

File No. 101564

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance SUB-Committee Date: March 16, 2011

Board of Supervisors Meeting

Date _____

Cmte Board

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<input checked="" type="checkbox"/>	<input type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Budget Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Ethics Form 126
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form (for hearings)
<input type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input checked="" type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
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OTHER

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Completed by: Victor Young

Date: March 11, 2011

Completed by: Victor Young

Date: _____

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

1 [Memorandum of Understanding - 34th America's Cup]

2
3 **Resolution approving a Memorandum of Understanding between the City Controller**
4 **and the Port Commission regarding the 34th America's Cup under Charter**
5 **Section B7.320.**

6
7 WHEREAS, The Board of Supervisors finds as follows:

8 (a) In February 2010, BMW Oracle Racing, sailing for the Golden Gate Yacht Club
9 (together with their successors, the "Team"), won the 33rd America's Cup in Valencia, Spain;
10 and,

11 (b) The Team, as Defender of the America's Cup, has the right and duty to organize
12 the 34th America's Cup (the "Event"), and has formed the 34th America's Cup Event Authority,
13 LLC (the "Event Authority") to organize the Event; and,

14 (c) The Team selected San Francisco as the host city for the Event on December 31,
15 2010; and,

16 (d) Hosting the 34th America's Cup in San Francisco would generate significant public
17 benefits for the City including: (i) the repair, improvement, and productive reuse of certain
18 City piers along the City's central waterfront that are currently in a state of disrepair; (ii) the
19 generation of significant new jobs and economic development in a very short period of time,
20 including over 9,000 jobs and more than \$1.4 billion of new economic activity, as projected in
21 an economic impact analysis completed by the Bay Area Council Economic Institute and
22 Beacon Economics; and (iii) substantially increased public access to the waterfront, new
23 opportunities for people to view and enjoy the San Francisco Bay, and an extraordinary
24 showcase for the Bay to the world; and,
25

1 (e) An America's Cup Organizing Committee (the "ACOC"), an independent not-for-
2 profit corporation, has been established and includes civic and corporate leaders from
3 throughout the Bay Area, California, and the nation, as well as a bipartisan honorary
4 committee including elected and appointed representatives from our local, state, and federal
5 governments; and,

6 (f) On December 14, 2010, the Board of Supervisors approved a Host City and Venue
7 Agreement, which the Event Authority executed and returned to the City on January 4, 2011
8 (the "Host Agreement"), by Resolution 585-10 (File No. 101259) under which the City will
9 provide the Event Authority with venues for 34th America's Cup facilities on property under the
10 jurisdiction of the Port Commission rent-free and perform certain infrastructure improvements
11 to prepare the Port properties for the 34th America's Cup, which creates race-related, net
12 short-term rent reductions to the Port and reductions in the Port's revenue bond capacity; and,

13 (h) By Resolution 585-10, the Board of Supervisors also acknowledged financial
14 impacts to the Port of hosting the 34th America's Cup and found a range of potential solutions,
15 including using San Francisco Charter Section B7.320 to offset race-related, net short-term
16 rent reductions to the Port, the Mayor and the San Francisco Board of Supervisors found the
17 34th America's Cup project to be fiscally feasible and responsible under San Francisco
18 Administrative Code Chapter 29; and,

19 (i) The City Controller and the Port Commission have negotiated terms of a proposed
20 Memorandum of Understanding, a copy of which is on file with the Clerk of the Board in File
21 No. 101564 and incorporated as if set forth in full in this Resolution, that provides the process
22 by which the City will offset the Port's lost rent and incurred race-related costs in connection
23 with the Host Agreement; and,

24 (j) Under San Francisco Charter Section B7.320, the Mayor may submit to the Board of
25 Supervisors a memorandum of understanding between the Port Commission between the

1 Port Commission and another department of the City, approved by the Port Commission by
2 resolution, that requires the department to transfer funds to the Port Commission; and,

3 RESOLVED, That the City has begun environmental review of the 34th America's Cup
4 under the California Environmental Quality Act ("CEQA") and nothing in this Resolution
5 implements any approvals or facilities for the Event, or grants any entitlements to the Event
6 Authority, nor does adoption of this Resolution foreclose the possibility of considering
7 alternatives to the proposal, mitigation measures or deciding not to grant entitlement or
8 approve or implement any actions to construct necessary amenities for the Event after
9 appropriate environmental review under CEQA is complete, and while the Memorandum of
10 Understanding implements certain obligations of the City under the Host Agreement, it does
11 not approve or finalize all of the material terms and conditions of the project; and, be it

12 FURTHER RESOLVED, That Board of Supervisors hereby approves and authorizes
13 the City Controller to enter into the Memorandum of Understanding with the Port Commission
14 regarding the 34th America's Cup and, if the Port incurs race-related costs in connection with
15 the Host Agreement, to transfer funds on the terms provided in the Memorandum of
16 Understanding; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and urges
18 the Mayor, Director of the Office of Economic and Workforce Development, and other City
19 officials with jurisdiction over the specific contractual and leasing subject matter, including the
20 City Controller and the Executive Director of the Port over Port matters, to take such steps
21 and enter into any additions, amendments or other modifications to the Memorandum of
22 Understanding as they, in consultation with the City Attorney, determine are in the best
23 interests of the City, do not materially increase the obligations or liabilities of the City and are
24 necessary or advisable to effectuate the purpose and intent of this Resolution, and further
25 ratifies such actions that the Mayor, Director of the Office of Economic and Workforce

1 Development, City Controller, Port Director, or other City official may undertake within the
2 scope of this authority before final adoption of this Resolution.
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8

CITY AND COUNTY OF SAN FRANCISCO
EDWIN LEE, MAYOR

MEMORANDUM OF UNDERSTANDING

MOU M14962

BY AND BETWEEN

THE CONTROLLER OF THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE SAN FRANCISCO PORT COMMISSION

Ben Rosenfield, Controller

Monique Moyer, Port Executive Director

SAN FRANCISCO PORT COMMISSION

Kimberly Brandon, President
Ann Lazarus, Vice President
Francis X. Crowley, Commissioner

MEMORANDUM OF UNDERSTANDING
(MOU M- 14962)

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is dated and effective as of the last date set forth below, by and between the San Francisco Controller (the "Controller") and the San Francisco Port Commission (the "Port"), each of which is agency of the City and County of San Francisco (the "City").

RECITALS

A. The competition for the America's Cup, first held in 1851 at Cowes, England, is one of the oldest international sporting competitions and the world's premier yacht racing event. The Golden Gate Yacht Club of San Francisco ("GGYC") won the 33rd America's Cup match in Valencia, Spain on February 14, 2010 and is now trustee under the Deed of Gift dated October 24, 1887, between George L. Schuyler and the New York Yacht Club, as amended by final decisions of the Supreme Court of the State of New York (the "Deed of Gift"), governing the silver cup won by the yacht America in the first America's Cup competition. Under the Deed of Gift, GGYC is entrusted with the organization of the 34th America's Cup ("AC34" or the "Event").

B. GGYC has received and accepted the challenge of Club Nautico di Roma of Rome, Italy ("CNR"), and GGYC and CNR entered into The Protocol Governing AC 34, dated September 9, 2010 and executed September 13, 2010 (together with all attachments, schedules and appendices thereto, and any amendment or any replacement protocol that governs AC34, the "Protocol").

C. GGYC and CNR have appointed the America's Cup Event Authority (the "Authority"), under Article 4 of the Protocol, to organize and manage AC34, in association with America's Cup Race Management ("ACRM"). GGYC selected San Francisco as the host city for AC34 on December 31, 2010. Under the Host City and Venue Agreement (the "HVA") between the Authority and the City, certain of the America's Cup World Series Pre-regattas, the America's Cup Challenger Series, the America's Cup Defender Series (if held), and the America's Cup Match will be held in San Francisco Bay. The HVA is on file with the Clerk of the Board of Supervisors in File No. 10-1259. Capitalized terms used but not defined in this MOU have the meanings given to them in the HVA.

