



MEMORANDUM

August 8, 2007

TO: MEMBERS, PORT COMMISSION
Hon. Ann Lazarus, President
Hon. Kimberly Brandon, Vice President
Hon. Rodney Fong
Hon. Michael Hardeman
Hon. Stephanie Shakofsky

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Approval of Addendum to Lease No. 13816 with Literacy for Environmental Justice for the Construction, Maintenance and Operation of a Living Classroom Building at Heron's Head Park.

DIRECTOR'S RECOMMENDATION: Approve Resolution

BACKGROUND

In 1998, the Port constructed Heron's Head Park (HHP) on the formerly undeveloped Pier 98 as part of settlement of a Bay Conservation and Development Commission enforcement order. The park includes approximately eight acres of wetland habitat, and 14 acres of upland open-space with trails, picnic area, interpretive signs, and a fishing pier. Community participation has been an important part of Heron's Head Park since its inception. The Port has sought to actively promote community involvement at the park and to help schools, community members, and environmental organizations take advantage of the hands-on educational experience that Heron's Head Park offers. Literacy for Environmental Justice (LEJ), a community-based non-profit organization dedicated to providing environmental education programs to schools and youth groups in the Bayview-Hunters Point community, has conducted education and community/volunteer programs at Heron's Head Park under contract with the Port since 1999.

In 2001, LEJ applied for and received a grant of \$898,000 from the City and County of San Francisco Department of the Environment (DOE) to construct the "Living Classroom" at Heron's Head Park. In 2003, LEJ applied for and received an additional \$400,000 in grant funding from the California State Coastal Conservancy (CCC) to support construction of the Living Classroom. The Classroom will consist of a one-story, 1,425 square foot building with solar power and wastewater treatment. It will be certified as a LEED ("Leader in Energy and

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Environmental Design”) structure. The “Living Classroom” will house the Heron’s Head Park programs and other environmental and health education programs, and will be available for certain other educational and community functions.

In January 2001, the Port Commission approved Resolution No. 01-02 supporting LEJ’s grant application and authorizing Port staff to negotiate agreements with LEJ as needed to construct the Living Classroom. In October 2002, the Port Commission heard an informational progress report, including the presentation of the schematic design and the Port’s role in project implementation. In 2005, the Port Commission approved Resolution No. 05-64 authorizing the lease with LEJ for construction and operation of the Living Classroom. Since 2005, LEJ has been working to complete its construction plans, resolve potential permitting issues associated with building design and construction, select and negotiate construction contracts with a general contractor and solar power installer, and secure all insurance and bonds required of the contractors and the tenant. To date, the Port has not executed the lease because LEJ has been unable to meet one of the conditions precedent to lease execution: the requirement to obtain a “Materialman’s Completion Bond”.

During the course of LEJ’s efforts to secure all of the required bonds and insurance, it was determined by LEJ and Port staff that the Materialman’s Completion Bond that LEJ is required by the lease to obtain is not commercially available for this project because LEJ is a small non-profit organization with limited assets or revenue. To address this problem, Port staff proposes to revise the commencement, insurance, and termination provisions of the lease, and the Work Letter (Exhibit G to the lease) as described below. These revisions are designed to mitigate the risks that the completion bond would cover and provide the Port with assurance that LEJ will have the resources to complete the project in accordance with the lease terms, or, in the event that LEJ does not have and cannot secure sufficient resources, the Port will have the right to terminate the lease and use the fees and deposits that the Port currently holds for any purpose, potentially including completion of the project, or removal of any partial construction and restoration of the site. The lease was previously approved by the Board of Supervisors and, upon Port Commission approval, the proposed addendum to Lease No. 13816 will be subject to Board of Supervisors approval.

PROPOSED REVISION TO TERMS OF LEASE NO. 13816

Commencement Date: Section 1.2 of the lease will be revised to make effectiveness of the lease conditioned upon receipt of performance bonds as described below.

Insurance: Section 18.1 of the lease will be revised to require that LEJ’s contractors will each obtain a payment (labor and materials) bond and performance bond in a form acceptable to Port and in an amount of at least (100%) of the value of the contract awarded to each contractor. These bonds will serve to ensure the Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of the work.

Termination: In the event that unforeseen conditions cause construction costs to exceed available funding, including the construction contingency, and LEJ is unable to secure the additional funding within 90 days, the Port has the right to terminate the lease. In such case, the Port would have the right to retain the \$68,000 in deposit and fees from LEJ.

Work Letter: The Work Letter (Exhibit G to the lease) will be revised to require that, LEJ, prior to beginning construction and at its sole expense, will hire a Third-Party Fund Administrator (TPA). The TPA will receive progress payments from LEJ's contractors, review them for consistency with each contractor's schedule of values, and forward approved payment requests to LEJ for submittal to DOE or CCC. The TPA will establish a disbursement account to which it will receive funds on LEJ's behalf from the DOE and CCC, and disburse funds to LEJ's contractors in accordance with approved payment requests. The TPA will notify the Port immediately of any lien, claim, suit or circumstance which could, in the opinion of the TPA, give rise to one, and reserve funds in the amount of any potential liability. Upon receipt of all documentation necessary to demonstrate completion of the work and final payment to LEJ's contractors, the TPA will release any remaining funds in accordance with the conditions of LEJ's funding agreements with the DOE and CCC.

Other New/Updated Lease Provisions: The lease amendment will include other updates to incorporate current standard lease provisions, including hazardous materials disclosure, sunshine ordinance, conflict of interest, drug-free workplace, use of public transit, food service waste reduction and Federal Emergency Management Agency disclosure.

RECOMMENDATION

Port staff recommends that the Commission authorize and direct the Executive Director to enter into the proposed amendment in substantially the form on file with the Commission Secretary, as well as all related agreements.

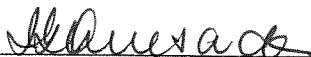
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**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 07-63

- WHEREAS, Charter Section 3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, The Port has approved Resolution No. 05-64 authorizing the lease with Literacy for Environmental Justice ("LEJ") for construction and operation of the Living Classroom; and
- WHEREAS, the Port now desires to revise the lease to remove the requirement that LEJ obtain a "Materialman's Completion Bond", and add new requirements regarding commencement, termination, and use of a Third-Party Funds administrator; now therefore be it
- RESOLVED, that the Port Commission hereby consents to revision of Lease No. 13816, the terms of which are described in the staff report and are on file with the Commission secretary; and be it further
- RESOLVED, that the Executive Director or her designee is hereby authorized to execute all such appropriate documentation as she deems necessary or appropriate to implement this Resolution in a form approved by the City Attorney's office, such determination to be conclusively evidenced by the execution and delivery by the Executive Director, or her designee of any such document.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 14, 2007.



Secretary