

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

**RESOLUTION NO. 18-39**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Golden Gate National Recreation Area (“GGNRA”) established as a unit of the National Park Service (“NPS”) in 1972, encompasses more than 80,000 acres of coastal lands in Marin, San Mateo and San Francisco counties. One of GGNRA’s most prominent sites is Alcatraz Island which is historically significant as part of early coastal fortification systems and later as a federal prison; and
- WHEREAS, Since 1972, the Port of San Francisco has served as the embarkation point for tourists and local residents visiting Alcatraz Island; and
- WHEREAS, NPS is empowered by the federal government to issue a bid prospectus and to select a ferry concessioner through a competitive process; and
- WHEREAS, The Port has periodically negotiated leases with ferry concessioners for embarkation locations to Alcatraz Island, with the embarkation point moving from Pier 41 to Pier 31½ as different ferry companies with leaseholds along Port property have been selected through the NPS ferry-bid process; and
- WHEREAS, The Port and NPS share a common goal of enhancing the Alcatraz visitor experience through significant investments in landside and waterside capital improvements – to improve the ease of movement of the more than 1.5 million visitors each year – and in interpretative installations and site amenities including food, retail, and restrooms; and
- WHEREAS, Alcatraz Island, access to which is controlled by NPS, is a one-of-a-kind visitor destination, attracting thousands of people each day to the waterfront and providing revenues roughly double the amount the Port would expect for a similar use not associated with Alcatraz Island; and
- WHEREAS, In 2008, the Port’s Executive Director and the GGNRA Superintendent began discussions about NPS selecting a permanent embarkation point at the Port and entering a direct agreement with the Port that governs the terms by which the embarkation point would be leased to NPS’s concessionaires; and

- WHEREAS, By entering such a direct agreement for the use of a set embarkation point, NPS, the Port and the public could be spared the disruption of moving the service each time a new concessioner is selected; and
- WHEREAS, Port staff, based on site criteria developed in conjunction with NPS staff, identified the following five potential Port properties for a permanent Alcatraz Embarkation location: Piers 19½, 29 ½, 31½, 41, and 45 Shed A as detailed in a December 3, 2009 informational presentation to the Port Commission; and
- WHEREAS, NPS completed a draft Environmental Impact Study under the National Environmental Policy Act to support its site selection process; and
- WHEREAS, Port staff in coordination with NPS staff selected Pier 31½ as the preferred Alcatraz Embarkation site and updated the Port Commission in a May 26, 2015 informational presentation; and
- WHEREAS, Pier 31½ is part of the Northeast Waterfront area and retail, food and beverage, and ferry service are allowed uses in such area under the Port's Waterfront Land Use Plan;; and
- WHEREAS, NPS developed an implementable vision for the project (the "Project") for Alcatraz ferry service and amenities within the bulkheads and portions of the sheds of Piers 31 and 33 and the Pier 31½ marginal wharf (the "Site"); and
- WHEREAS, The Site is currently operated for ferry service to Alcatraz Island and supporting food and beverage; the Project would expand existing uses to include a visitor contact station and ancillary retail uses, and
- WHEREAS, NPS has determined that a long-term embarkation site is desirable to improve the quality of the Alcatraz visitor experience; and
- WHEREAS, NPS has partnered with the Golden Gate National Parks Conservancy (the "Conservancy"), a local nonprofit dedicated to conservation of GGNRA lands through public education, historic interpretation, public access, and capital improvements, as part of its long-term plan for the Site; and
- WHEREAS, The Conservancy is a local nonprofit with a proven track record of developing and operating memorable and stimulating visitor experiences in nationally- and internationally-renowned destinations including Alcatraz Island cell house tours and Museum Store, Golden Gate Bridge Welcome Center, Crissy Field Center, and Lands End Visitor Center, among others; and
- WHEREAS, The shared vision of a unified visitor experience - from site entrance and orientation, to ferry embarkation, to Alcatraz Island and jailhouse –

requires specialized knowledge of and experience in historic interpretation and education; and