D. Under the HVA, the City offers the use of Port property rent-free for staging the Event and commits to perform certain Infrastructure Work and incur other Event-related costs ("Port AC34 Costs"). The City expects to incur these costs commencing in 2011 and ending 2014. If GGYC succeeds in defending the America's Cup, it may elect to hold subsequent America's Cup events in San Francisco, which would require new host and venue agreements and memoranda of understanding between the Controller and the Port.

E. Port staff, the Board of Supervisors' Budget Analyst, and the Controller have estimated lost rent and the costs of City Infrastructure Work on Port property. Reports of these estimates are on file with the Clerk of the Board of Supervisors in File No. 10-1259. Port staff and the Controller agree that these costs are greater than the Port's ability to pay with the Port's Harbor Fund. Since the benefits of the AC34 are expected to accrue to the City's General Fund and to the broader regional economy beyond the jurisdiction of the Port Commission, the Port, the Controller, and the Office of Economic and Workforce Development recommend that the City's General Fund and the nonprofit San Francisco America's Cup Organizing Committee fund the majority of the Port AC34 Costs.

F. The Port has issued outstanding, publicly-held debt in the form of Series 2010 A and B Revenue Bonds subject to a bond indenture (the "Port Indenture"). To provide the

greatest assurance to Port bondholders, the Port and the Controller recommend a binding agreement that protects the Port's Harbor Fund against certain of the Port AC34 Costs. Charter Section B7.320 permits the Mayor to submit to the Board of Supervisors for its approval a memorandum of understanding between the Port Commission and another department requiring the transfer of funds between the Port and another department.

G. Under the Burton Act (Chapter 1333 of Statutes 1968, as amended) and San Francisco Charter Section 4.114, the Port administers and controls the real property transferred to the City by the State of California, including the area encompassing the real property that is the subject of the HVA and this MOU.

H. Under Charter Section 3.105, the Controller is responsible for the timely accounting, disbursement, or other disposition of monies of the City in accordance with sound financial practices applicable to municipalities and counties.

AGREEMENT

1. Definitions. The following words and phrases have the following meanings in this MOU:

"CPI" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics.

"Payments In-Lieu of Rent" means payments from the City to the Harbor Fund, as calculated by the Controller under Section 4.c of this MOU.

"Race" means the America's Cup World Series Pre-regattas, the America's Cup Challenger Series, the America's Cup Defender Series (if held), and the America's Cup Match.

"Rent Index" means the annual increase specified in the subject Port lease, for each Port lease at a Venue Site in effect as of January 1, 2011 for base rents, and the CPI for percentage or participation rents, wharfage, dockage, landing fees, and crane rental revenues.

"Tenant Relocation Cost" means any costs the Port incurs to relocate a tenant from a Venue Site to another facility, including all related legal costs.

"Venue Site" or "Venue Sites" means one or more Port facilities that will be used for staging or in preparation for staging AC34 in 2011-2014.

2. General Principles; Term.

a. General: The Port, and the Controller will monitor Port AC34 Costs and use best efforts to ensure that such costs are paid in a manner that: (i) preserves the Port's credit rating; (ii) maintains compliance with the Port Indenture; and (iii) does not reduce the Port's ability to make capital improvements to the waterfront.

b. Term: The term of this MOU will begin on the date the resolution approving it becomes effective and end on the last day of fiscal year 2013-14.

3. AC34 Budget; Records.

a. The Port and the Controller will make available to each other such records and accounts as are necessary to track Port AC34 Costs and revenues associated with Port property on a timely basis, whether incurred by the Port or by the City. This information will include a list of all Port leases and licenses that are terminated or are permitted to expire in anticipation of occupancy by the Authority for Event-related purposes. The list will include a summary of Port lease and license terms, and all rents, including base and percentage rent, and other use fees and maritime related revenues.

4. Payments In-Lieu of Rent.

- a. Establishing Venue Site Baseline Rents: In the third quarter of FY 2010-2011, the Controller will determine the Venue Site Baseline Rents for Port facilities that will be used as Venue Sites for the AC34, equal to: (i) rents due to the Port in the month of January 2011 from all tenants; plus (ii) the monthly average wharfage, dockage, landing fees, and crane rental for the period between January 2010 and December 2010.
- b. Tracking Port Percentage Rents: Commencing in 2011, the Port will provide to the Controller quarterly reports of its percentage rent revenues from Port property.
- c. Calculation and Payment of In-Lieu of Rent: The Controller will calculate the Payment In-Lieu of Rent due to the Port in each fiscal quarter during the term of this MOU. Subject to the terms and limitations of Charter Section B7.320, the Controller will remit to the Port Payments In-Lieu of Rent until (and including a payment for) the fiscal quarter after the last fiscal quarter in which the Authority has occupied a Venue Site.

i. Step 1 - Calculation of Net Lost Rent from Venue Sites:

- Determine the "Lost Gross Rent From Venue Sites," which is a projection of the rent that the Port would have received from Venue Sites if the City did not host AC34, based on the Venue Site Baseline Rents as adjusted by the Rent Index.
- Determine the "Residual Rent from Venue Sites," which means any rent that continues to be due from Port tenants from Venue Sites in any fiscal quarter between 2011 and 2014.
- Determine "Rent from Venue Site Relocated Tenants," which means any rent the Port is due during a fiscal quarter from 2011 to 2014 from a Port tenant relocated from a Venue Site to another Port facility, less Tenant Relocation Costs.
- Calculate "Net Lost Rent from Venue Sites" according to the following formula:

$$\begin{aligned} & \text{(Lost Gross Rent from Venue Sites)} \\ & - \text{(Residual Rent from Venue Sites)} \\ & - \text{(Rent from Venue Site Relocated Tenants)} \\ & = \text{(Net Lost Rent from Venue Sites)} \end{aligned}$$

ii. Step 2 - Calculation of Percentage Rents from Non-Venue Sites:

- Determine the "Race-Induced Percentage Rent Increase From Non-Venue Sites," which means the participation or percentage rent that the Port is due, excluding rent from Venue Sites, during any fiscal quarter from 2011 to 2014.
- Determine the "Inflation Adjusted Prior Year's Quarterly Percentage Rent From Non-Venue Sites" by multiplying the participation or percentage rent that the Port is due, excluding rent for Venue Sites, in the fiscal quarter one year before any fiscal quarter for which a Payment In-Lieu of Rent is calculated, by 1.03.

- Calculate "Percentage Rents from Non-Venue Sites" according to the following formula:

$$\frac{(\text{Race-Induced Percentage Rent Increase From Non-Venue Sites})}{-(\text{Inflation Adjusted Prior Year's Quarterly Percentage Rent From Non-Venue Sites})} = (\text{Percentage Rents from Non-Venue Sites})$$

- Negative values for Percentage Rents from Non-Venue Sites will be disregarded in any calculation of Payment In-Lieu of Rent in Step 3.
- iii. Step 3 - Calculation of Payment In-Lieu of Rent:
- Calculate "Payment In-Lieu of Rent" according to the following formula:

$$\frac{(\text{Net Lost Rent From Venue Sites})}{-(\text{Percentage Rents From Non-Venue Sites})} = (\text{Payment In-Lieu of Rent})$$

5. Responsibility for Other Port AC34 Costs. Tenant Relocation Costs and Event-related staffing costs are anticipated to be reimbursed by private funds raised by the America's Cup Organizing Committee to the extent such funding is available. The Port and the Controller each will maintain and make available to each other an accounting of all Tenant Relocation Costs and Event-related expenditures in connection with the agreements and/or arrangements governing the use of such funds.

6. Certification of Funds. The Controller will certify the use of any funds other than the Port's Harbor Fund, including private funds raised by the America's Cup Organizing Committee to the extent available for such costs, to pay for all other Event-related costs for which the City or Port is responsible under the HVA. The Controller will also certify the amount of debt or cash that is not repaid by the Harbor Fund to fund the costs of the City's Infrastructure Work (as defined in Article 6 of the HVA).

