

**CITY AND COUNTY OF SAN FRANCISCO**

**BOARD OF SUPERVISORS**

**BUDGET AND LEGISLATIVE ANALYST**

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June 15, 2021

**TO:** Government Audit and Oversight Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** June 18, 2021 Special Government Audit and Oversight Committee Meeting

**TABLE OF CONTENTS**

<b>Item</b>	<b>File</b>	<b>Page</b>
2	21-0560 Mutual Lease Termination Agreement - Ferry Plaza Limited Partnership .....	1
3	21-0392 Accept and Expend Grant - Retroactive - San Francisco Bay Area Rapid Transit District - Pit Stop Public Toilet Program - \$250,000 .....	4
4	21-0530 Renewal Agreement - Data Center Space and Services - 3101 Gold Center Drive, Rancho Cordova, California - \$639,480 Annual Base Rent - Not to Exceed \$2,015,960.70.....	7
5	21-0638 Contract Amendment - Regents of the University of California - Behavioral Health Services - Not to Exceed \$29,291,485.....	11
6	21-0637 Contract Amendment - Edgewood Center for Children and Families - Behavioral Health Services - Not to Exceed \$57,298,967.....	15

<b>Item 2</b> <b>File 21-0560</b>	<b>Department:</b> Port Commission (Port)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution approves the Mutual Termination Agreement between the Port and Ferry Plaza Limited Partnership to terminate the lease for premises at the east end of Ferry Plaza.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• Ferry Plaza Limited Partnership leases restaurant space from the Port at the east end of Ferry Plaza. The original lease began in 1974 and is scheduled to end in 2040. According to the lease, the space is to be maintained and in use as a first-class restaurant, but according to the Port, the space has not been in use for the prior eight years, although Ferry Plaza Limited Partnership has continued to pay base rent. Because the tenant was not using the space as a restaurant, and because the Port and the tenant could not agree on another use of the space, the Port recommended, and the Port Commission agreed to an early termination of the lease.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• Under the Mutual Termination Agreement, Ferry Plaza Limited Partnership forfeits its security deposit of \$222,866 and would pay rent due through December 2020 of \$228,534. The Mutual Termination Agreement is effective once final payment is made and agreement conditions are met.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• According to Port staff, in considering termination of the lease, Port’s maintenance and engineering staff conducted a walkthrough of the site and the Port hired a broker to visit and assess the site. The findings from those efforts comport with Port real estate staff’s assessment of the premises: that the site has excellent potential, in a very favorable setting, but that a new tenant would have to invest substantial capital to upgrade the site into a ‘destination’ location, attractive enough to motivate customers to walk out to the end of the pier. If the mutual termination is approved by the Board, Port staff intends to seek Port Commission direction regarding the terms under which to issue a competitive solicitation to find a new tenant to make these investments and operate the site.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

## MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, (2) have anticipated revenues to the City of \$1,000,000, or (3) the modification, amendment or termination of these leases is subject to Board of Supervisors approval.

## BACKGROUND

The Port entered into a 66-year lease with Barbary Coast Investment, Inc. in 1974 for restaurant space, which was scheduled to end in 2040. Under the original lease, the tenant paid base rent, increased annually by the Consumer Price Index (CPI), and percentage rent. Barbary Coast Investment subsequently assigned its interest in the lease to Ferry Plaza Limited Partnership in accordance with lease provisions.

The lease required the tenant to construct restaurant space to be continuously used as a first-class restaurant. According to the Port staff memorandum to the February 9, 2021, Port Commission meeting, no restaurant has operated at this site for the past eight years, and operated only intermittently prior to the past eight years, although Ferry Plaza Limited Partnership continued to pay base rent. Because the tenant was not using the space as a restaurant, and because the Port and the tenant could not agree on another use of the space, the Port recommended, and the Port Commission agreed to an early termination of the lease.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves the Mutual Termination Agreement between the Port and Ferry Plaza Limited Partnership to terminate the lease for premises at the east end of Ferry Plaza.

The Mutual Termination Agreement requires Ferry Plaza Limited Partnership to leave the premises in substantially the same condition as existed during Port inspections. According to the staff memorandum, facility inspections identified some needed repairs, which the Port considered could be made from proceeds of the forfeited security deposit (see Fiscal Impact section), and tenant improvements to be made by a future tenant.

Under the Mutual Termination Agreement, the tenant broadly releases the Port from claims and the Port provides a limited release of the tenant from claims. This limited release applies to (a) third-party claims properly filed against the Port, (b) claims alleged in a written notice of violation by a regulatory agency, (c) claims resulting from conditions identified during Port inspections, and (d) claims by the Port for rent. The Mutual Termination Agreement provides that the tenant is released from these claims to the extent that loss or damage is not covered by insurance that the tenant was required to maintain.

**FISCAL IMPACT**

Under the Mutual Termination Agreement, Ferry Plaza Limited Partnership forfeits its security deposit of \$222,866 and would pay rent due through December 2020 of \$228,534. The Mutual Termination Agreement is effective once final payment is made and agreement conditions are met.

**POLICY CONSIDERATION**

According to Port staff, in considering termination of the lease, Port's maintenance and engineering staff conducted a walkthrough of the site and the Port hired a broker to visit and assess the site. The findings from those efforts comport with Port real estate staff's assessment of the premises: that the site has excellent potential, in a very favorable setting, but that a new tenant would have to invest substantial capital to upgrade the site into a 'destination' location, attractive enough to motivate customers to walk out to the end of the pier. If the mutual termination is approved by the Board, Port staff intends to seek Port Commission direction regarding the terms under which to issue a competitive solicitation to find a new tenant to make these investments and operate the site.

**RECOMMENDATION**

Approve the proposed resolution.