WHEREAS, As set forth in Administrative Code Section 2.6-1, the Board of Supervisors' policy is to approve only such proposed leases involving City property or facilities that departments have awarded to the highest responsible bidder under the competitive bidding procedures, except where competitive bidding is impractical or impossible; and

WHEREAS, Development of an embarkation site with access to Alcatraz Island, a visitor contact station and retail and food and beverage amenities presents an important opportunity to provide public serving, cultural, historic and other significant public benefits to the people of the City, the entire Bay Area region and beyond, including an opportunity for a significantly improved one-of-a-kind waterfront destination that will achieve public access objectives for the Site while adding an attractive mix of uses and destinations along the waterfront; and

WHEREAS, The achievement of the Port's goal of retaining the Alcatraz embarkation site and the benefits noted above on Port property requires negotiating directly with NPS and NPS's selected partner, the Conservancy; and,

WHEREAS, NPS and Port staff negotiated, on a sole source basis, a Term Sheet dated July 7, 2016 (the "Term Sheet"), which sets forth the essential terms upon which the Port and NPS would negotiate in good faith to reach agreement on a final agreement (the General Agreement or GA) regarding the Project leases that will be attached to the GA: a form lease with the NPS-selected concessioner for ferry service and a lease with the Conservancy for a visitor contact station, retail, and food and beverage uses; and

WHEREAS, On July 12, 2016, the Port Commission approved Resolution No. 16-30 endorsing the Term Sheet and authorizing the Executive Director of the Port to execute the Term Sheet and present the Term Sheet to the Board of Supervisors for its endorsement and a determination that the proposed Project is exempt from competitive bidding requirements pursuant to Administrative Code Section 2.6-1; and

WHEREAS, On November 29, 2106 the Board of Supervisors adopted Resolution No.497-16 endorsing the Term Sheet and exempting the Project from the competitive bidding policy set forth in Administrative Code, Section 2.6-1; and

WHEREAS, The Port and NPS have negotiated a final GA regarding the Project and its associated lease attachments; and

- WHEREAS, The GA between the Port and NPS has a term of up to 50 years (30 years plus two 10-year options to extend) for the Alcatraz Island ferry embarkation site on Piers 31, 31½, and 33; and
- WHEREAS, The GA designates the Site as the long-term sole visitor contact station and ferry embarkation for public access to Alcatraz Island and outlines independent and joint obligations, such as NPS selecting and contracting for ferry concession services and the Port entering leases with NPS's selected operator(s) for ferry concessions and the Conservancy for visitor services and a café, and
- WHEREAS, The GA describes capital obligations of the ferry concessioner, the Conservancy, and the Port, and provides for clarity, cooperation and coordination throughout the term between the Port and NPS as further described in the June 7, 2018 Memorandum to the Port Commission that accompanied this Resolution (the "Memorandum"); and
- WHEREAS, NPS is solely responsible for selection of and contracting with operators for the ferry concession (the "Ferry Concession Contract") and Port has no role in the selection, solicitation, and/or award of a contract to a selected operator (a "Ferry Concessioner"); and
- WHEREAS, On January 18, 2018, the National Park Service (NPS) released a prospectus (the "Prospectus") soliciting proposals to operate Alcatraz passenger ferry service and associated services within Golden Gate National Recreation Area; and
- WHEREAS, As set forth in the Prospectus, the term of the new Ferry Concession Contract will be for fifteen (15) years and proposals are due in summer 2018; and
- WHEREAS, That in the support of the issuance of a timely and appropriate supplemental wage determination (the "Supplemental Wage Determination"), Port staff forwarded correspondence to the attention of the Department of Labor including publicly-available data on the current wages for relevant occupations at Port ferry operations; and
- WHEREAS, NPS published the Supplemental Wage Determination from the Department of Labor for commonly used labor classifications for a San Francisco passenger ferry operation (e.g. Master Captain, Senior Deckhand/Mate, Deckhand and Able-Bodied Seaman) and has amended the Prospectus with the Supplemental Wage Determination on May 21, 2018; and
- WHEREAS, The initial and each subsequent NPS prospectus for a Ferry Concession Contract must include as part of the information furnished in the