7. Pier 27.

- a. Subject to appropriation by the Port Commission, the Mayor, and the Board of Supervisors, and compliance with CEQA, the Port will use revenue bonds or other debt, the Authority Infrastructure Work, and other available sources of funding to finance and construct the core and shell of a cruise terminal at Pier 27 by January 1, 2013.
- b. Subject to appropriation by the Port Commission, the Mayor and the Board of Supervisors and compliance with CEQA, the Controller will certify the availability of funds (currently estimated to be \$6.5 million) in City capital funding that is not repaid by the Harbor Fund to finance a portion of the Port's shortfall for the cruise terminal project to core and shell of a cruise terminal at Pier 27.

8. Notices. Any notice given under this MOU shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier return receipt requested, with postage prepaid, at the following addresses, or at such other addresses as either the Port or the Controller may designate by notice as its new address:

Address for Port:

Port of San Francisco
Pier One
San Francisco, CA 94111
Attn: Monique Moyer, Executive Director
Email: monique.moyer@sfport.com
Telephone No.: (415) 274-0401
Fax No.: (415) 274-0578

Address for Controller:

Office of the Controller
City Hall Room 316
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Ben Rosenfield, Controller
Email: ben.rosenfield@sfgov.org
Telephone No.: (415) 554-7500
Fax No.: (415) 554-7466

Any notice under this MOU shall be deemed to have been given two business days after the date when it is mailed if sent by first-class or certified mail, one business day after the date it is mailed, if sent by overnight courier, or on the date personal delivery is made. For convenience of the parties, courtesy notices may also be given by email, facsimile, or telephone to the address or numbers set forth above or such other address or number as may be provided from time to time; however, neither the Port nor the Controller may give official or binding notice by email, telephone, or facsimile.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through its Controller

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through the San Francisco Port Commission

By: _____
BEN ROSENFELD
Controller

By: _____
MONIQUE MOYER
Executive Director

Date: _____

Date: _____

REVIEWED:
DENNIS J. HERRERA, City Attorney

REVIEWED:
DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

By: _____
Joanne Sakai
Deputy City Attorney

Authorized by Port Resolution No. _____ and
Board of Supervisors Resolution No. _____

Item 5
File 10-1564

Departments:
Controller's Office
Port Commission

EXECUTIVE SUMMARY

Legislative Objective

- Resolution approving a Memorandum of Understanding (MOU) between the City Controller and the Port Commission regarding the 34th America's Cup under Charter Section B7.320.

Key Points

- On December 14, 2010, the Board of Supervisors approved a resolution (File 10-1259; Resolution No. 585-10) enabling the City to enter into a Host City and Venue Agreement with the America's Cup Organizing Committee (ACOC) and the America's Cup Event Authority, LLC (Event Authority).
- The proposed MOU indicates that the (a) Port's staff, (b) the Board of Supervisors Budget and Legislative Analyst and the (c) Controller had previously estimated lost rent and the costs of City infrastructure work on Port property pertaining to hosting the 34th America's Cup in San Francisco. As a result of those estimates, the proposed MOU specifically states that Port staff and the Controller agree that such estimated lost rent and costs are greater than the Port's ability to pay with respect to the Port's responsibility for the 34th America's Cup.

Fiscal Analysis

- While \$9,011,137 is the maximum total projected loss of gross rental revenue during the 34th America's Cup, the Port projects that \$1,584,966 may be recouped from tenants who relocate from a Venue Site to other Port property between 2011 and 2014, such that, the Port's estimated Net Lost Rent from Venue Sites totals \$7,426,171 from FY 2011-2012 through 2013-2014.
- The Port estimates receiving \$710,158 in increased rents from sites not officially used for the 34th America's Cup from FY 2011- 2012 through FY 2013-2014, reducing the total net lost rental revenues from the 34th America's Cup to be paid by the City to the Port to \$6,716,013.
- Based on a total estimated budget of \$74,562,931 and an estimated \$54,300,089 in identified non-General Fund potential funding sources, and proposed \$6,500,000 in City General Fund contributions, the Port still has a remaining \$13,762,842 shortfall for the construction of the core and shell of the Pier 27 Cruise Terminal needed for the 34th America's Cup. Therefore, the Port is requesting that language related to funding the Pier 27 Cruise Terminal be deleted from the proposed MOU at this time and instead be considered separately in the future.

Policy Considerations

- Section 2 of the proposed MOU requires the Port and Controller to monitor the Port's 34th America's Cup costs and use best efforts to ensure that such costs are paid in a manner that: (a) preserves the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture. In response to the Budget and Legislative Analyst's concern that the above statement from Section

2 implies that the City is financially responsible for the Port's fiscal health, Ms. Forbes stated that Section 2 could be removed without financial impact to the Port. Mr. Ben Rosenfield, the City Controller concurs that Section 2 of the proposed MOU be removed.

- Section 5 of the proposed MOU addresses reimbursements to the Port for tenant relocation and staff costs of the Port to be incurred by the ACOC if funds are available, which should not be part of this proposed MOU.
- Although specific language is not included in the proposed MOU, the estimate of the Port's Lost Gross Rent from Venue Sites assumes that all impacted tenants will leave Port property six months prior to the delivery dates of such Venue Sites to the Event Authority, which is a conservative estimate. However it is likely that some of the tenants will stay longer, resulting in the Port not losing as much revenues as have been estimated.
- While the City may want to ensure that the Port not bear a disproportionate burden of the costs for the 34th America's Cup event, the City's General Fund obligation to cover the Port's loss of rents should not exceed the estimated net rent loss of \$6,716,013 plus a ten percent contingency of \$671,601, or a total maximum cost of \$7,387,614.

Recommendations

- Request the Controller and the Port to amend the title and Section 2 of the proposed MOU to delete the General Principles provision requiring that the Port and Controller monitor the Port's 34th America's Cup costs and use best efforts to ensure that such costs are paid in a manner that: (a) preserves the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture.
- Request that the Controller and the Port to amend Section 5 of the proposed MOU to delete the provision regarding the reimbursement to by the ACOC the Port for tenant relocation and staff costs by the ACOC given that the direct reimbursement to the Port by the ACOC should not be part of the proposed MOU between the Controller and the Port.
- Request the Controller and the Port to amend the proposed MOU to impose a limitation on the amount of revenues that would be transferred from the City's General Fund to the Port to \$7,387,614 (\$6,716,013 (See Table 3 below) plus a tent percent contingency of \$671,601) over the three-year period from FY 2011-2012 through FY 2013-2014.
- Request the Controller and the Port to amend the proposed MOU to delete all of the provisions related to the financing of the Pier 27 Cruise Terminal building, given the projected budgetary shortfalls of \$13,762,842 (see Table 5 above), including a City General Fund contribution of \$6,500,000.
- Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

In accordance with the State's Burton Act (Chapter 1333 of Statutes 1968, as amended), and City Charter Section 4.114, the Port Commission administers and controls the real property transferred to the City by the State of California.

Charter Section B7.320 provides that the Mayor may submit a memorandum of understanding (MOU) for interagency agreement between the Port and another City department for approval by the Board of Supervisors, once approved by resolution of the Port Commission, which requires expenditure and transfer of funds to or from the Port. If the Board of Supervisors approves such interagency agreement with the Port, the City will appropriate sufficient funds for the interagency expenditure or transfer, until the agreement expires, or is terminated or modified by the Mayor and the Board of Supervisors.

Background**The 34th America's Cup will be held in San Francisco**

On October 5, 2010, the Board of Supervisors approved a resolution (File 10-1254; Resolution No. 465-10) to approve a non-binding Term Sheet that outlined the basis for the City, the America's Cup Organizing Committee (ACOC)¹ and the America's Cup Event Authority, LLC² (Event Authority) to negotiate a Host City and Venue Agreement for the 34th America's Cup to be held in San Francisco.

