at 300 Jefferson Street, the monthly base rental rate, according to the terms of the existing lease, only applies to 2,120 square feet on the first floor¹ because, according to Mr. Bauer, at the time of the original lease award, the subject building was only a one story building. Mr. Bauer further noted that because the percentage of sales rental model includes sales from all levels of Lou's Pier 47, and Lou's Pier 47 has consistently exceeded the monthly base rent, the application of the base rental rate to only the first floor has not resulted in lower rental revenues to the Port.

The term of the existing lease which Lou's Pier 47 purchased in 1997 during a bankruptcy court auction expired on January 31, 2007, and has been extended on a month-to-month basis for 39 months under the holdover provisions in the purchased lease. According to Mr. Bauer, when the lease expired, the Port determined that Lou's Pier 47 was eligible for a directly negotiated

¹ The first floor is actually 2,300 square feet. However the previously purchased lease only applied to 2,120 square feet such that 180 square feet were not included in the base rent calculation. The proposed new lease includes the entire 4,363 square foot building, including 2,300 square feet on the first floor and 2,063 on the second floor.

sole-source lease under the Port's Retail Leasing Policy and initiated direct negotiations. In August of 2008, Lou's Pier 47 withdrew from negotiations due to the economic downturn and did not reengage the Port to continue negotiations until November of 2009. According to Mr. Bauer, the Port did not conduct a competitive process for the lease immediately after Lou's Pier 47 withdrew from negotiations because the Port did not anticipate being able to award a lease during the economic turndown which would have resulted in rental revenues to the Port in excess of the previous rental revenues realized by the Port.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new, sole-source lease between the Port, as the lessor, and Lou's Pier 47, as the lessee, for 4,363 square feet of restaurant space, including 2,300 square feet on the first floor and 2,063 on the second floor, located at 300 Jefferson Street for 15.5 years, from June 1, 2010 through November 30, 2025, with one option to extend the lease term by five years. Table 1 below compares provisions of the current and proposed leases.

Under the proposed new lease, Lou's Pier 47 is required to pay to the Port the greater of (a) base rent of \$11,955 per month in the first year, increasing by 2 percent annually throughout the 15.5 year lease term (see Table 2 below), or (b) 6.75 percent of monthly gross sales, increasing to 7.0 percent in the 11th year of the lease. The proposed new lease would increase the monthly base rent by \$5,379, or 81.9 percent, from \$6,575 to \$11,955 per month.

Table 1: Comparison of Current and Proposed Leases

	Current Expired Lease Continued on a Month-to-Month Basis	Proposed Lease	Change
Lessee	Lou's Pier 47	Lou's Pier 47	No Change
Term	30 years from February 1, 1977 to January 31, 2007.	15.5 years, from June 1, 2010 to November 30, 2025	Decrease by 14.5 years ² .
Extension Option	None	One Option to Extend by 5 Years	Increased by one 5 year option.
Required Capital Improvements	None	\$750,000 of property improvements to be completed by July 1, 2011. However, the Port would waive rent payments during the construction period for up to 6 months	\$750,000 increase in required capital improvements
Percentage Rent	6.75% of Gross Sales	6.75% of Gross Sales, Increasing to 7% in Year 11 (see Table 2 below). The Port can also increase the percentage rent to fair market value at the beginning of the optional five year extension.	No Change Until Year 11
Base Rent Rate	\$3.10 per square foot	\$2.74 per square foot	Decrease of \$0.36 per square foot, or 11.6%
Annual Increase in Base Rent Rate	According to the Consumer Price Index	2% per year	-
Square Footage Subject to Base Rent	2,120 square feet	4,363 square feet	Increase of 2,243, or 105.8%
Monthly Base Rent	\$6,572	\$11,955 in the First Year	Increase of \$5,383, or 81.9%

The Budget and Legislative Analyst notes that although the base rental rate would decrease from \$3.10 to \$2.74 in the proposed lease, as shown in Table 1, the net increase in the total base rent is due to the increase in area which would be subject to the base rental rate, from 2,120 square feet to 4,363 square feet in the proposed lease. According to Mr. Bauer, the proposed decrease in the base rental rate per square foot reflects the inclusion of both the first and second floor spaces in the rate, as compared to the base rate under the current expired lease which only includes the more valuable first floor retail space.

