




MEMORANDUM

April 26, 2024

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Gail Gilman, Vice President
Hon. Willie Adams
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director 

SUBJECT: Informational presentation to consider and possible action to approve a resolution recommending the Board of Supervisors approve a Second Amendment to the Lease with Golden Gate National Parks Conservancy at Pier 31 and 33.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 24-24

EXECUTIVE SUMMARY

Golden Gate National Parks Conservancy (**Conservancy**) has a 30-year Lease with the Port to build and operate a public serving café (**Phase I Improvements**) and an interpretive retail and visitor center (**Phase II Improvements**) at the Alcatraz Landing site at Pier 31. The Lease commenced on October 15, 2019, and Base Rent was set to start on July 12, 2020. The original target construction completion date for the Phase I Improvements was October 15, 2020. Due to the COVID pandemic, construction never commenced, and the Port and the Conservancy have since been actively seeking a solution to update the Lease to account for the delayed Phase I Improvements and move the project forward.

While originally positioned to begin the work, and with a Sublease Tenant under the Letter of Intent as the café operator (Boudin Bakery), the project was halted. As the COVID

pandemic set in, the Conservancy's financial position eroded and negotiations with the café subtenant proved challenging. Despite these project delays, the Conservancy started paying base rent in October 2022 in good faith and continues to pay on the vacant, shell space. The continued delay in initiating the Phase I Improvements is a result of construction cost increases (the original estimate was \$3.692 million, and the current estimate is \$5.095 million), and further challenges with the sublease negotiations for the café space.

Port Staff briefed the Port Commission in closed session on March 9, 2021, February 14, 2023, and most recently on February 6, 2024, regarding the then-current status of the agreement.

The Conservancy is now prepared to move the project forward, as economic conditions and the prospect of leasing the café space have improved. The Conservancy intends to proceed with construction of the Phase I Improvements at their cost in anticipation of a future café operator, building a generic café warm shell (see **Exhibit A**). The Conservancy has also hired a reputable retail broker, Maven, to procure a new café operator to take delivery of the shell space, install fixtures, furnishings, and equipment (FF&E) suitable to their operation, and open. The Conservancy expects to have the café up and operating by late 2025.

To clean up the Lease delinquency from 2020 and 2021 and facilitate moving the project ahead under a feasible economic structure, modifications to the original Lease are necessary. Based on the Conservancy's good faith efforts with continued payment of Base Rent and commitment to resolving the outstanding Lease performance issues, and with the support of the National Park Service (**NPS**), Port Staff have negotiated a proposed Second Amendment to Lease (**Amendment**), subject to Port Commission and Board of Supervisors approval.

The proposed Amendment terms are as follows:

- Collection of eighty-five percent (85%) of the unpaid Base Rent, \$289K, for the period July 1, 2020 to September 30, 2022.
- An extension of the Lease term for an additional 3 years, including Base Rent and percentage rent, with a new expiration date of June 30, 2052.
- Updated café construction delivery date of December 31, 2025.
- Rent Credits for the purpose of funding increased construction costs of both the Phase I Improvements and Phase II Improvements increased by \$246,000, from \$554,000 to \$800,000 or approximately \$87 per square foot.
 - *\$440,000 of the credit will be applied to costs associated with the Pier 31 café/Phase I and \$360,000 will be applied to the Pier 33 retail space/Phase II.*

- The Conservancy will share fifty percent (50%) of any excess rents from restaurant subtenants, a term which has become increasingly important to the Conservancy and is common in commercial leases to incentivize increased subleasing activities and revenues.

Port Staff recommends proceeding with the Amendment as proposed. The Amendment will allow the Conservancy to proceed with construction and tenancy to further activate a public amenity in that area (a currently vacant space). This will support economic recovery and is a primary goal of the Port and NPS.

STRATEGIC PLAN ALIGNMENT

Completion of the café at Pier 31 will support the following Strategic Plan goals:

Economic Recovery:

The Pier 31 bulkhead space has been vacant for years. Successful activation of this space by an experienced operator will generate new, stable income for the Port and enliven our historic bulkhead space.

Economic Growth:

This lease will facilitate the addition of an operating café at Pier 31 and further improvements to both Pier 31 and Pier 33 properties, increasing the revenue for the Port. Port investment through rent credits toward capital improvements at the Pier 31 and Pier 33 spaces will increase the likelihood of success for the new operator and encourage increased investment in Port property by the tenant.

