



Memorandum

To: Supervisor David Chiu, President, Board of Supervisors
Supervisor Michela Alioto-Pier
Supervisor John Avalos
Supervisor David Campos
Supervisor Carmen Chu
Supervisor Chris Daly
Supervisor Bevan Duffy
Supervisor Sean Elsbernd
Supervisor Eric Mar
Supervisor Ross Mirkarimi
Supervisor Sophie Maxwell

From: Monique Moyer, Executive Director

cc: Steve Kawa, Jennifer Entine Matz, Kyri McClellan

Date: December 14, 2010

Re: Proposed Modifications to America's Cup Northern Waterfront Alternative Host City Agreement

Overview

On Wednesday, December 9, 2010 and again yesterday December 13, 2010, Port and City staff addressed the Budget and Finance Committee of the Board of Supervisors regarding the proposed Northern Waterfront Host City Agreement that is proposed as San Francisco's bid to host the 34th America's Cup. Yesterday afternoon and evening, Port and City staff engaged further discussions with representatives of the America's Cup Event Authority ("Authority") regarding that alternative.

The Port Commission Resolution 10-73 approving both the original Host City Agreement and the Northern Waterfront Alternative states:

"Further Resolved, That the Port Commission hereby authorizes and urges the Executive Director to take such steps and enter into any additions, amendments or other modifications to the Host Agreement or Northern Waterfront HCA as they, in consultation with the City Attorney, determine are in the best interests of the City, do not materially increase the obligations or liabilities of the City or the Port except those obligations or liabilities that are offset by a commensurate benefit to the City or the Port and are necessary or advisable to

bring the 34th America's Cup to San Francisco Bay and effectuate the purpose and intent of this Resolution..."

As stated at the December 8 Budget and Finance Committee hearing, City staff designed the Northern Waterfront Alternative based on its understanding of the Port's waterfront and the best interests of the race. Staff noted that the Authority had limited input to the terms of that proposal.

This memo summarizes proposed modifications to the Northern Waterfront Host City Agreement designed to address concerns raised by the Authority over the weekend and yesterday evening.

Port staff has determined, in consultation with the City Attorney, that the proposed modifications do not materially increase the City's obligations or liabilities compared to the terms approved by the Port Commission on November 30, 2010. Rather, the modifications are designed to provide certainty to the parties as a basis for further negotiation of the proposed Venue Leases and Legacy Leases.

Proposed Changes to the Northern Waterfront Host City Agreement

The most significant changes are as follows:

Section 6.2: Permits the Authority at its discretion and subject to the City's prior approval, to make structural improvements to the Short-Term Venues (such as Piers 19, 23 and 29) or to make a cash contribution to complete the Pier 27 Cruise Terminal or the Northeast Wharf Plaza (which shall then be repaid via Rent Credits against the Legacy or Legacy Option Leases).

Section 6.3: Permits the Authority at its discretion and its own expense to dredge and install wave attenuation devices, subject to permitting requirements.

Section 7.3(a): Provides for Term Sheet endorsement of Legacy Leases and Legacy Option Leases by the Board of Supervisors.

Section 7.3(f): Provides that fair market base rent for Legacy Leases and Legacy Option Leases will be set by appraisal subject to baseball arbitration (consistent with the Budget Analyst's recommendation), indexed by CPI.

Provides for Rent Credits to be amortized against 100% of base rent with an imputed rate of return of 11% annually.

Provides for market resets by appraisal (subject to baseball arbitration) when Authority's Rent Credits are fully amortized, and every ten years thereafter.

Section 7.3(h): Provides the Port with two forms of participation rent:

1% of the sales value of any condominium constructed on Seawall Lot 330, via a transfer fee enforced by deed restriction, except for initial sales, and

15% of the sale price of any second or subsequent transfer (net of the initial sale price).

Section 7.3(k): Authority cooperation to form a Community Facilities District on Seawall Lot 330 and Piers 30-32 to fund ongoing maintenance of the Brannan Street Wharf.

Section 7.3(i): Consistent with the original Host City Agreement, a requirement for the City to remove the common law trust from Seawall Lot 330 and to transfer fee title, with the fair market value sale subject to Rent Credits. Any legislation will confer a major benefit to the public trust consistent with AB 1389 (Assemblymember Shelley) and SB 815 (Senator Migden).

Section 7.3(j)(i): Consistent with the original Host City Agreement, a requirement for the City to remove the common law trust from Seawall Lot 330 and to transfer fee title, with the fair market value sale subject to Rent Credits. Any legislation will confer a major benefit to the public trust consistent with AB 1389 (Assemblymember Shelley) and SB 815 (Senator Migden).

Section 7.6(a–e): Provisions to balance the value of Legacy Leases and Legacy Option Leases, together with any Infrastructure Financing District tax proceeds, with the Authority's total City-approved investment in the Port's waterfront.

Section 7.7: The provision of marina and spectator vessel leases to the Authority, at one or both of the areas between Piers 32-38 and Pier 14-22.5, on commercially reasonable terms subject to Rent Credits to amortize the Authority's dredging cost, subject to agreement on terms between the Authority and the City.

Port staff recommends your approval of the resolution approving the Northern Waterfront Host City Agreement with these modifications to the underlying agreement.

Attachment 1:

Revised December 14, 2010 Host City Agreement redline against December 13 Budget and Finance Committee Version