As shown in Table 1 above, the proposed lease would provide monthly base rent in the first year of \$11,955, an increase of \$5,383, or 81.9 percent, more than the current monthly base rent of \$6,572.

According to Mr. Bauer, after the proposed lease expires, the Port intends to either (a) conduct a competitive process, or (b) enter into direct negotiations with Lou's Pier 47 for a new sole-source lease, subject to the criteria for direct negotiations under the Port's leasing

² According to Mr. Bauer, the decrease in term reflects an appropriate term for restaurant leases under current market conditions.

policy. However, the proposed new lease includes a holdover provision wherein the Port could allow the lessee, Lou's Pier 47, to continue to lease the premises indefinitely on a month-to-month basis. In that event, the monthly base rent would increase by \$8,045, or 50 percent, from \$16,090 to \$24,135

FISCAL IMPACTS

As shown in Table 2 below, the proposed new 15.5 year lease agreement (June 1, 2010 through November 30, 2025) would require Lou's Pier 47 to pay the Port rental revenues of at least \$2,505,723.

Table 2: Rents Payable to the Port Over the 15.5 Year Lease

Lease Year	Percentage Rent	Monthly Base Rent ³	Total Base Rent
1	6.75%	\$11,955	\$71,730 ⁴
2	6.75%	12,194	146,329
3	6.75%	12,438	149,256
4	6.75%	12,687	152,241
5	6.75%	12,940	155,286
6	6.75%	13,199	158,391
7	6.75%	13,463	161,559
8	6.75%	13,733	164,790
9	6.75%	14,007	168,086
10	6.75%	14,287	171,448
11	7.00%	14,573	174,877
12	7.00%	14,865	178,374
13	7.00%	15,162	181,942
14	7.00%	15,465	185,581
15	7.00%	15,774	189,292
16	7.00%	16,090	96,539 ⁵
		Total	\$2,505,723

Mr. Bauer anticipates that, based on past rental payments paid by Lou's Pier 47 to the Port, which have averaged \$160,218 per year over the past three years, Lou's Pier 47 will continue to pay percentage of gross sales rent which is estimated to exceed base rent.

³ Monthly Base Rent includes a 2% annual increase, as required in the proposed lease.

⁴ Because the lease would waive rent payments for up to 6 months during the construction period of the required capital improvements, the total annual base rent in the first year is \$71,742 (6 x \$11,957).

⁵ Because the lease includes 15.5 months, the total base rent in the 16th year of the lease is \$96,555 (6 x \$16,093).

POLICY CONSIDERATIONS**The proposed new lease was not competitively bid.**

As discussed above, the Port's Retail Leasing Policy allows the Port to hold direct negotiations with existing tenants to re-lease City property instead of conducting a competitive process if:

- 1) the tenant has a positive history of rental payments and regulatory compliance,
- 2) the tenant's business plan includes significant capital improvements which have not been constructed because the term of the tenant's current lease does not provide sufficient time to recoup the capital investment,
- 3) direct negotiations would result in fair market rental revenues, and
- 4) the tenant has a positive record of non-discrimination in its operating and hiring practices.