Equity:

The new operations at Piers 31 and 33 will present new options for visitors to the Embarcadero and new contracting opportunities for retail/restaurant service businesses, including laundry, custodial, food and beverage supply, pest control, and maintenance.

BACKGROUND

In November 2018, the Port and NPS entered a 50-year General Agreement (**GA**) that established portions of Piers 31, 31½, and 33, and the water basin between Pier 31 and Pier 33 as the ferry embarkation site for Alcatraz Island (**Embarkation Site**) to provide a stable location for the ferry and to allow for significant capital investments.

Under the GA, the Embarkation Site is operated by Alcatraz Cruises, LLC, the ferry concessioner selected by NPS pursuant to federal bidding processes. For the first 15 years of the GA, Alcatraz Cruises is responsible for all improvements, originally estimated by the Port and NPS to be \$30 million. The GA also commits the Port to leasing portions of the Embarkation Site to the Conservancy, the primary fundraiser and project manager for NPS, to provide visitor amenities including a café at Pier 31 and a retail visitor center at Pier 33. Both the Port Commission and the Board of Supervisors waived competitive bidding policies to proceed with the Lease.

LEASE PROVISIONS, RENTAL PAYMENTS AND IMPROVEMENTS

The Phase I Pier 31 café location consists of 2,750 sf of unimproved bulkhead space plus 1,000 sf of storage space. The Conservancy originally selected Boudin for negotiations to become the café subtenant on April 2, 2019.

A First Amendment to Lease dated September 30, 2019, revised the Commencement Date to October 15, 2019, and established the Phase I Rent Commencement Date as July 1, 2020. The Lease provides a 270-day rent-free construction period, includes 2.5% annual increases, and provides a schedule to phase in the base rent phase during the first two years of the lease. Base Rent payments were to start on July 12, 2020. Completion of Phase I Improvements was originally slated for October 15, 2020. Due to the COVID-19 pandemic, the Conservancy did not begin paying rent nor commence improvements as set forth in the Lease.

According to the Conservancy, they had planned to use revenue from its subtenant to offset its rent, but since they were unable to secure the Boudin sublease and open the café, they were unable to pay rent. The Conservancy's outstanding Base Rent balance as of September 2022 was approximately \$339,200 (this figure takes into account rent abatement as provided in the Lease for Alcatraz Island closure days, Lease specific phase-in discounts, and annual increases, and does not include late fees or interest). In October 2022, the Conservancy in good faith commenced paying the scheduled Base Rent of \$16,476/month on the empty, unoccupied space, and has paid base rent through April 2024; however, the Conservancy has not yet paid anything toward its balance owed prior to October 2022.

As to the Phase I café improvements, the Conservancy advises the lack of a café subtenant, COVID-related economic issues, and subsequent erosion in the Conservancy finances caused the Conservancy to miss construction milestones set forth in the Lease. The Conservancy notified the Port in November 2023 that they terminated efforts on a sublease with Boudin. They are now proceeding with the execution of a new strategy as detailed below.

EXECUTION AND TIMING

The Conservancy now intends to move forward as quickly as possible to build and open the café. The Conservancy has selected Maven Commercial to manage the RFP process to select a café operator. Selection of the café operator and sublease execution is expected in 2024, with occupancy and opening in 2025, allowing the operator sufficient time for tenant improvement design and plan development, as well as permitting.

The Conservancy will immediately move to complete the buildout of the café space to a Warm Shell condition, minimizing the work required of the selected operator. Completion of warm shell design and permitting is anticipated by November 2024, with completion of construction expected by May 2025.

Warm Shell improvements will include the design and construction of the following:

- Building envelope upgrades, including window and door replacement
- Accessibility and ingress/egress upgrades
- Utility connections, including electric, gas, water, and communications
- Fire/life/safety systems
- HVAC installation
- A commercial kitchen hood

The café operator will provide fixtures, furniture, and equipment (**FF&E**), and perform interior finish carpentry, wall finishes, and paint, kitchen equipment installation, and specialty lighting. A schematic plan of the café space is included as **Exhibit A**.

At Lease Commencement in 2019, the budget for the Phase I and Phase II Improvements was \$3.692 million, including an allowance for rent credits of up to \$554,000. Since that time, estimated costs have increased to \$5.095 million, with costs for construction of the warm shell improvements for the Phase I café estimated at \$2.5 million. As a result, the Port is supporting the absorption of these additional costs by offering an additional \$246,000 of rent credits, increased to a total of \$800,000 in the Amendment. Note that there is no direct investment of Port capital contemplated with this transaction.