On December 14, 2010, the Board of Supervisors approved a subsequent resolution (File 10-1259; Resolution No. 585-10) enabling the City to enter into a Host City and Venue Agreement with the ACOC and the Event Authority. Under this Agreement, the City agreed to provide the Event Authority with various venues for the 34th America's Cup facilities on Port property, which would require removing or relocating various Port tenants, short-term Port rent losses and reductions in the Port's overall revenue bonding capacity, contingent upon completion of review under the California Environmental Quality Act (CEQA) and approval by the Board of Supervisors. The Budget and Legislative Analyst's estimated that under the requirements of the Host City and Venue Agreement approved on December 14, 2010, hosting the 34th America's Cup would cost approximately \$31,400,000, including (a) \$16,100,000 in Port costs and lost revenue and

¹ The ACOC is a 35-member honorary group that includes members of California's Congressional delegation, to facilitate holding the 34th America's Cup in San Francisco and securing financial support for the event.

² The Golden Gate Yacht Club, located in the Marina, is the home of Oracle Racing (previously known as BMW Oracle Racing), the winner of the 33rd America's Cup. Club Nautico di Roma of Rome, Italy has challenged Oracle Racing for the 34th America's Cup. Together these two Clubs established the protocol for the 34th America's Cup and appointed an Event Authority, which is responsible for the professional organization, management and financing of the 34th America's Cup, including any exhibition matches, the challenger series, and the final America's Cup match in San Francisco.

(b) \$15,300,000 in other City department costs³. The 34th America's Cup is estimated to generate \$1.2 billion in expenditures which would benefit businesses in San Francisco, resulting in estimated tax revenues of \$19,500,000 to the City. As a result, the 34th America's Cup is estimated to result in a net loss of \$11,900,000 (\$31,400,000 costs less \$19,500,000 revenues) to the City's treasury.

As part of these costs and in accordance with the Host City and Venue Agreement, the Event Authority is required to demolish any temporary structures added to Pier 27 for the 34th America's Cup to allow for construction, in the future, of a new Cruise Terminal building and to fund the actual costs of relocating shoreside power.⁴ According to Ms. Elaine Forbes, Finance and Administration Deputy Director for the Port, the Port currently estimates these Event Authority's costs to be \$7,500,000. However, Ms. Forbes also advises that such costs would be reimbursed by the Port to the Event Authority in the form of rent credits, which would reduce any rent payable by the Event Authority to the Port for the long term development sites⁵ to be delivered to the Event Authority under the terms of the Host City and Venue Agreement.

As detailed in Table 1 below, in accordance with the Host City and Venue Agreement, the ACOC also pledged to raise \$32,000,000 of private funds over a three-year period to offset the City's expenses. In the first year, the ACOC pledged to meet a fundraising target of \$12,000,000, which would eliminate the City's estimated net loss of \$11,900,000, no later than seven working days after completion of the environmental review pursuant to CEQA. In accordance with the Host City and Venue Agreement, the City may terminate the Host City and Venue Agreement if the ACOC does not meet its \$12,000,000 first year target by the deadline. In accordance with the Host City and Venue Agreement, the ACOC is required to provide annual written notice to the City of the ACOC's success or failure in meeting the fundraising targets for the second and third years. Such private contributions are intended to compensate the City for costs associated with CEQA review and reimbursement for lost revenues and City expenditures from the (a) Port, (b) Police Department, (c) Public Works Department, (d) Municipal Transportation Agency, and (e) the Mayor's Office of Economic and Workforce Development.

³ The Budget and Legislative Analyst will be issuing a report on March 10, 2010 which compares the provisions and requirements of the Host City and Venue Agreement previously approved by the Board of Supervisors on December 14, 2010 to the current Host City and Venue Agreement.

⁴ Shoreside power is a power source from land used to power marine vessels when in a harbor.

⁵ The Host City and Venue Agreement requires that, in exchange for the Event Authority providing up-front funding of certain infrastructure and site preparation work on various Port properties in advance of and after the 34th America's Cup events, long-term development rights of up to 75 years will be transferred from the Port to the Venue Authority.

Table 1: ACOC Fundraising Pledged for Reimbursement to the City	
	ACOC-Pledged Fundraising
Year 1 (No more than 7 days after CEQA review)	\$12,000,000
Year 2	10,000,000
Year 3	10,000,000
Total	\$32,000,000

The December 14, 2010 resolution previously approved by the Board of Supervisors regarding the Host City and Venue Agreement (File 10-1259) stated, on page 4, lines 8 through 14, “the City has identified potential financial impacts to the Port of hosting (the 34th America’s Cup) and a range of potential solutions, including using Charter Section B7.320 to offset race-related, net short-term rent reductions to the Port, financing certain city costs to prepare venues for the Event with City Certificates of Participation, and City financing for waterfront improvements to offset reductions in the Port’s revenue bond capacity...”

On December 31, 2010, San Francisco was selected by the Golden Gate Yacht Club as the host City for the 34th America’s Cup regatta. Under the terms of the Host City and Venue agreement between the City, the Event Authority, and the ACOC, the 34th America’s Cup Match is scheduled to take place in the San Francisco Bay from September 7 – 22, 2013⁶, subject to the pending environmental review process required under CEQA.

The Port’s debt issuance will decrease from 2010 estimates

According to Ms. Forbes, in February, 2010 the Port issued \$36,650,000 in Revenue Bonds in two series, a tax-exempt series (Series 2010A) and a taxable series (Series 2010B)⁷. The Series 2010A Revenue Bond issuance totaled \$14,220,000 and the Series 2010B Revenue Bond issuance totaled \$22,430,000. Series 2010A matures in March, 2040 and carries a coupon rate⁸ of 5.125 percent. Series 2010B are variable rate bonds⁹ which mature from March, 2011 through March, 2020 with interest rates currently ranging from 2.72 percent to 7.41 percent.

⁶ Preliminary exhibition matches (America’s Cup World Series events) would take place at undetermined dates in 2011 and/or 2012, and elimination races (the Challenger Series) in the summer of 2013.

⁷ The Port’s tax exempt bond is a bond whose interest income is exempt from federal and state income tax while the Port’s taxable bond is a bond whose interest income is subject to only federal income tax.

⁸ The coupon rate of a bond is the annual interest rate paid by the bond issuer to the bondholder, expressed as a percentage of the face value of the bond.

⁹ These variable rate bonds have differing maturity dates and interest rates which are adjusted periodically, based upon specific market indicators.

The proceeds from these two Revenue Bonds are being used for the design, construction, reconstruction, repair and/or improvements to various Port facilities. Total costs including proposed payments on the two Revenue Bonds totaling \$36,650,000 plus a projected \$38,772,830 of interest expenses, are estimated to result in total debt service of \$75,422,830 over the 30-year life of these bonds. The annual debt service payments range between \$1,850,644 and \$2,846,926 over the remaining 29 years of repayment, and are pledged to be repaid from the Port's net revenues.¹⁰

According to Ms. Forbes, the Port's bond indenture¹¹ requires that the Port's net revenues be at least 130 percent of debt service and two bond rating agencies have recommended that the Port's net revenues be at least 200 percent of debt service. Ms. Forbes advises that the 130 percent of debt service requirement is to provide a certain level of protection to Port bond holders in case future events adversely affect the Port's ability to repay its debt. In preparation for the 2010 Series A and B Port Revenue Bond issuances, the Port prepared projections of Port revenues, expenses and debt service coverage over the next five years. These five-year projections indicated that the Port's net revenues would range between 560 and 200 percent of debt service between FY 2010-2011 and FY 2014-2015.

However, these 2010 projections did not include any impacts of the 34th America's Cup. In addition, these 2010 projections contemplated that the Port would issue approximately \$59,500,000 of additional debt in the form of Revenue Bonds between 2010 and 2015 for a total of \$96,150,000, including the above noted two Revenue Bond totaling \$36,650,000. The Port now estimates that an additional \$46,551,500 can be issued over the next five years, instead of the previously anticipated additional \$59,500,000, a reduction of \$12,948,500 or 21.8 percent. This \$12,948,500 reduction in anticipated debt issuance from 2010-2015 would lower the Port's overall estimated debt issuance from \$96,150,000 to \$83,201,500 or approximately 13.5 percent, as shown in Table 2 below.