As discussed in the attached memorandum (Attachment), Mr. Bauer provided the following information regarding how the proposed lease with Lou's Pier 47 complies with the above criteria:

- 1) Lou's Pier 47 has consistently remitted rent to the Port on time, and has met all of the Port's regulatory requirements.
- 2) As required by the proposed lease, Lou's Pier 47 would expend approximately \$750,000 on capital improvements to the subject property, including (a) handicapped accessible features such as an elevator and widened restrooms (b) kitchen improvements, and (c) improvements to the building's exterior. According to the terms of the lease, all improvements must be permanent improvements to the property which remains with the Port in the event Lou's Pier 47 terminated its occupancy.
- 3) The proposed percentage rental rate of 6.75 percent is within the fair market value estimate determined by a consultant, Economic Planning Systems, which was retained by the Port. Economic Planning Systems determined that fair market rental rates for Fisherman's Wharf restaurants range between 6 and 8 percent of gross sales.
- 4) Lou's Pier 47 has a policy of non-discrimination in its hiring and operational practices and is committed to maintaining that policy throughout its tenancy with the Port.

Mr. Bauer noted that on October 16, 2007 and December 16, 2008, in separate resolutions (Files 07-1311 and 08-1415), the Board of Supervisors approved two new Port leases which were the result of direct negotiations with current Port lessees, which met the Port's Retail Leasing Policy criteria described above.

Although the proposed lease with Lou's Pier 47 meets the Port's Retail Leasing Policy criteria for awarding a lease through direct negotiations rather than a competitive process, and the proposed lease would result in a 81.9 percent increase in the base rent payable to the Port, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors because (a) the Port's Retail Leasing Policy has not previously been approved by the Board of Supervisors, (b) the subject restaurant space at 300

Jefferson Street has never been subject to a competitive process by the Port, and (c) the Port could conduct a competitive process which (1) considers proposals from other firms which have a track record for paying rents on a timely basis, (2) would make capital improvements of \$750,000 or more, and (3) would maintain non-discrimination policies.

The proposed lease includes a holdover provision which would allow the Port to extend the lease indefinitely, with the current lessee, Lou's Pier 47, after the proposed lease expires, without further approval by the Board of Supervisors.

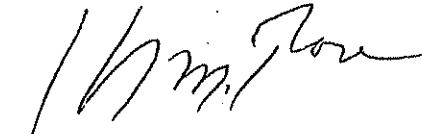
The proposed new lease includes a holdover provision wherein the Port could allow the lessee, Lou's Pier 47, to continue to lease the premises indefinitely on a month-to-month basis after the lease term expires. In that event, the monthly base rent would increase by \$8,045, or 50 percent, from \$16,090 to \$24,135

According to Mr. Bauer, the holdover provision in this lease, as well as all other Port commercial leases, benefits the City by providing flexibility during adverse real estate conditions or when the use of the property is in transition. Although Mr. Bauer stated that after the term of the proposed lease expires, the Port intends to either (a) conduct a competitive process for a new lease, or (b) enter into direct negotiations with Lou's Pier 47, subject to the criteria in the Port's Retail Leasing Policy, for a new sole-source lease, the Budget and Legislative Analyst notes that the proposed lease does not limit the duration of the holdover period, such that the lease could continue indefinitely with the same lessee, Lou's Pier 47.

Therefore, if the Board of Supervisors approves the proposed resolution, amend the proposed resolution to require that the Port, at the end of the proposed lease, report back to the Board of Supervisors, no later than 30 days after the termination of the lease term, as to the Port's plan for the future status of this lease including (a) how long the Port anticipates the existing lease will continue on a month-to-month basis with the existing lessee, and (b) when the lease will be subject to a future competitive process.

RECOMMENDATIONS

1. Approval of the proposed resolution is a policy matter for the Board of Supervisors because the proposed new lease, which was awarded on a sole-source basis, was not subject to a competitive process.
2. If the Board of Supervisors approves the proposed resolution, amend the proposed resolution to require that the Port, at the end of the proposed lease, report back to the Board of Supervisors, no later than 30 days after the termination of the lease term, as to the Port's plan for the future status of this lease including (a) how long the Port anticipates the lease will continue on a month-to-month basis with the existing lessee, and (b) and when the lease will be subject to a future competitive process.