Prospectus a form lease (a “Ferry Concessioner Lease”) prepared and approved by the Port that the Ferry Concessioner will be required to sign; and

WHEREAS, Under the GA, the Port agrees to enter into a Ferry Concessioner Lease for portions of the Site with the Initial Ferry Concessioner substantially in the form of the lease attached to the GA with no changes other than (A) changes agreed to by the Port and NPS in the sole discretion of each; and (B) to add new Laws and City Requirements effective as of the commencement date of the Ferry Concessioner Lease; and

WHEREAS, Subsequent Ferry Concession Leases will be prepared by Port based on the then-current Ferry Concessioner’s Lease and the then-current standard terms and conditions in the Port’s form lease for similar operations, including retail/maritime uses, and shall include all then-applicable City Requirements; and

WHEREAS, Each Ferry Concessioner will be required to pay monthly Base Rent for its premises, escalated annually, and

WHEREAS, In addition to Base Rent, the Ferry Concessioner shall pay monthly Percentage Rent on the difference between the Gross Revenue minus the NPS Concession Franchise Fee, but only to the extent that such amount exceeds Base Rent, and

WHEREAS, The NPS-selected Initial Ferry Concessioner must complete the following no later than the 5th anniversary date of the Ferry Concessioner Lease: waterside improvements, including new ferry barges, docks and associated infrastructure; Pier 31½ Marginal Wharf deck surface and visitor amenities; Pier 33 Shed visitor restrooms; Pier 31 bulkhead restrooms; interior improvements in the Pier 31 and Pier 33 Sheds; Pier 33 South Bulkhead Building ticketing area improvements; and demolition of a portion of the 2nd floor of the Pier 33 South Bulkhead Building and construction of a mezzanine area(together, the “Embarkation Site Improvements”); other material business terms are set forth in the attached Memorandum; and

WHEREAS, Upon completion of the Embarkation Site Improvements the Initial Ferry Concessioner shall be entitled to a rent credit in a maximum amount of \$2,520,000 for the Embarkation Site Improvements as generally described above and further set forth in the attached Memorandum; and

WHEREAS, Once the Embarkation Site Improvements are completed, certain portions of the property will be turned over to the Conservancy; and

- WHEREAS, Port and NPS agree that, in order to enhance the visitor experience, NPS selected the Conservancy to provide the interpretive retail and food and beverage services and other public amenities at the Site and as described above, the Board of Supervisors exempted the lease with the Conservancy from the City's competitive bidding policy; and
- WHEREAS, Port has negotiated a lease with the Conservancy for initial and potentially future site improvements and to operate visitor amenities including a visitor contact station and café consistent with the GA for a 30-year term with two 10-year options; and
- WHEREAS, The current sole source exemption under Board of Supervisors Resolution No.497-16 covers the initial thirty (30) year term of the Conservancy Lease, Port proposes to extend the sole source exemption for the two 10-year option periods because it will provide for continuing capital improvements to its premises and will continue to provide a cohesive visitor experience to the Site; and
- WHEREAS, The Conservancy will be required to pay monthly Base Rent, escalated annually, for its premises. In addition to Base Rent, the Conservancy shall pay monthly Percentage Rent on the amount by which Gross Revenues exceed Base Rent; other material business terms are set forth in the attached Memorandum; and
- WHEREAS, The Conservancy shall construct improvements including the build-out of the Pier 31 bulkhead cafe; and in a later phase the Pier 33 visitor contact station/interpretive retail center (together, the "Initial Tenant Improvements"); and
- WHEREAS, The Conservancy must complete the Initial Tenant Improvements no later than the first anniversary of each of the two phases, and upon completion the Conservancy shall be entitled to a rent credit of \$554,000 for the Initial Tenant Improvements as further described in the Memorandum; and
- WHEREAS, The entire Site is subject to the common law public trust for commerce, navigation and fisheries and the Burton Act statutory trust (collectively, the "Public Trust"); and
- WHEREAS, Use of Public Trust lands is generally limited to maritime commerce, navigation, fisheries, water-oriented recreation, including commercial facilities that must be located on or adjacent to water, and environmental stewardship and recreation, such as natural resource protection, wildlife habitat and study, and facilities for fishing, swimming, and boating; and
- WHEREAS, Ancillary or incidental uses that promote Public Trust uses or accommodate public enjoyment of Public Trust lands such as hotels,

restaurants, and visitor-serving retail are also permitted on Public Trust lands; and

