

AMENDED IN COMMITTEE
09/08/2021

FILE NO. 210813

RESOLUTION NO.

1 [Lease Agreement - Pilara Family Foundation - Pier 24 Annex - Minimum Base Rent of
2 \$92,857.40 Per Month]

3 **Resolution authorizing a new lease between the Port of San Francisco and the Pilara**
4 **Family Foundation for the premises located at Pier 24 Annex on The Embarcadero for a**
5 **term of approximately three years and ten months to commence following Board**
6 **approval at a monthly rent of \$92,857.40 with a monthly rent credit of \$87,122.09 in**
7 **respect of previously completed capital improvements to the property.**

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9 WHEREAS, California Statutes of 1968, Chapter 1333 (the "Burton Act") and Charter,
10 Sections 4.114 and B3.581 empower the San Francisco Port Commission ("Port
11 Commission") with the power and duty to use, conduct, operate, maintain, manage, regulate,
12 and control the Port area of the City and County of San Francisco; and

13 WHEREAS, The Port entered into Lease No. L-14414 in June 2007 with the Pilara
14 Family Foundation, a nonprofit corporation ("PFF") for 27,311 square feet of Pier 24 Annex
15 (the "Original Lease"); and

16 WHEREAS, The Original Lease, as subsequently amended, was for a term of ten
17 years with monthly rent and an amortized rent credit in the amount of \$3.0 million for base
18 building core and shell improvements only; and

19 WHEREAS, The Port reviewed and validated \$8.5 million in base building core and
20 shell improvements performed by PFF, leaving \$5.5 million in unamortized capital
21 improvements; and

22 WHEREAS, The Original Lease expired on November 30, 2017, and the rent credit
23 was exhausted; the Original Lease has been on holdover status since its expiration; and

24 WHEREAS, The parties engaged in several rounds of negotiations but were unable to
25 resolve their disputes regarding Port's claims for rent due and PFF's claims for rent credits

1 due and after two years of such discussions, Port staff issued a 30-day notice of termination
2 on December 22, 2019; and

3 WHEREAS, After the issuance of that notice, the parties revisited their final offers and
4 reached agreement on a draft Settlement Agreement (the “Settlement Agreement”) which
5 requires the parties to enter into a new lease for the premises (the “New Lease”); and

6 WHEREAS, Under the proposed Settlement Agreement, among other things, (i) Port’s
7 claims for rent due and PFF’s claims for rent credits due under the Original Lease will be
8 resolved; (ii) Port and PFF will terminate the Original Lease and enter into a New Lease for
9 the Pier 24 Annex for a term equivalent to the time needed to apply the unamortized rent
10 credits (currently calculated at approximately three years and ten months depending on the
11 actual date of execution of the New Lease); (iii) the New Lease will allow storage, curation
12 and display of a photographic collection and require PFF to continue to provide free public
13 access to view the collection and will allow for rent credits of up to \$5.5 million; and (iv) the
14 parties will release each other from potential claims in connection with the Settlement
15 Agreement; and

16 WHEREAS, The New Lease is on the Port’s standard form lease, provides the
17 following key terms: monthly rent equal to the current parameter rental rate of \$3.40/sf per
18 month adopted by the Port Commission (with no indexing increases); PFF to take rent credits
19 of \$3.19/sf per month, leaving a payment of \$5,735.31; PFF must continue the public-oriented
20 operations at the Premises with free entry and report on visits; no transfers without Port’s
21 consent in its sole discretion; no holdover rights; and elective termination rights for PFF with
22 one year’s prior written notice, and a termination right for PFF with 90 days written notice in
23 the event that maintenance and repair obligations exceed what is reasonable in light of the
24 remaining term of the New Lease; and includes the Port’s standard provisions regarding as-is
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1 conditions, the Seawall project, Port participation in sale of the lease, hazardous materials,
2 indemnity, insurance, and all required City provisions; and

3 WHEREAS, On March 10, 2020, the Port Commission, by Resolution No. 20-14,
4 approved the terms of the Settlement Agreement and the New Lease and, subject to Board of
5 Supervisors approval of the New Lease, authorized the Executive Director of the Port to
6 execute both documents; and

7 WHEREAS, Beginning on March 16, 2020, the City's Health Officer and Mayor issued
8 a series of public health orders in response to the Covid-19 pandemic that prohibited and/or
9 restricted PFF from allowing free public access to view the collection as required under the
10 terms of the New Lease; and

11 WHEREAS, In response to the public health orders, PFF and the Port agreed to
12 postpone the introduction of a Board of Supervisors resolution approving the New Lease until
13 such time as PFF would be able to allow free public access as required under the New Lease;
14 and

15 WHEREAS, PFF resumed offering free public access to view the collection beginning
16 July 1, 2021; and

17 WHEREAS, A copy of the New Lease is on file with the Clerk of the Board of
18 Supervisors in File No. 210813; and

19 WHEREAS, The permitted uses under the New Lease are a continuation of existing
20 and related uses and are not a project under California Environmental Quality Act; and

21 WHEREAS, San Francisco Charter, Section 9.118, requires Board of Supervisors'
22 approval of a real property lease with a term of 10 or more years, or having anticipated
23 revenue to the City of \$1,000,000 or more when the lease is executed; now, therefore, be it

24 RESOLVED, That the Board of Supervisors approves the New Lease and authorizes
25 the Port Executive Director or her designee to execute the New Lease as approved by the

1 City Attorney and in substantially the form on file with the Clerk of the Board of Supervisors;
2 and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
4 Director to enter into any additions, amendments or other modifications to the New Lease that
5 the Executive Director, in consultation with the City Attorney, determines, when taken as a
6 whole, to be in the best interest of the Port, do not materially increase the obligations or
7 liabilities of the City or the Port, and are necessary or advisable to complete the transactions
8 which this Resolution contemplates and effectuate the purpose and intent of this Resolution,
9 such determination to be conclusively evidenced by the execution and delivery by the
10 Executive Director of such documents and, be it;

11 FURTHER RESOLVED; That within thirty (30) days of the New Lease being fully
12 executed by all parties, the Port shall provide copies of the New Lease to the Clerk of the
13 Board for inclusion into the official file.

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