Harvey M. Rose

cc: Supervisor Avalos
Supervisor Mirkarimi
Supervisor Elsbernd
President Chiu
Supervisor Alioto-Pier
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Mar
Supervisor Maxwell
Clerk of the Board
Cheryl Adams
Controller
Greg Wagner



April 21, 2010

To: Nathan Cruz
Budget Analyst

Port staff has reviewed Lou's Pier 47's proposal and determined that Lou's Pier 47 meets the criteria found in the Retail Leasing Policy as described below including the implacability of a public offering:

Lou's Pier 47 has been a tenant in good standing during its tenancy.

Lou's Pier 47's current lease (L-9798) expired on January 31, 2007 and it has been on a month-to-month hold over basis since that time. The current lack of term on the existing lease does not support nor allow Lou's Pier 47 to execute its business plan that includes making a significant capital investment into Port property. Pursuant to its business plan, Lou's Pier 47 is committing to invest up to \$750,000 into the premises. The tenant improvements include installation of a lift elevator and refixturing the kitchen and bar area. In addition, Lou's Pier 47 will construct ADA compliant accessible bathrooms on the first and second floors, create barrier free paths of travel, construct a new and more inviting entrance and completely resurface the interior and exterior finishes of the building.

Lou's Pier 47 is making a sizeable investment in the Port's property. In exchange for this investment, and upon approval by the Port Commission and the Board of Supervisors, the Port will grant Lou's Pier 47 (i) a sole-source business opportunity and (ii) an extended lease term of fifteen and a half years plus a five-year extension. Aside from the six months of free rent during the construction period, it is not now, nor will it ever be, the Port's intention to also grant rent credits or other financial considerations for these improvements.

There are substantial and quantifiable benefits to direct negotiations with this existing tenant. Lou's Pier 47 is willing to make a significant capital investment in Port property within a predetermined timeframe as required by the proposed lease; Lou's Pier 47 has established a proven track record and successful restaurant formula in the competitive restaurant-rich Fisherman's Wharf area; and Lou's Pier 47 is the only live music venue in Fisherman's Wharf and attracts nighttime customers to the general wharf area which benefits all wharf merchants.

Furthermore, in June 2006, the Port commissioned a third party real estate analysis to determine the "highest and best use" for three Port properties in the Fisherman's Wharf area. The report documents findings and analysis for 360 Jefferson Street, currently leased by Portco; 300 Jefferson Street, currently Lou's Pier 47; and 2890 Taylor Street, currently leased by Boudin's (see attached location map).

The study concluded that these restaurants tend to pay lower percentage rents, in the 6 to 8 percent range, while retail shops pay in the 8 to 9 percent range. The report concluded that these ranges were appropriate and in-line with their respective uses. Based on the finding in the 2006 report and in conjunction with other relevant market data from other like-situated Port restaurants along Jefferson Street, Port staff believes that a percentage rent of 6.75% increased to 7% in the tenth year reflects fair market conditions. It should be noted that retail comparables for percentage rent do not typically fluctuate during three to five year periods therefore the 2006 report would be considered as relevant market data.

Lou's Pier 47 is committed to non-discrimination in its hiring and retail practices and is committed to adhering to a program of non-discrimination during the term of the proposed lease. According to recordings provided by Lou's Pier 47 they currently provide forty jobs to the City's economy.

Lou's Pier 47 currently pays the greater of minimum base rent in the amount of \$6,579.99 per month or \$3.10 per square foot or 6.75% of all gross sales.

Under the proposed new Lease, the percentage rent will remain at 6.75%, but the minimum base rent will initially be increased to \$11,954.62 per month, which represents an 80% increase over the existing monthly rent. The Lease provides for an annual 2% adjustment to the minimum base rent and, in the tenth year, the percentage rent will be increased to 7%.

The current lease does not account for or apply a minimum base rent figure to the second floor which accounts for 50% of the entire building envelope. The new Lease "fixes" this issue by incorporating the entire building's square footage into the rent equation.