WHEREAS, The Project has been planned and designed to provide multiple Public Trust benefits delivered via development and use of the Site as a long-term home for Alcatraz ferry and other maritime excursions, with various visitor-serving amenities including public access space and uses, an interpretive retail center and a restaurant/café serving Alcatraz ferry passengers as well as the general public; and

WHEREAS, A Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review on December 6, 2017; and

WHEREAS, On December 27, 2017, an appeal of the decision to issue the Final Mitigated Negative Declaration (FMND) was filed within the 30-day public review period; and

WHEREAS, The Planning Department prepared responses to Sausalito's comments, made minor revisions to the PMND and on February 22, 2018, the Planning Commission held a public hearing on the PMND and after consideration of the points raised by the appellant, both in writing and at the February 22, 2018 hearing, found that the contents of the PMND and the procedures through which the PMND was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) (CEQA), 14 California Code of Regulations Sections 15000 et seq. (the "CEQA Guidelines") and Chapter 31 of the San Francisco Administrative Code ("Chapter 31") and finalized the PMND (the Final MND); and

WHEREAS, The Planning Commission found the FMND was adequate, accurate and objective, reflected the independent analysis and judgment of the Department of City Planning and the Planning Commission, and reaffirmed its conclusion that the Project could not have a significant effect upon the environment; and

WHEREAS, On February 23, 2018, the Environmental Review Officer signed the FMND for the Project and the Final MND was issued in compliance with CEQA, the CEQA Guidelines and Chapter 31; and

WHEREAS, The Commission Secretary for the Planning Department, Jonas Ionin, is the custodian of records at 1650 Mission Street, Fourth Floor, San Francisco, California; and

WHEREAS, Port staff prepared a Mitigation Measures and Improvement Measures Monitoring and Reporting Program (MMRP), which material was made

available to the public and this Commission for this Commission's review, consideration and action; and now, therefore be it

RESOLVED, That retaining the high-revenue generating, maritime Alcatraz embarkation use on Port property is a priority for economic and visibility reasons, with no similar use able to attract the number of visitors and economic activity generated by the internationally-known Alcatraz Island; and be it further

RESOLVED, That the Board of Supervisors exempted the Project from the competitive bidding policy set forth in Administrative Code, Section 2.6-1, including (1) a lease for ferry service to Alcatraz Island with a future concessioner selected by NPS and (2) a lease with the Golden Gate National Parks Conservancy; and be it further

RESOLVED, That Port Commission directs staff to seek a determination that the entire term of the Conservancy Lease, including the two extension options are exempt from competitive bidding requirements pursuant to Administrative Code, Section 2.6-1; and be it further

RESOLVED, That prior to execution of the Initial Ferry Concessioner Lease, the Operations Plan included in the lease will be updated to reflect the following annual limits for interpretive park cruises: 45,000 passengers in years 1 and 2; 46,125 passengers in year 3; 47,278 passengers in year 4; 48,460 passengers in year 5; and 90,000 passengers annually in year 6 through lease expiration after year 15; and, be it further

RESOLVED, That in addition to the remedies the Port may have for any violation of the Operations Plan, including but not limited to the declaration of a material default, the initial Ferry Concessioner Lease shall provide that any violation of the limits noted above in a given year will result in an equivalent reduction of the interpretive cruise passenger limit in the following year; and, be it further

RESOLVED, That a provision shall be added to the GA to prohibit interpretive park cruises from any subsequent Ferry Concessioner Lease without the prior consent of both the Port and NPS, in each such party's sole discretion; and, be it further