Table 2: Summary of Change in Port Debt Issuance Estimations				
	Debt Issuance Estimated At Time of 2010 Debt Issuance for Time Period 2010-2015	Current Estimation of Debt Issuance between 2010-2015	Difference	Percent Decrease
Debt Issued in 2010	\$36,650,000	\$36,650,000	0	0%
Estimated Debt to be Issued by the Port	\$59,500,000	\$46,551,500	\$12,948,500	21.8%
Total	\$96,150,000	\$83,201,500	\$12,948,500	13.5%

¹⁰ Port net revenues are defined in the bond indenture as revenues less operation and maintenance expenses.

¹¹ The bond indenture is a legal document issued to lenders and describes key terms such as the interest rate, maturity date, convertibility, pledge, promises, representations, covenants, and other terms of the bond offering.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve and authorize the Controller to enter into a Memorandum of Understanding (MOU) with the Port Commission, given that the Board of Supervisors approved a Host City and Venue Agreement on December 14, 2010, to transfer City General Fund monies to the Port based on identified costs that the Port incurs in connection with the 34th America's Cup Host Agreement.

The proposed resolution also authorizes the Mayor, the Director of the Office of Economic and Workforce Development, the Controller, the Port Director and other City officials to add, amend or make any other modifications to the subject MOU, in consultation with the City Attorney that are in the best interests of the City, and do not materially increase the obligations or liabilities to the City.

The proposed MOU indicates that the (a) Port's staff, (b) Board of Supervisors Budget and Legislative Analyst and (c) Controller have previously estimated lost rent and the costs of City infrastructure work on Port property pertaining to hosting the 34th America's Cup in San Francisco. As a result of those estimates, the proposed MOU specifically states that Port's staff and the Controller agree that such previously estimated costs are greater than the Port's ability to pay from the Port's Harbor Fund.¹² Therefore, the proposed MOU concludes that, since the benefits of the 34th America's Cup are expected to accrue to the City's General Fund and to the broader regional economy beyond the jurisdiction of the Port, the Port, the Controller and the Office of Economic and Workforce Development recommend that the City's General Fund and the not-for-profit ACOC fund the majority of the Port's costs. Furthermore, the proposed MOU states that to provide the greatest assurance to Port bondholders, the Port and the Controller recommend a binding agreement to protect the Port's Harbor Fund against the majority of the 34th America's Cup expenses being borne by the Port.

Under Section 2 of the proposed MOU, the Port and Controller will monitor the Port's 34th America's Cup costs and use best efforts to ensure that such costs are paid in a manner that: (a) preserves the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture. Section 2 of the proposed MOU also states that the term of the MOU would extend approximately three years, commencing when the proposed resolution becomes effective through June 30, 2014.

Under Section 3 of the proposed MOU, the Port and Controller will provide each other with all records and accounts necessary to track all Port revenue and costs associated with the 34th America's Cup, including (a) Port leases and licenses affected by the 34th America's Cup, (b) summaries of those leases and licenses, (c) summaries of all affected rents, (d) affected maritime-related revenues and other use fees affected by the 34th America's Cup.

¹² The Port's Harbor Fund, as stated in the Burton Act, is the fund that receives all Port revenues for all Port-related expenditures.

Under Section 4 of the proposed MOU, the Controller would initially determine total baseline rent revenues at Port's facilities to be equal to (a) all commercial tenant rent revenues for the month of January 2011¹³ plus (b) monthly average maritime revenues¹⁴ for the period between January, 2010 and December, 2010. Under Section 4 of the proposed MOU, the Port would begin providing quarterly reports of the Port's actual total monthly commercial tenants and maritime revenues to the Controller at the end of the third quarter of FY 2010-2011 (January through March, 2011). Ms. Forbes advises that, although not included in the MOU, the Port estimates that quarterly reports would be delivered 60-90 days after the end of each quarter to allow time for tenants to report their sales to the Port from the relevant quarter.

Under Section 4 of the proposed MOU, the Controller would then calculate the Payment In-Lieu of Rent due to the Port each fiscal quarter that the proposed MOU is in effect, and remit such payments from the City's General Fund to the Port until June 30, 2014, when the term of the MOU ends. The Payment In-Lieu of Rent due to the Port would be based on the difference between the total baseline monthly commercial tenant rents and maritime revenues initially calculated and the monthly amount actually received by the Port. The proposed MOU states that the Payment In Lieu of Rent reimbursement would be an obligation of the City's General Fund.

Section 5 of the proposed MOU states that any Port tenant relocation costs and Event-related Port staffing costs would be reimbursed with private funds raised by the ACOC, if such funding is available and in accordance with any agreements and/or arrangements governing the use of such funds. The Port and Controller will maintain and make available to each other an accounting of all Tenant Relocation Costs and Event-related expenditures in connection with the agreements and/or arrangements governing the use of such funds. As detailed in Table 1 above, the ACOC pledged to raise \$32,000,000 of private funds over a three-year period to offset City expenses in the Host City and Venue Agreement, with a minimum of \$12,000,000 raised in the first year which would eliminate the City's estimated net loss of \$11,900,000. In accordance with the Host City and Venue Agreement, the City may terminate the Host City and Venue Agreement if that \$12,000,000 is not raised by the deadline. The Budget and Legislative Analyst notes that Section 5 of the proposed MOU does not create an obligation for the City to pay the Port staffing costs from the City's General Fund, and further notes that any agreements and/or arrangements governing the use of ACOC funds would be subject to future separate Board of Supervisors approval.

Section 6 of the proposed MOU requires the Controller to certify the use of any funds besides the Port's funds, including City and private funds raised by the ACOC to pay for all 34th America's Cup event-related costs the City incurs, including costs to comply with CEQA. The Controller will be responsible for monitoring all City costs resulting from hosting the 34th America's Cup in San Francisco and allocating actual City General Fund monies and ACOC funds raised accordingly. However, no precise methodology for

¹³ January was chosen as the baseline in an effort to balance concerns regarding seasonality, recentness of data, and anomalous non-recurring events like the San Francisco Giant's 2010 championship season which would result in higher baseline rents than are typical.

¹⁴ Maritime revenues include wharfage, dockage, landing fees and crane rentals.

allocation of these funds to City departments was established in (a) the Host City and Venue Agreement, (b) the proposed resolution, or (c) the proposed MOU.

According to Ms. Forbes, the City is currently in the process of finalizing its sponsorship program agreement with the ACOC. Once that has been finalized, the City and the ACOC plan to enter into an agreement regarding (a) the Port's and other City departments' costs that are eligible for reimbursement under ACOC's fundraising commitment, (b) the mechanism by which the City will manage the expenditure of such funds, and (c) the timing and process by which the ACOC will transfer privately raised contributions to the City to pay for the Port's and other City departments' approved costs. Ms. Forbes advises that this agreement could be subject to Board of Supervisors approval and that the Office of Economic and Workforce Development will, at a minimum, report on that agreement to the Board of Supervisors. The allocation and appropriation of the ACOC funds will be subject to Board of Supervisors approval.

Section 7 of the proposed MOU also states that, subject to appropriation approval by the Port Commission, the Mayor and the Board of Supervisors, and compliance with CEQA, (a) the Port would use revenue bonds and other available sources of funding to finance and construct the core and shell of a Cruise Terminal at Pier 27¹⁵ by January 1, 2013, and (b) the Controller would certify the availability of an estimated \$6,500,000 of City General Fund capital improvement monies or through the issuance of debt serviced by the City's General Fund, that would not be repaid by the Port to finance a portion of the Port's construction of the core and shell of a Cruise Terminal at Pier 27.

The Port Commission approved this action by resolution on February 8, 2011 (Resolution 11-05).