During the twelve month period between November 2008 and December 2009, Lou's Pier 47 has reported sales of \$2.1 million dollars. During the same period Lou's Pier 47 paid a total rent of \$151,337.00 per year or an average of \$12,611.00 per month or \$35.00 per square foot per year. The average range for similarly-sized Port restaurants located on Jefferson Street is from \$21 to \$38 per square foot per year.

Port staff anticipates a direct and corresponding increase in Lou's Pier 47 sales as a result of its investment in the premises. First, by integrating the first and

second floors, it will create a more unified restaurant operation and a generally better utilization of space. Secondly, by creating a more inviting restaurant atmosphere, it will provide an enhanced dining and entertainment experience for its customers. The Port believes that both these improvements will enhance sales and therefore revenue to the Port.

Jeffrey A. Bauer
Senior Leasing Manager



ORIGINAL

**CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR**

LEASE NO. L-14630

BY AND BETWEEN

**THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION**

AND

**D & G COMPANY
A CALIFORNIA LIMITED LIABILITY COMPANY
DBA LOU'S PIER 47**

PIER 47

**MONIQUE MOYER
EXECUTIVE DIRECTOR**

SAN FRANCISCO PORT COMMISSION

**RODNEY FONG, PRESIDENT
STEPHANIE SHAKOFSKY, VICE PRESIDENT
KIMBERLY BRANDON, COMMISSIONER
MICHAEL HARDEMAN, COMMISSIONER
ANN LAZARUS, COMMISSIONER**

TABLE OF CONTENTS

		<u>Page</u>
1.	Demise.....	1
2.	Definitions.....	1
3.	Premises; As-Is Condition.....	9
	3.1. Premises.....	9
	3.2. No Right to Encroach.....	9
	3.3. As Is Condition.....	10
	3.4. Port's Rights Regarding Premises.....	11
	3.5. Relocation Option.....	11
4.	Term of Lease; Termination by Port.....	11
	4.1. Term.....	11
	4.2. Waiver of Relocation Benefits.....	11
	4.3. Unique Nature of Premises.....	11
	4.4. Termination Rights.....	12
5.	Rent.....	12
	5.1. Manner of Payment.....	14
	5.2. Late Charges.....	14
	5.3. Returned Checks.....	15
	5.4. Default Interest.....	15
	5.5. Net Lease.....	15
	5.6. Additional Charges.....	15
6.	Taxes and Assessments.....	16
	6.1. Payment of Taxes.....	16
	6.2. Possessory Interest Tax.....	16
7.	Security.....	17
	7.1. Security Deposit.....	17
	7.2. Letter of Credit.....	17
	7.3. Environmental Oversight Deposit.....	18
8.	Use of the Premises.....	19
	8.1. Permitted Use.....	19
	8.2. Prohibited Use.....	19

8.3.	Notice of Prohibited Use Charge	20
9.	Compliance with Laws and Regulations.....	20
10.	Port Acting as Owner of Property; Regulatory Approvals; Compliance with City's Risk Manager's Requirements	21
10.1.	Port Acting as Owner of Property.....	21
10.2.	Regulatory Approvals	21
10.3.	Compliance with City's Risk Manager's Requirements.....	22
11.	Maintenance and Repairs.....	22
11.1.	Tenant Maintenance and Repair Obligations.....	22
11.2.	Port's Right to Inspect	22
11.3.	Port's Right to Repair.....	22
11.4.	Acts of God.....	23
12.	Utilities and Services	23
12.1.	Utilities.....	23
12.2.	Services	24
12.3.	Antennae and Telecommunications Dishes	24
13.	Improvements and Alterations.....	25
13.1.	Port Consent Required.....	25
13.2.	Tenant's Obligation to Construct the Initial Tenant Improvements	25
13.3.	Construction Requirements.....	25
13.4.	Improvements Part of Realty	27
13.5.	Removal of Improvements.....	27
13.6.	Removal of Non-Permitted Improvements.....	27
13.7.	Port's Alterations.....	27
14.	Liens.....	28
15.	Hazardous Materials	28
15.1.	Requirements for Handling.....	28
15.2.	Tenant Responsibility	28
15.3.	Tenant's Environmental Condition Notification Requirements.....	28
15.4.	Requirement to Remediate.....	30
15.5.	Port's Right to Audit	30
15.6.	Notification of Asbestos	30
15.7.	Notification of Lead.....	31

