

**MEMORANDUM**

October 20, 2011

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Ann Lazarus, Vice President  
Hon. Francis X. Crowley  
Hon. Doreen Woo Ho  
Hon. Leslie Katz

**FROM:** Monique Moyer  
Executive Director

**SUBJECT:** Request authorization to award, subject to the Board of Supervisors approval, a five-year lease for surface parking, special events and signage between the Port of San Francisco and China Basin Ballpark Company, LLC, Lease No. L-14980 for Seawall Lot 337, Pier 48 Shed A, Shed C, the Pier 48 Valley and access from Terry Francois Blvd and Mission Rock Street

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

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**BACKGROUND**

On September 9, 1997, the Port Commission approved Resolution No. 97-78, authorizing Port staff to execute a ten-year lease with the China Basin Ballpark Co., LLC ("CBBC") for the development and construction of a new parking lot at Seawall Lot ("SWL") 337 and approving CEQA findings supporting this use. Both the lease and CEQA findings were subsequently approved by the San Francisco Board of Supervisors and, on November 15, 1999, Lease No. L-12515 commenced (the "Current Lease").

On November 15, 2009, the Current Lease term expired and has since been on a month-to-month holdover status. Effective April 1, 2011, pursuant to the Holding Over provisions of the Current Lease, Port staff increased the rent to market. Informed by the new market rate adjustment, Port staff and CBBC have negotiated terms for a new, interim 5-year lease (the "New Lease"). CBBC is a tenant in good standing pursuant to the Port's policy. These terms are presented below for your review and approval.

**THIS PRINT COVERS CALENDAR ITEM NO. 10B**

## **ANALYSIS**

The Current Lease requires a rent payment of 50% of net parking revenue to the Port after deducting for City parking tax and operating expenses. Through the Current Lease termination date of November 2009, as allowed by the Current Lease, CBBC was permitted a rent credit to reimburse costs related to the initial development of the parking lot (demolition of pre-existing structures, site grading, drainage, lighting, fencing, striping). Under the proposed New Lease, the Port is guaranteed the greater amount of either Base Rent or 66% of all gross receipts for parking net of the City parking tax. Recognizing that 85% of the gross revenues for this parking lot derive from patrons of events at AT&T Park (primarily baseball games), the New Lease provides a deduction of up to \$620,000 per year for extraordinary expenses attributable to the provision of event style parking serving events at the ballpark. These terms have been applicable since April 1, 2011 when the Port exercised the holdover provisions of the Current Lease.

## **SPECIAL EVENTS**

The Current Lease authorized special events as a permissible use at SWL 337. The New Lease permits CBBC to also use Pier 48 Shed A, C and Valley for special events. CBBC's use of Pier 48 shall be in the form of a non-exclusive license, allowing the Port and CBBC to coordinate space needs, ensuring maximum utilization and revenue generation from this facility.

CBBC will use its marketing expertise to promote events at Pier 48 and SWL 337 and pay rent consistent with Port Commission approved special event rental parameters. For special events greater than 14-days duration, the New Lease requires Port and CBBC to negotiate a market-based agreement approved by the Executive Director. In all such cases, the minimum payment to Port shall be no less than the Port Commission approved rental rate for paved land. If a special event displaces percentage rent from parking revenues, the parties must negotiate a payment making the Port whole to be approved by the Executive Director. Should the Port Commission approve the Resolution attached to this staff report, approval for the majority of special events will be at the discretion of the Port's Executive Director or her designee with special events exceeding 60-days duration requiring approval from the Port Commission.

The New Lease allows CBBC to use its marketing expertise to sell promotional space on directional signage within Parcel A. Such signage must conform to Port's sign guidelines with all revenues (net of costs of creating the promotional material) shared equally between Port and CBBC.

## **SOLE SOURCE**

On May 25, 2010, the Port Commission approved Resolution No. 10-32, authorizing staff to enter into an Exclusive Negotiation Agreement ("ENA") with Seawall Lot 337 Associates, LLC to negotiate terms for the development and lease of SWL 337 and Pier 48. This ENA commenced September 15, 2010 and, with options to extend, continues

into 2016. The ENA recognizes both the existing, month-to-month lease with CBBC, a San Francisco Giant's affiliate, and the effort to negotiate terms for a new interim lease.