PROPOSED AMENDMENT KEY TERMS

To address the outstanding balance and missed construction milestones, the Port and the Conservancy are seeking to amend the Lease. The Amendment would include the following:

- **The Conservancy will be required to pay \$289,765.05 (85%) of the approximately \$339,200 in base rent owed from July 12, 2020 through September 30, 2022.** In exchange, Port will waive interest and late fees accrued. Port's execution of the Second Amendment is subject to receiving the full payment of \$289,765.05 upfront.
- **Extend the completion timing for the Phase 1 Improvements, from October 15, 2020 to December 31, 2025.** Given the Conservancy's progress to date, payment of Base Rent, and efforts to establish an achievable sublease structure, Port staff recommends an extension of the completion date.
- **Increase maximum rent credits from \$554,000 to \$800,000 to align with the estimated 38% increase in construction costs between 2020 and 2024.** Construction costs for all required tenant improvements (including both the Phase I Improvements and the Phase II improvements for the Pier 33 retail visitor center) have risen to \$5.1 million in 2024 vs. the original \$3.7 million. The proposed Amendment allows a maximum rent credit of \$440,000 upon completion of the Phase I Improvements and \$360,000 or the remaining rent credit balance toward the Phase II Improvements. These rent credits commence upon completion of the

improvements for each Phase and Port approval of itemized statements for the actual costs expended for such work.

- **Change the split of “excess rent” between the Port and the Conservancy.** The Lease requires that 100% of any excess sublease rent received by the Conservancy must be paid to Port. This would leave the Conservancy with no incentive to make a better deal on a sublease if one was available. Instead, the Amendment proposal would allow the Conservancy to retain 50% of the excess as Port staff have recommended in other scenarios to incentivize the Conservancy to seek subleases with the most positive economic return. The revenue split solution provides the tenant with potential additional revenue to offset additional capital costs. The Port’s negotiated base rent and percentage rents continue to be protected by confining this change to “excess” rent only.
- **Clarify items not to be included in the definition of “gross revenues”.** The Amendment would clarify that certain items on which the Conservancy earns no revenues (passed through to NPS) are not included in gross revenues for purposes of determining percentage rent due to Port, such as park passes sold as a convenience to NPS and charitable donations. The projected financial impact is negligible; according to the Conservancy, they anticipate sales of park passes and memberships to be very low volume based on their experience at Alcatraz Landing and other locations throughout the United States.
- **Three-year term extension.** The Amendment would extend the expiration date by three (3) years to June 30, 2052, allowing Port an opportunity to recover proforma percentage rent lost due to the delay in constructing the café. This also provides the Conservancy with additional terms to secure against.
- **Addition of Upset Events.** In the event the Conservancy (i) fails to obtain NPS’s consent to the café sublease; (ii) fails to execute a café sublease by June 30, 2025; or (iii) fails to meet the December 31, 2025 completion date, the Port may exercise any of the following remedies:
 - Declare the Amendment null and void.
 - Impose a charge of \$375 per day for the duration of the Upset Event.
 - Reduce the rent credit for the tenant improvements by \$10,000 per month.
- **Base rent and percentage rent remain unchanged.** The base rent for Phase I and II, and the percentage rent of 7.5% of gross revenue, remain unchanged by the Amendment.

The Amendment also includes conforming changes and adds new standard City requirements.

STAFF ANALYSIS

Port staff believes the Amendment adequately resolves all disputes related to

outstanding rent and Phase I/II Improvements. This amendment would bring the Conservancy into good standing with the Port and assure uninterrupted rent from the Conservancy in the longer term.