15.8.	Failure to Comply	32
15.9.	Survival	32
15.10.	Storm Water Pollution Prevention	32
15.11.	Presence of Hazardous Materials	32
16.	Insurance	32
16.1.	Required Insurance Coverage	32
16.2.	Claims-Made Policies	34
16.3.	Annual Aggregate Limits	34
16.4.	Payment of Premiums	34
16.5.	Waiver of Subrogation Rights	34
16.6.	General Insurance Matters	34
17.	Damage and Destruction	35
17.1.	General; Notice; Waiver	35
17.2.	Rent after Damage or Destruction	36
17.3.	Tenant's Obligation to Restore	36
17.4.	Major Damage and Destruction or Uninsured Casualty	36
17.5.	Effect of Termination	37
17.6.	Distribution Upon Lease Termination	37
17.7.	Use of Insurance Proceeds	37
17.8.	No Release of Tenant's Obligations	38
17.9.	Arbitration of Disputes	38
18.	Eminent Domain	39
18.1.	General; Notice; Waiver	39
18.2.	Total Condemnation	40
18.3.	Substantial Condemnation, Partial Condemnation	40
18.4.	Awards	40
18.5.	Temporary Condemnation	41
19.	Indemnity and Exculpation	41
19.1.	General Indemnity	41
19.2.	Hazardous Materials Indemnity	41
19.3.	Scope of Indemnities	42
19.4.	Exculpation	42
19.5.	Effect of Waivers	43

20.	Assignment and Subletting	43
	20.1. Transfer to Affiliate	43
	20.2. Transfer to Non-Affiliate	43
	20.3. Sublease	44
	20.4. Transfer Agreement Requirements	46
	20.5. Transfer Audit.....	46
	20.6. Acknowledgement	46
	20.7. Interpretation and Definitions	46
21.	LEASEHOLD MORTGAGE	47
	21.1. No Mortgage Except as Set Forth Herein.....	47
	21.2. Leasehold Liens	48
	21.3. Purpose of Mortgage.....	48
	21.4. Interest Covered by Mortgage	48
	21.5. Rights Subject to Lease.....	49
	21.6. Required Provisions in every Mortgage	49
	21.7. Notices to Mortgagee.....	49
	21.8. Mortgagee's Right to Cure	50
	21.9. Assignment by Mortgagee.....	52
	21.10. Transfer of Mortgage	53
	21.11. Appointment of Receiver.....	53
22.	Representations and Warranties of Tenant	53
23.	Default by Tenant	54
24.	Port's Remedies.....	56
	24.1. Tenant's Right to Possession Not Terminated	56
	24.2. Termination of Tenant's Right to Possession.....	56
	24.3. Appointment of Receiver.....	57
	24.4. Port's Right to Cure Tenant's Default	57
	24.5. Port's Options for Hazardous Materials Default.....	57
	24.6. No Accord and Satisfaction	57
	24.7. Wavier of Redemption.....	58
	24.8. Habitual Late Payer.....	58
	24.9. Remedies Not Exclusive.....	58
25.	Litigation Expenses; Attorneys' Fees.....	58

