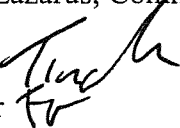




## MEMORANDUM

September 22, 2005

**TO:** MEMBERS, PORT COMMISSION  
Hon. Wilfred Hsu, President  
Hon. Michael Hardeman, Vice President  
Hon. Sue Bierman, Commissioner  
Hon. Kimberly Brandon, Commissioner  
Hon. Ann Lazarus, Commissioner

**FROM:** Monique Moyer   
Executive Director

**SUBJECT:** Approval of Ground Lease with Literacy for Environmental Justice for the Construction Maintenance and Operation of a Living Classroom Building at Heron's Head Park and Related Transaction Documents.

**DIRECTOR'S RECOMMENDATION:** APPROVE GROUND LEASE AND RELATED AGREEMENTS

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### BACKGROUND

The Port constructed Heron's Head Park (HHP) on the formerly undeveloped Pier 98 in 1998 as part of settlement of a BCDC enforcement order. The park includes approximately 8 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 and is a major contributor to the health and vitality of the park. Heron's Head Park offers a unique opportunity for local schools and other visitors to study and enjoy wetlands in their own backyard. The Port has sought to actively promote community involvement at the park and to help local schools take advantage of the hands-on educational experience that Heron's Head Park offers. To that end, the Port has worked with various entities to develop and conduct school and community participation programs at Herons Head Park since 1998. The programs offer opportunities to a wide variety of ages and interests, from a short field trip for pre-schoolers from a nearby child development center, to a semester-long series of field trips by a local high school science class, to independent study of wetland ecology by City College students. The programs also include monthly community participation days on weekends to promote involvement of non-student park visitors.

**THIS PRINT COVERS CALENDAR ITEM NO. 6A**

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-Hunter's Point community, has conducted education and community/volunteer programs at Heron's Head Park under contract with the Port since 2001. These programs have brought thousands of youth and adults to study and appreciate one of the few remaining wetlands in the city and have contributed many thousands of hours of volunteer work to maintain the park and wetlands. LEJ is physically located in Bayview-Hunter's Point, has demonstrated commitment and experience in providing culturally relevant environmental education programs for urban youth, and offers a high degree of technical expertise. LEJ also draws youth directly from the community that Heron's Head Park is intended to serve to participate as employees, interns and student leaders.

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. The Classroom will consist of a one-story, 1,425 square foot building with passive solar power. It will be certified as a LEED ("Leader in Energy and Environmental Design") structure, in accordance with the City's Green Building Ordinance. The "Living Classroom" will house LEJ's educational 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.

Port staff has negotiated a ground lease with LEJ for the construction, and occupancy and maintenance of the Living Classroom. The ground lease and all related exhibits on file with the Port Commission Secretary, and the key terms and conditions are outlined below:

## **PROPOSED LEASE**

### **1. Premises:**

Approximately 2,292 sq. ft. of open land, which represents the footprint of the Living Classroom building to be constructed by LEJ and approximately 6,058 sq.ft. of open land under non-exclusive license for footpaths, landscaping and circulation around the building.

### **2. Use:**

The construction and operation of a building consisting of approximately 1,450 square feet of indoor space including a classroom/meeting room, small office, two bathrooms, a storage room, and a small greenhouse. The facility will be used as the home base for environmental education programs and for related meetings or other purposes consistent with the park programs or other Port uses. LEJ must conduct the foregoing construction and permitted uses in accordance with the Final Supplemental Environmental Impact Report (SEIR) issued by the San Francisco Planning Department, Office of Environmental Review, File No. 1999.377E. Also, LEJ must make the building available for use by future grantees of Port funded educational programs.

3. **Term of Lease:**

The Lease becomes effective upon satisfaction of various conditions precedent, including Board of Supervisors approval and payment of certain fees and deposits by LEJ (see below). Upon Lease commencement and procurement of all requisite regulatory approvals, LEJ may begin construction of the Living Classroom but may not occupy it or commence "operations" at the building until the Jefferson-Martin 230kV Line Project has been completed by PG&E. The Lease has a term of ten years, commencing on the date of completion of the transmission line described above.

4. **Rent:**

Base Rent: Rental Rate of \$.20 per sq. ft. per month for open land, with annual cost of living increases.

Total Base Rent \$458.40 per month. \$5,500.80 annually.

5. **Security Deposit:** \$5,000.00

6. **Rent Credit for Foundation and Site Preparation:**

LEJ, at its sole cost and expense, must grade and prepare the leased site, and construct a foundation for the Living Classroom building. LEJ will receive a rent credit for the actual cost of such working upon submittal of requisite documentation in a sum not to exceed \$70,000.00.

7. **Improvements:**

LEJ will construct, at LEJ's sole cost and expense, a 1,450 square foot building and ancillary outdoor improvements, such as footpaths and landscaping.

8. **Maintenance and Repairs:**

Throughout the term of the Lease, LEJ shall maintain and repair, at LEJ's sole cost and expense, the Premises, and all public access improvements located on the Premises, except for Capital Improvements (described below).

9. **Capital Improvements:**

While the Lease is a triple net lease, Port agrees to perform certain capital improvements on the Premises during the Lease term to maintain quality control in such improvements. LEJ must pay Port, prior to Lease Commencement, \$48,000.00 as a "Capital Improvements Fee" to cover Port's anticipated costs. This Fee may be reasonably increased by the Port during the Lease term.

10. **Environmental:**

LEJ will be required to comply with applicable mitigation measures identified in the First Addendum to Final Negative Declaration, dated July 26, 2002, and Second Addendum to Final Negative Declaration, dated August 16, 2005, File No. 1997.432E, issued by the San Francisco Planning Department.