FISCAL ANALYSIS

In Lieu of Rent Payments to the Port from the Controller's Office

As shown in Table 3 below, as a result of having the 34th America's Cup in San Francisco, the Port's total Lost Gross Rent from Venue Sites¹⁶ over the three-year period from FY 2011-2012 through FY 2013-2014 is estimated to equal \$9,011,137. These estimates incorporate rent lost from both commercial and maritime tenants, who pay rent to the Port including (a) parking lot tenants and retail tenants who pay rent based on a percentage of revenue, and (b) flat rental rates based on square footage of space rented. These estimates assume that all impacted tenants leave Port property approximately six months prior to the delivery dates of such Venue Sites to the Event Authority and that no tenants return until six months after the 34th America's Cup event ends. Mr. Nathan Cruz, Principal Administrative Analyst at the Port, noted that the total lost rent of

¹⁵ According to the Host City and Venue Agreement approved by the Board of Supervisors, Pier 27 would be used as a Venue Site for the 34th America's Cup.

¹⁶ Total Lost Gross Rent from Venue Sites, as defined in Section 4 of the proposed MOU, is a projection of the rent that the Port would have received from Venue Sites if the City did not host the 34th America's Cup and provide Port property to the America's Cup Event Authority free of rent.

\$9,011,137 is based on actual rent currently received at the subject Port properties and, although not specified in the proposed MOU, assumes that rent would not be received from the Venue Sites beginning, on average, six months prior to the date which the Port is required to deliver the Venue Sites to the Event Authority because (a) some tenants are likely to leave Port property as soon as they find replacement space in the private sector, (b) rent credits may be offered as an incentive to relocate, and (c) some time is required to prepare the sites for delivery to the Event Authority. Mr. Cruz further noted that the lost rent also assumes that no rent is received for six months after the end of the America's Cup event, in accordance with the Host City and Venue Agreement which states that the Event Authority has the right to occupy the Venue Sites for a period of six months after completion of the event.

Table 3: Lost Rent Analysis for the Port due to the 34th America's Cup				
	FY 11/12	FY 12/13	FY 13/14	Total
Lost Gross Rent from Venue Sites	\$2,667,132	\$3,617,394	\$2,726,611	\$9,011,137
Residual Rent from Venue Sites¹⁷	0	0	0	0
Less Rent Projected to be Received from Venue Site Relocated Tenants¹⁸	483,372	628,136	473,458	1,584,966
Net Lost Rent from Venue Sites	\$2,183,760	\$2,989,258	\$2,253,153	\$7,426,171
Less Percentage Rents from Non-Venue Sites	0	0	710,158	710,158
Payment In-Lieu of Rent	\$2,183,760	\$2,989,258	\$1,542,995	\$6,716,013

As shown in Table 3 above, while \$9,011,137 is the total projected loss of gross rent assuming all impacted tenants left Port property approximately six months prior to the delivery of such Venue Sites to the Event Authority and that no tenants return until six months after the 34th America's Cup event ends, the Port anticipates that some of these losses may be recouped with Residual Rent from Venue Sites and Rent from Venue Site Relocated Tenants. However, according to Mr. Cruz, the Port currently does not have the required information from the Event Authority to project if it's possible to receive Residual Rent from Venue Sites as defined in the proposed MOU so those possible offsetting rents are not reflected in Table 3 above. As shown in Table 3 above, when accounting for current available projections of these offsetting rents, the estimated Net Lost Rent from Venue Sites is projected to total \$7,426,171 over this three-year period.

¹⁷ Residual Rent, as defined in the proposed MOU, is any rent that is received from tenants which continue to occupy Venue Sites in any fiscal quarter between 2011 and 2014. According to Mr. Cruz, should the Event Authority not require some portion of any Venue Site after the delivery date for that site, the Port would attempt to lease such space until the Event Authority required it. Should such leasing of unused space occur, it would offset the lost gross rent of \$9,011,137 shown above.

¹⁸ Rent from Venue Site Relocated Tenants, as defined in the proposed MOU, is rent from tenants who relocate from a Venue Site to other Port property between 2011 and 2014. According to Ms. Forbes, based on current Port vacancies as well as historical experience in relocating tenants, the Port estimates that 15% of tenants (based on dollars of rent paid) will be relocated to other Port facilities.

The Port will also be accruing additional rents due to the 34th America's Cup event from increased retail sales and parking lot use. Such increased rents would be used to offset the total net projected lost rent of \$7,426,171, shown in Table 3 above. These additional rents are projected to total \$710,158, as shown in Table 3 above. According to Mr. Cruz, this estimate is based on (a) the increased tourism estimated by Beacon Economics in their report "The America's Cup: Economic Impacts of a Match of San Francisco Bay and (b) the methodology set forth in the proposed MOU by determining the Race-Induced Percentage Rent Increase from Non-Venue Sites¹⁹ on a quarterly basis and subtracting that amount from the Inflation Adjusted Prior Year's Quarterly Percentage Rent from Non-Venue Sites.²⁰ In other words, these rent increases were estimated by determining what (if any) rent increases are expected from the 34th America's Cup per quarter and then, based on those estimates, determining what quarter those projections exceed the projected rent increases due solely to inflation for the same quarter. This was deemed by the Port and the Controller to be the most appropriate method for estimating the 34th America's Cup benefits that exceed expected increases in Port revenue due to inflation.

As shown in Table 3 above, the Port estimates that it will receive \$710,158 in increased percentage rents from other Port-owned sites not directly used for the 34th America's Cup event in FY 2013-2014, which will offset the Port's \$7,426,171 total net lost rents, such that the Port's estimated total net reduced rent would be \$6,716,013.

As described in the Background section above, the Port's bond indenture requires that the Port's annual net revenues be at least 130 percent of annual debt service. As shown in Table 4 below, the Port previously anticipated issuing \$59,500,000 of additional revenue bonds and assumed annual debt service coverage ranging from 217 to 560 percent. If the proposed MOU is not approved, and the Port issues an additional \$46,551,600 of revenue bonds, instead of the previously anticipated \$59,500,000 the Port's debt service coverage will range from 157 percent through 560 percent, which would meet the Port's required bond indenture of at least 130 percent, but according to Ms. Forbes, it would almost certainly result in a downgrade of the Port's credit rating. If the proposed MOU is approved such that the City's In-Lieu Rent Payments would be made to the Port, and the Port issues an additional \$46,551,600 of revenue bonds, the debt service coverage for the Port from FY 2010-2011 through FY 2014-2015 will range

¹⁹ Race-induced Percentage Rent Increase from Non-Venue Sites, as defined in the proposed MOU, is the total percentage rent (such as from parking and retail tenants) during the fiscal quarters from 2011 to 2014 in which an America's Cup sailing event occurs.

²⁰ Inflation Adjusted Prior Year's Quarterly Percentage Rent From Non-Venue Sites, as defined in the proposed MOU, is the percentage rent (such as from parking and retail tenants) during the fiscal quarters from 2011 to 2014 one year prior to the same quarter in which an America's Cup sailing event occurs, increased to account for inflation by 3 percent per year. Such Inflation Adjusted Prior Year's Quarterly Percentage Rent from Non-Venue Sites is conceptually equivalent to the percentage rent that the Port would have expected to receive from non-Venue sites if the America's Cup was not taking place. Ms. Forbes advises that the 3 percent inflation rate was chosen because, although the City was in an economic downturn for the past two years, the Port is experiencing positive growth in the current year, with Port tenants' cash transactions averaging approximately 8 percent higher in the current fiscal year. The Budget and Legislative Analyst notes that the average national inflation rate from 2006 through 2010 was 2.25 percent.

from 217 percent through 560 percent, which is identical to the debt service coverage originally projected in 2010 with the higher \$59,500,000 additional bonds, as shown in Table 4 below.