RESOLVED, That in acknowledgement of the concerns raised by the City of Sausalito as to future construction at Fort Baker, the General Agreement should be amended to include a statement noting that the parties intend to comply with any required environmental and regulatory reviews and approvals for any proposed changes to the vessel landing operations at Fort Baker; and be it further



- RESOLVED, That subject to Board of Supervisors' approval, the Port Commission approves the GA between the Port and NPS that designates the Site as the long term sole visitor contact station and ferry embarkation for public access to Alcatraz Island on the terms further described in the Memorandum; and be it further
- RESOLVED, That the Port Commission approves the form of lease for the Initial Ferry Concessioner substantially in the form of the lease attached to the GA as further described in the Memorandum with no changes other than (A) changes agreed to by the Port and NPS in the sole discretion of each; and (B) to add new Laws and City Requirements effective as of the commencement date of the Lease; and be it further
- RESOLVED, If space within the Site is not available, Port may allow the Initial Ferry Concessioner to use additional space under a Port license or other agreement subject to Port's standard terms and conditions for such agreements and payment of rent as specified in the then-current published Port Commission-approved rental rate schedule; provided that, Port agrees to waive the requirement to pay rent for up to 3,000 square feet of space for up to two (2) years during construction of the Embarkation Site Improvements; and be it further
- RESOLVED, The Port Commission authorizes Port staff to prepare and execute leases for portions of the Site with subsequent Ferry Concessioners selected by NPS based on the then-current Ferry Concessioner's Lease and the then-current standard terms and conditions in the Port's form lease for similar operations, including retail/maritime uses, which shall include all then-applicable City Requirements; and be it further
- RESOLVED, Each Ferry Concessioner shall have a one-time right of first refusal to use specified, additional aprons in the Water Basin, as available and appropriate for such use, for lay berthing subject to the Ferry Concessioner entering into a Port license or other agreement subject to Port's standard terms and conditions for such agreements and payment of rent as specified in the then-current published Port Commission-approved rental rate schedule for a term that may exceed five years but may not exceed the term of the associated Ferry Concessioner Lease; and be it further
- RESOLVED, That, subject to Board of Supervisors' approval, the Port Commission approves the Conservancy Lease for initial and ongoing site improvements and to operate visitor amenities including a visitor contact station and café consistent with the GA for a thirty (30) year term with two (2) ten (10) year options as further described in the Memorandum; and be it further

RESOLVED, That the Port Commission has reviewed and considered the FMND and the record as a whole, finds that the FMND is adequate for its use as the decision-making body for the Project, that there is no substantial evidence that the Project will have a significant effect on the environment with the adoption of the measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project, and hereby adopts the FMND; and be it further

RESOLVED, That the Port Commission hereby adopts the FMND and the MMRP attached hereto as Attachment A and incorporated herein as part of this Resolution by this reference thereto and all required mitigation measures identified in the FMND and contained in the MMRP will be included in the lease between the Port and each successive Ferry Concessioner and the Port and the Conservancy; and be it further

RESOLVED, That the Port Commission finds that the Project, including the GA and leases is consistent with the Public Trust in that the Project will provide multiple Public Trust benefits delivered via use of the Site as a long-term home for Alcatraz ferry and other maritime excursions, with various visitor-serving amenities including public access space and uses, an interpretive retail center and a restaurant/café serving Alcatraz ferry passengers as well as the general public; and be it further

RESOLVED, That, upon approval by the Board of Supervisors as described above, the Port Commission authorizes the Executive Director of the Port, or her designee, to execute the GA, initial Ferry Concession Lease, successive Ferry Concession Leases and the Conservancy Lease; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director of the Port, or her designee, to enter into any amendments or modifications to the General Agreement, initial Ferry Concession Lease, successive Ferry Concession leases and the Conservancy lease and to exercise associated extension options that the Executive Director determines, in consultation with the City Attorney, are in the best interests of the Port, do not materially decrease the benefits to or materially increase the obligations or liabilities of the Port, and are in compliance with all applicable laws and are necessary and advisable to complete the transaction and 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 June 25, 2018.***

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**Secretary**