11. **Fee for Removal of Tenant Improvements:**

LEJ must pay a Removal Fee in the amount of \$15,000.00, prior to Lease Commencement, securing LEJ's obligation to remove all improvements on the Premises. This Fee is *not refundable*.

**12. Materialman's Completion Bond:**

LEJ shall furnish to Port a Materialman's Completion Bond, issued by a responsible surety company, satisfactory to Port in Port's reasonable discretion, licensed to do business in California, in an amount not less than the final construction contract bid. The Materialman's Completion Bond must remain in effect until the entire cost of proposed improvements have been paid in full and the new improvements have been insured as provided in the Lease.

**13. Assignment and Subletting:**

LEJ is not allowed to sublease the Premises, and LEJ may not assign the Premises without the Port's written consent. Additionally, LEJ must agree to assign the Lease to a party requested by the Port if an Event of Default occurs and the Port elects such a remedy. This provision is designed to ensure that the Living Classroom can be utilized for educational purposes by another qualified nonprofit if LEJ is unable to perform its Lease obligations. The California Coastal Conservancy will assist the Port in finding a qualified assignee. The assignment will not require subsequent Port Commission or Board of Supervisors approval as long as no material changes are made to the Lease.

**SOUTHERN WATERFRONT ADVISORY COMMITTEE (SWAC)**

SWAC reviewed and voted on proposed Lease between the Port and LEJ at its meeting on July 13, 2005. SWAC bylaws require a minimum 5 votes in favor to carry an item. At the meeting at which SWAC 8 members were present, 4 members voted in favor of the proposed transaction, 2 voted against, and 2 abstained from voting.

**BOARD OF SUPERVISORS APPROVAL**

Under Charter Section 2.110 and 9.118, leases having a term of ten years or more are subject to approval by the Board of Supervisors. The lease with LEJ for space at Heron's Head Park will require approval from the Board of Supervisors and will not become effective until such approval is granted.

**CALIFORNIA STATE COASTAL CONSERVANCY**

In October 2003, the California State Coastal Conservancy, consistent with its mission to promote public access to the coast, awarded a grant of \$400,000 to LEJ to support construction of the Living Classroom. The Public Resources Code authorizes the Coastal Conservancy to award grants and requires that the Coastal Conservancy execute agreements with grantees and property owners to protect the public interest in any improvements or developments funded by such grants. The agreement between the Coastal Conservancy, the Port and LEJ ensures that the Living Classroom will be maintained and operated in manner consistent with the intent of the grant, provides nondiscriminatory public access, and does not pose a hazard to public safety or property. A copy of the proposed Agreement is attached as an exhibit to the Ground Lease. The key terms are that the Living Classroom be used for environmental educational purposes for 20 years and that the conservancy has the right to find a replacement nonprofit to LEJ for the lease obligations in the event LEJ defaults and Port exercises its remedies.

## STAFF RECOMMENDATION

Port staff recommends that the Commission authorize and direct the Executive Director to enter into the proposed Ground Lease in substantially the form on file with the Commission Secretary, as well as all related agreements, including the tri-party agreement with the Coastal Conservancy and LEJ.

Prepared by: Mark Lozovoy, Assistant Deputy Director, Real Estate  
Carol Bach, Assistant Deputy Director, Environmental, Health and Safety  
Bijal Patel, Deputy City Attorney

**(REVISED 9/27/05)**  
**PORT COMMISSION**  
**CITY AND COUNTY OF SAN FRANCISCO**

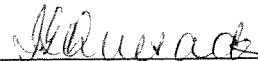
**RESOLUTION NO. 05-64**

- 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, Literacy for Environmental Justice ("LEJ") has proposed to develop a "living classroom" facility at Heron's Head Park, which is within the Port's jurisdiction; and
- WHEREAS, the proposed use of Heron's Head Park is consistent with the California Public Trust, the General Plan of the City and County of San Francisco, the San Francisco Planning Code, the Waterfront Land Use Plan and the BCDC Seaport Plan; and
- WHEREAS, the site for the LEJ Lease proposed at Heron's Head Park was analyzed in the First Addendum to Final Negative Declaration, dated July 26, 2002, and Second Addendum to Final Negative Declaration, dated August 16, 2005, File No. 1997.432E issued by the San Francisco Planning Department, Office of Environmental Review to assess any changes in environmental impacts from the proposed Lease; and
- WHEREAS, Port staff have negotiated a lease ("Lease") for the construction, maintenance, and operation of the proposed Living Classroom, a copy of which is on file with the Commission Secretary and the terms for which are outlined in the staff report for this Agenda item ("Staff Report"); and
- WHEREAS, as part of the transaction Port staff have also negotiated an agreement with the California Coastal Conservancy, a donor agency for the Living Classroom, in the form attached to the Lease; and
- WHEREAS, The Lease requires approval by the Board of Supervisors pursuant to Charter Section 9.11.8; and
- WHEREAS, Port staff recommends the Commission approve the Lease and related agreements on the terms and conditions set forth in the Staff Report; now, therefore, be it
- RESOLVED, that based on staff's recommendation and its own review and analysis, the Port Commission hereby approves the Lease and related agreements; and now, be it further

RESOLVED, that the Port Commission hereby authorizes and directs the Executive Director to forward the Lease to the Board of Supervisors for approval, pursuant to its authority under Charter Section 9.118 (c), and upon the effectiveness of such approval, to execute the Lease and related agreements; and now, be it further

RESOLVED, that the Commission authorized the Executive Director to execute and enter into any additional documents including non-material modification to the Lease and related agreements, as she deems necessary or appropriate, in consultation with the City attorney, to consummate the transactions contemplated hereby or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents.

*I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 27, 2005.*



Secretary