Table 4: Projections of Net Revenues' Percentage of Debt Service from FY 2010-2011 to FY 2014-2015			
Fiscal Year	2010 Projected Annual Port Net Revenues to Annual Debt Service, Assuming \$59,500,00 Debt Issuance (%)	Current Projected Annual Port Net Revenues to Annual Debt Service, Assuming \$46,551,500 Debt Issuance and No City In-Lieu of Rent Payments to the Port (%)	Current Projected Annual Port Net Revenues to Annual Debt Service, Assuming \$46,551,500 Debt Issuance and City In-Lieu of Rent Payments to the Port (%)
FY 2010-2011	560	560	560
FY 2011-2012	318	258	318
FY 2012-2013	217	157	217
FY 2013-2014	245	200	245
FY 2014-2015	200	200	200

The City will Contribute General Fund Monies towards Construction of the Core and Shell of the Pier 27 Cruise Terminal Building

Ms. Forbes advises that the Port's current construction schedule for the Pier 27 Cruise Terminal building has been accelerated so that the shell and core of the new Cruise Terminal building can be used during the 34th America's Cup. The construction of the core and shell of the Pier 27 Cruise Terminal building has a total estimated budget of \$74,562,931.

Under Section 7 of the proposed MOU, the City would contribute an estimated \$6,500,000 of capital funding from the City's General Fund toward the construction of the core and shell of the Pier 27 Cruise Terminal building, whose total budget is \$74,562,931. The City's estimated \$6,500,000 General Fund contribution to the Pier 27 Cruise Ship Terminal would be subject to separate appropriation approval by the Board of Supervisors. According to Ms. Forbes, the Port has identified \$54,300,089 in potential additional funding for the first phase of this project including (a) \$30,075,089 in previously appropriated Port funding, (b) \$1,225,000 of Port capital funds recommended for appropriation by the Port Commission in the Port's FY 2011-2012 budget, subject to Board of Supervisors approval, (c) \$15,000,000 in new Port revenue bonds expected to be issued in 2012, and (d) \$7,500,000 contribution from the Event Authority in accordance with the Host City and Venue Agreement, which as noted above would be reimbursed through rent credits for the long-term leases required under the Host City and Venue Agreement and will not be repaid by the City's General Fund under the proposed MOU.

As shown in Table 5 below, based on a total estimated Cruise Terminal budget of \$74,562,931 and assuming \$54,300,089 of additional funding identified and the City's proposed General Fund contribution in the subject MOU of \$6,500,000 for a total of \$60,300,089, the Port would still be left with a projected funding shortfall of \$13,762,842.

Table 5: Summary of Shortfall for the Construction of the Core and Shell of the Pier 27 Cruise Terminal Building	
Total Cruise Terminal Budget	\$74,562,931
Currently Identified Funds excluding City Contribution in Proposed MOU	54,300,089
Proposed General Fund Contribution, in the Subject MOU	6,500,000
Subtotal Funds Identified To Date	\$60,800,089
Estimated Shortfall for the Construction of the Core and Shell of the Pier 27 Cruise Terminal Building	(\$13,762,842)

Ms. Forbes advises that the Port initially estimated the City's \$6,500,000 General Fund contribution as proposed in the subject MOU, would be sufficient for the construction of the core and shell of the Pier 27 Cruise Terminal building. However, as shown in Table 5 above, updated budget estimates have disclosed additional budgetary shortfalls of \$13,762,842, even assuming the City's General Fund contribution of \$6,500,000 is made.

According to Ms. Forbes, the Port is currently discussing with the Mayor's Office, the Department of Public Works, and the Office of Public Finance how to resolve this current projected funding shortfall and, as of the writing of this report, is now proposing that the Cruise Terminal portion of the MOU be removed until the Port and the City arrive at a solution to recommend to the Budget and Finance Committee.

Other Port Costs due to the 34th America's Cup are not part of the City's Obligation

Under Section 5 of the proposed MOU, tenant relocation and Port staff costs are not anticipated to be paid out of the City's General Fund. These costs are estimated to total \$2,600,000 and are anticipated to be reimbursed separately with private contribution funds raised by the ACOC, provided that these funds are available. As discussed in the above Background section, the ACOC has committed to raising \$32,000,000 over a three-year period to offset City expenses in the Host City and Venue Agreement, with a minimum \$12,000,000 raised in the first year, which would eliminate the City's

estimated net loss of \$11,900,000, or the City will have the right to terminate the Host City and Venue Agreement.

City's Total Proposed Contribution to the Port is \$13,216,013

Table 6 below summarizes the City's total \$13,216,013 proposed General Fund contribution to the Port, based on the estimated \$6,716,013 In-Lieu of Rent payments due to the 34th America's Cup in FY 2011-2012 through FY 2013-2014, identified above in Table 3, and the City's estimated \$6,500,000 General Fund contribution in FY 2010-2011 for the construction of the core and shell of the Pier 27 Cruise Terminal building, which will be used for the 34th America's Cup, identified above in Table 5.

Table 6: City's Total Proposed Contribution to the Port	
Estimated In-Lieu of Rent Payments	\$6,716,013
City's Estimated Contribution to the Construction of the Core and Shell of the Pier 27 Cruise Terminal Building	6,500,000
Total Estimated Contribution	\$13,216,013

POLICY CONSIDERATIONS

City Bearing Responsibility for Port's Financial Health

As discussed in the Details of Proposed Legislation section above, Section 2 of the proposed MOU includes a provision guaranteeing that the Port and Controller will monitor the Port's 34th America's Cup costs and use best efforts to ensure that such costs are paid in a manner that: (a) preserves the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture. The Budget and Legislative Analyst notes that, while the December 14, 2010 resolution, previously approved by the Board of Supervisors to enter into the Host City and Venue Agreement, contained a whereas clause that acknowledged the financial impacts of the 34th America's Cup on the Port, no specific action, including the signing of the proposed MOU, was resolved to be done in that earlier resolution. The Budget and Legislative Analyst also notes that as shown in Table 4 above, if the Port issues an anticipated additional \$46,551,600 of revenue bonds, the Port's projected debt service coverage is estimated to range from 157 percent through 560 percent, which would more than meet the Port's required bond indenture of at least 130 percent, even if the proposed MOU is not approved.

In response to the Budget and Legislative Analyst's concern that the above statement stating the City will ensure that these payments (a) preserve the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture implies that the City is financially responsible for the Port maintaining its financial status, Ms. Forbes stated that Section 2 could be removed without any financial impact to the Port. Mr. Ben Rosenfield, the Controller concurs that Section 2 of the proposed MOU be removed. Therefore, the Budget and Legislative Analyst recommends that the Budget and Finance Committee request that the Controller and Port amend Section 2 of the proposed MOU to delete the above provision stating the City will ensure that the these payments (a) preserve the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture in order to clarify that the City is not financially responsible for the financial status of the Port.

Reimbursement to Port by the ACOC is Included in the Proposed MOU

As discussed in the Details of Proposed Legislation section above, Section 5 of the proposed MOU includes a provision regarding the reimbursement by the ACOC to the Port for tenant relocation and staff costs to the extent that such funding is available. The Budget and Legislative Analyst questions why the reimbursement to the Port by the ACOC is part of the proposed MOU between the Controller and the Port. If the ACOC's fundraising goals are not met, such that the ACOC cannot reimburse the Port for the Port's expenses, the Budget and Legislative Analyst believes there should be a separate specific Board of Supervisors discussion of how this reimbursement would be handled at that time. Therefore, any City responsibility for reimbursing the Port for what are ACOC's specified responsibilities should not be included in the MOU at this time.

Mr. Rosenfield concurs that Section 5 of the proposed MOU should be removed. According to Ms. Forbes, exclusion of Section 5 of the proposed MOU would not have any financial impact to the Port. Therefore, the Budget and Legislative Analyst recommends that the Budget and Finance Committee request that the Controller and Port delete Section 5 of the proposed MOU.

Lost Gross Rent from Vacated Venue Sites is Based on Six Months Prior to 34th America's Cup Event

Although specific language is not included in the proposed MOU, the estimate of Lost Gross Rent from Venue Sites assumes that all impacted tenants will vacate Port property six months prior to the delivery dates of such Venue Sites to the Event Authority. The Budget and Legislative Analyst notes that the assumption that all impacted tenants will vacate Venue Sites six months prior to the delivery dates of those Venue Sites is conservative and tenants may vacate for a shorter period of time than the Port is currently estimating, thereby resulting in increased rental revenues to the Port. Consequently, the Lost Gross Rent from Venue Sites will also likely be less than the \$9,011,137 (see Table 3 above) the Port is currently estimating.