25.1.	Litigation Expenses.....	58
25.2.	Appeals	58
25.3.	City Attorney	58
26.	Port's Entry on Premises	58
26.1.	Entry for Inspection	58
26.2.	General Entry.....	58
26.3.	Emergency Entry	59
26.4.	No Liability.....	59
26.5.	Non-Disturbance.....	59
27.	Surrender and Quitclaim.....	59
27.1.	Surrender.....	59
27.2.	Quitclaim.....	60
27.3.	Abandoned Property	60
27.4.	Survival.....	60
28.	Holding Over	60
28.1.	Terms of Holdover Tenancy.....	60
28.2.	With Consent	60
28.3.	Without Consent	61
28.4.	Renewal Letter of Credit.....	61
29.	Mineral Reservation.....	61
30.	City Requirements	61
30.1.	Non Discrimination.....	61
30.2.	Requiring Health Benefits for Covered Employees.....	62
30.3.	First Source Hiring.....	63
30.4.	Resource-Efficient Facilities and Green Building Requirements.....	64
30.5.	Prohibition of Tobacco Sales and Advertising	64
30.6.	Graffiti Removal	64
30.7.	Pesticide Prohibition.....	65
30.8.	MacBride Principles Northern Ireland.....	65
30.9.	Tropical Hardwood and Virgin Redwood Ban.....	65
30.10.	Preservative-Treated Wood Containing Arsenic	65
30.11.	Notification of Limitations on Contributions	65
30.12.	Sunshine Ordinance	66

30.13.	Conflicts of Interest.....	66
30.14.	Charter Provisions.....	66
30.15.	Drug-Free Workplace	66
30.16.	Wages and Working Conditions	66
30.17.	Public Transit Information.....	66
30.18.	Food Service Waste Reduction Ordinance	66
30.19.	Employee Signature Authorization Ordinance	67
30.20.	Prevailing Wages for Theatrical Workers.....	67
31.	Notices	67
32.	Signs.....	68
33.	No Light, Air or View Easement.....	68
34.	Miscellaneous Provisions.....	68
34.1.	California Law	68
34.2.	Entire Agreement.....	68
34.3.	Amendments	68
34.4.	Severability	68
34.5.	Successors	69
34.6.	Real Estate Broker's Fees.....	69
34.7.	Counterparts.....	70
34.8.	Authority.....	70
34.9.	No Implied Waiver	70
34.10.	Time is of Essence	70
34.11.	Cumulative Remedies	70
34.12.	Survival of Indemnities.....	70
34.13.	Relationship of the Parties	70
34.14.	No Recording.....	70
34.15.	Additional Written Agreement Required.....	70
35.	Limitation on Damages.....	70
35.1.	No Recourse Beyond Value of Facility	70
35.2.	Non-Liability of City Officials, Employees and Agents	71
35.3.	Limitation on Port's Liability Upon Transfer	71
36.	Tenant Estoppel Certificates.....	71
37.	Non-Competition	71

38.	Extension Option	72
	38.1. Option to Extend Term	72
	38.2. Base Rent and Other Terms	72
	38.3. Arbitration.....	73
39.	Force Majeure	75
40.	Tenant's Management Covenants.....	75
	40.1. Covenants.....	75
	40.2. Continuous Operations.....	75
41.	On-Site Renewable Energy.....	76
42.	Fema Disclosure Notice.....	76
43.	Approval of Board of Supervisors	77

EXHIBITS AND SCHEDULES

EXHIBIT A	DESCRIPTION OF PREMISES
EXHIBIT B	COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM
EXHIBIT C	ESTOPPEL CERTIFICATE
EXHIBIT D	WORK LETTER
EXHIBIT E	RULES AND REGULATIONS

SCHEDULE 1	ASBESTOS NOTIFICATION AND INFORMATION
SCHEDULE 2	SUBSTRUCTURE REPORT(S)

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: D & G Company, Doing Business as Lou's Pier 47	
<i>Please list the names of: (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> Glenn Meyers, Managing Partner, Garrett Meyers, Managing Partner, Geald Meyers, Member, Don Tarantino, Member	
Contractor address: 300 Jefferson Street San Francisco, CA 94133	
Date that contract was approved:	Amount of contract: \$2.3 Million
Describe the nature of the contract that was approved: A 15.5 Year Restaurant Lease with one five year renewal option	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer:	Contact telephone number: 0
Address:	E-mail:

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