- The Conservancy's core mission and business is in support of NPS and as such represents a unique value proposition in terms of improving the visitor experience.
- The Conservancy's financial position has improved and appears committed to moving this ahead. In March 2020, the Conservancy closed all visitor centers and touring operations, resulting in lost revenue of approximately \$25 million during FY2021. The Conservancy's audit firm, Armanino, LLP, raised substantial doubts about the Conservancy's ability to continue. Subsequent cost-saving measures (staff layoffs), disaster relief loans, and bank credit facilities alleviated the doubts raised by Armanino LLP about the Conservancy's ability to continue. As the market has recovered, the Conservancy has been urging the Port for this Amendment to move ahead.
- The Amendment will put the Conservancy in a better position to construct the Phase I Improvements and revitalize the Pier 31 bulkhead. This project is an integral component of the Embarkation Site's goal to provide a high-quality welcome and orientation facility.
- The negotiated terms improve the Conservancy's ability to absorb additional construction costs.
- The Conservancy now has a dedicated project team to oversee the Phase I Improvements.
- The Port is recovering \$289,765 of the \$339,000 in base rent due through September 2022, and the extension of the Expiration Date will allow the Port to recover percentage rent lost during the early years of the Lease.
- The effect of the increase in the rent credits, the revised definition of Gross Revenue, and the change to Excess Rent provisions result in a small decrease in Port revenue compared to the potential revenue expected under the life of the amended Lease. The Conservancy reports gross revenue from passes and memberships is negligible; as a result, the financial impact is expected to be minimal.
- The Amendment avoids declaring a Conservancy Lease in default which would likely result in a significant and protracted dispute with the Conservancy and potentially NPS and could further delay the construction of a café.
- NPS supports an Amendment as outlined in these notes. Subject to the Port Commission and Board of Supervisors' approval of the Amendment, the GA will need to be amended to conform to the changes in the Amendment.

RECOMMENDATION

Port staff recommend the Port proceed to finalize the second amendment on the stated terms and seek the Port Commission and Board of Supervisors' approval of the Amendment.

Prepared by: Sandra Oberle, Senior Property Manager
Real Estate and Development

For: Scott Landsittel, Deputy Director
Real Estate and Development

Attachment: Exhibit A – Pier 31 Schematic Café Floorplan

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

RESOLUTION NO. 24-24

WHEREAS, Pursuant to Charter Section B3.581, the Port Commission has the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of the City and County of San Francisco; and

WHEREAS, At its June 25, 2018 meeting, the Port Commission authorized the Executive Director of the Port or her designee to enter into Lease No. L-16274 with the Golden Gate National Parks Conservancy (“Conservancy”) (the “Lease”) to build and operate a public serving café and retail space within the bulkheads and portions of the sheds of Piers 31 and 33 for a thirty (30) year term, with two (2) options to extend the Lease for ten (10) additional years (the “Option”); and

WHEREAS, On September 25, 2018, the Board of Supervisors adopted Resolution No. 317-18 approving the Lease; and

WHEREAS, The Port Commission and Conservancy entered into a First Amendment to Lease dated September 30, 2019, establishing the Phase I Commencement Date as October 15, 2019, and the Phase I Rent Commencement Date as July 1, 2020; and

WHEREAS, As a result of COVID pandemic impacts, construction cost increases, and challenging subtenant negotiations, Conservancy did not begin construction of the food and beverage space at Pier 31 (“Phase I Improvements”), did not meet the Phase I Improvements completion date of October 15, 2020, and did not begin paying rent until October 1, 2022; and

WHEREAS, The Port and Conservancy have negotiated the terms of a Second Amendment to Lease (“Second Amendment”), a copy of which is on file with the Secretary of the Port Commission; and

WHEREAS, The terms of the Second Amendment (i) establishes the amount of unpaid base rent Conservancy will pay to Port at \$289,765.05; (ii) extends the Phase I Improvements completion date to December 31, 2025; (iii) increases the original construction rent credit from \$554,000 to \$800,000; (iv) provides a three (3) year extension of the Lease term to June 30, 2052; and (v) establishes a fifty percent (50%) share of any excess rents from food and beverage subtenants; now therefore be it

RESOLVED, The Port Commission hereby approves the Second Amendment between the Port and Conservancy on terms substantially consistent with those described in the Second Amendment on file with the Secretary of the Port Commission; and be it further

RESOLVED, That following approval by the Board of Supervisors and execution of the Second Amendment by the Conservancy, the Port Commission authorizes the Executive Director of the Port, or her designee, to execute the Second Amendment on terms substantially consistent with those described in the Second Amendment on file with the Secretary of the Port Commission; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director of the Port to enter into any additions, amendments, or other modifications to the Second Amendment and any other agreement necessary to effectuate the purpose of the Second Amendment and this Resolution that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the Port, and are necessary and advisable to complete the transaction and effectuate the intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director, or her designee, of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 30, 2024.

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Secretary
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Exhibit A – Cafe Schematic Floorplan