Limit City's Liability for Port's Potential Losses Without Subsequent Review and Approval by the Board of Supervisors

The Budget and Legislative Analyst notes that the proposed MOU, which would approve the provision of City General Fund payments to the Port as a way to offset potential losses that the Port may incur from the 34th America's Cup and provide a minimum of \$6,500,000 from the City's General Fund to finish the construction of the core and shell of the Cruise Terminal building, and an estimated conservative net rent loss of \$6,716,013, or a total of \$13,216,013 (see Table 3 above), does not provide a maximum threshold for the City's exposure to financial liabilities which might be incurred by the Port.

While the City may want to ensure that the Port not bear a disproportionate burden of the costs for the 34th America's Cup event when the entire City will be reaping the potential tax and other economic benefits, efforts should be made to ensure that the Port's loss of rents not exceed the estimated conservative net rent loss of \$6,716,013, shown in Table 3 above. Similarly, while the City may want to contribute to the construction of the core and shell of the Cruise Terminal building due to its use during the 34th America's Cup, as noted above, the Port is now proposing that the Cruise Terminal portion of the MOU be removed until the Port identifies additional funding sources for the estimated projected shortfall of \$13,762,842 to complete the construction of the core and shell of the Pier 27 Cruise Terminal.

Maximum caps of exposure are especially important given the existing budget issues facing the City. The Mayor's Budget Office currently projects a \$379,800,000 shortfall for FY 2011-2012, assuming current spending levels and estimated revenues. Committing unlimited resources of the City's General Fund revenues towards reimbursing the Port would not be advisable given the City's projected budgeting shortfall and the potential for additional shortfalls if the 34th America's Cup event does not realize the \$19,500,000 in additional City revenues to the City's Treasury as previously estimated by the Budget and Legislative Analyst.

Therefore, the Budget and Legislative Analyst recommends that the Budget and Finance Committee amend the proposed resolution to delete all language pertaining to the proposed Cruise Terminal project and request that the Controller and the Port amend the proposed MOU to delete all provisions related to the Cruise Terminal Project. In addition, the Budget and Legislative Analyst recommends that the Budget and Finance Committee request the Controller and the Port to amend the proposed MOU to establish a financial cap of \$6,716,013 (see Tables 3 and 6 above) plus a ten percent contingency of \$671,601, for a total maximum of \$7,387,614 for the City's General Fund payments to the Port over the three-year period from FY 2011-2012 through FY 2013-2014 due to the impacts of the 34th America's Cup. However, the Budget and Legislative Analyst notes that if special circumstances were to occur related to the 34th America's Cup that increase the financial burden on the Port, the maximum financial cap could be subject to future review and approval by the Board of Supervisors at that time.

SUMMARY

On December 14, 2010, the Board of Supervisors approved a resolution (File 10-1259; Resolution No. 585-10) enabling the City to enter into a Host City and Venue Agreement with the ACOC and the Event Authority. This proposed resolution would approve and authorize the Controller to enter into a MOU with the Port Commission to transfer City General Fund monies to the Port based on identified costs that the Port incurs in connection with the 34th America's Cup Host City and Venue Agreement.

The Port's total projected loss of gross rent is conservatively estimated at \$9,011,137, assuming all impacted tenants leave Port property six months prior to the delivery of such Venue Sites to the Event Authority and no tenants return until six months after the 34th America's Cup event ends. However, the Port anticipates that some of these losses may be recouped with Residual Rent from Venue Sites and Rent from Venue Site Relocated Tenants, such that the estimated Net Lost Rent from Venue Sites is projected to total \$7,426,171. In addition, the Port will accrue an estimated \$710,158 of additional rents due to the 34th America's Cup event from increased retail sales and parking lot use in FY 2013-2014, which will further reduce the Port's estimated total net reduced rent to \$6,716,013, as summarized in Table 3 above.

Under the proposed MOU, the City would contribute an estimated \$6,500,000 of capital funding from the City's General Fund toward construction of the core and shell of the Pier 27 Cruise Terminal building, whose total budget is \$74,562,931. As shown in Table 5 above, assuming \$54,300,089 of additional funding identified and the City's proposed General Fund contribution of \$6,500,000 for a total of \$60,800,089, the Port would still be left with a projected funding shortfall of \$13,762,842.

Based on the above, if the proposed MOU is approved, it would result in a total \$13,216,013 General Fund contribution to the Port, including (a) \$6,716,013 In-Lieu of Rent payments in FY 2011-2012 through FY 2013-2014, and (b) \$6,500,000 General Fund contribution in FY 2010-2011 for the construction of the core and shell of the Pier 27 Cruise Terminal building.

However, the Port is currently discussing with the Mayor's Office, the Department of Public Works, and the Office of Public Finance how to resolve the current projected funding shortfall for the Cruise Terminal, such that the Port requests that the Cruise Terminal provisions be removed from the proposed MOU.

In addition, the proposed MOU does not provide a maximum threshold for the City's exposure to financial liabilities which might be incurred by the Port. While the City may want to ensure that the Port not bear a disproportionate burden of the costs for the 34th America's Cup event when the entire City will be reaping the potential tax and other economic benefits, efforts should be made to ensure that the Port's loss of rents not exceed the estimated conservative net rent loss of \$6,716,013 plus a ten percent contingency of \$671,601, for a total maximum of \$7,387,614 for the City's General

Fund payments to the Port over the three-year period from FY 2011-2012 through FY 2013-2014 due to the impacts of the 34th America's Cup.

In response to the Budget and Legislative Analyst's concern that Section 2 of the MOU states that the City will ensure that these payments (a) preserve the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture implies that the City is financially responsible for maintaining the Port's financial status, Both the Port and the Controller concur that Section 2 of the proposed MOU be removed.

The proposed MOU also includes a provision regarding the reimbursement by the ACOC to the Port for tenant relocation and staff costs, which are estimated to total \$2,600,000. The Budget and Legislative Analyst questions why the reimbursement to the Port by the ACOC is part of the proposed MOU between the Controller and the Port. If the ACOC's fundraising goals are not met, such that the ACOC cannot reimburse the Port for the Port's expenses, the Budget and Legislative Analyst believes there should be a separate specific Board of Supervisors discussion of how this reimbursement would be handled at that time. Mr. Rosenfield concurs that this section be deleted from the proposed MOU.

RECOMMENDATIONS

1. Request the Controller and the Port to amend the title and Section 2 of the proposed MOU to delete the General Principles provision requiring that the Port and Controller monitor the Port's 34th America's Cup costs and use best efforts to ensure that such costs are paid in a manner that: (a) preserves the Port's credit rating, (b) does not reduce the Port's ability to make capital improvements to the waterfront, and (c) maintains compliance with the Port's bond indenture.
2. Request that the Controller and the Port to amend Section 5 of the proposed MOU to delete the provision regarding the reimbursement to by the ACOC the Port for tenant relocation and staff costs by the ACOC given that the direct reimbursement to the Port by the ACOC should not be part of the proposed MOU between the Controller and the Port.
3. Request the Controller and the Port to amend the proposed MOU to impose a limitation on the amount of revenues that would be transferred from the City's General Fund to the Port to \$7,387,614 (\$6,716,013 (See Table 3 above) plus a ten percent contingency of \$671,601) over the three-year period from FY 2011-2012 through FY 2013-2014.
4. Request the Controller and the Port to amend the proposed MOU to delete all of the provisions related to the financing of the Pier 27 Cruise Terminal building, given the projected budgetary shortfalls of \$13,762,842 (see Table 5 above), including a City General Fund contribution of \$6,500,000.

5. Approval of the proposed resolution, as amended, is a policy decision for the Board of Supervisors.