At Port parking facilities not encumbered by an ENA, the Port conducts a public bidding process to determine a suitable parking lot operator. At SWL 337, staff recommends the Port Commission find that conducting a public bid is impractical because of the uncertainties presented by the developer's rights through the ENA. Should the Port Commission approve the New Lease, staff will proceed to the Board of Supervisors to seek sole source approval for direct negotiations and simultaneous approval of the New Lease. If, subsequent to the New Lease being approved by the Port Commission and the Board of Supervisors, the ENA were to terminate, the Port would pursue its typical public bidding process for a subsequent lease or leases at this site.

### **LEASE TERMS**

<b>Tenant</b>	China Basin Ballpark Company, LLC
<b>Lease No.</b>	L-14980
<b>Premises</b>	SWL 337, Pier 48 Sheds A, C & Valley; Expansion to Pier 48 Shed B at Port's option.
<b>Lease Commencement</b>	Following Board of Supervisors approval, anticipated January 1, 2012.
<b>Lease Expiration Date</b>	60 months following the commencement date.
<b>Monthly Base Rent ("Minimum Rent")</b>	\$355,000, April – October \$45,000, November – March
<b>Security Deposit</b>	Stand By Letter of Credit in lieu of or in addition to cash at Port's sole discretion.
<b>Rent Adjustment</b>	Annual 3%.
<b>Percentage Rent</b>	The greater amount of the Base Rent or 66% of gross Revenue (after deduction for parking tax and up to \$620,000 in substantiated annual extraordinary costs directly associated with ballpark event parking) in excess of Monthly Base Rent. Eligible extraordinary costs include 100% of security, accessibility shuttle, temporary bathroom facilities and post-game Premises cleaning and one third of labor costs.
<b>Port's Right to Terminate</b>	Only upon termination of ENA.
<b>Maintenance and Utilities</b>	Port has no obligations.
<b>Use</b>	Operation of parking lot for ballpark event parking, commuter parking, special events and in-site signage.

**Operation Plan**

Tenant is required to submit and comply with Operational and Customer Service Plan to be approved by Port.

**Insurance, Hazardous Materials and Holdover Provisions**

These provisions will conform to Port's standard form lease.

**Other Approvals**

CEQA: Tenant shall comply with the applicable provisions and mitigation measures in the Final Environmental Impact Report for the Giants Ballpark certified June 26, 1997 (Case No. 96.176E) and the Addendum #3 to the Final Environmental Impact Report for the Giants Ballpark dated June 16, 1999.  
City Planning: The uses contemplated in this staff report have been authorized by the San Francisco Planning Department pursuant to Planning Code Section 205 (Temporary Use Authorization).

**RECOMMENDATION**

Port staff recommends that the Port Commission approve the five-year lease for parking, special events and on-site signage between the Port of San Francisco and China Basin Ballpark Company, LLC, Lease No. L-14980, for SWL 337, Pier 48 Shed A, Shed C and Pier 48 Valley and authorize the Executive Director to forward said Lease to the Board of Supervisors for award and approval pursuant to Board's authorization under Charter Section 9.118, and upon the effectiveness of such approval, execute said lease.

Prepared by: Phil Williamson, Project Manager  
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For: Byron Rhett, Deputy Director of Planning and Development  
Susan Reynolds, Deputy Director of Real Estate

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO. 11-68**

- WHEREAS, Charter Section B3.581 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, Use of Port property for surface parking generates a significant revenue stream to the Port, and the Port desires to operate its parking lots in an efficient manner while maximizing revenues; and
- WHEREAS, On September 9, 1997, the Port Commission approved CEQA findings supporting this use at Seawall Lot (“SWL”) 337; and
- WHEREAS, The Port Commission approved ten-year lease with the China Basin Ballpark Company, LLC (“CBBC”) for the development and construction of a new parking lot at SWL 337 expired on November 15, 2009, was adjusted to market on April 1, 2011, and has been on holdover status at market rate since that date; and
- WHEREAS, CBBC is a tenant in good standing pursuant to Port Commission policy; and
- WHEREAS, Port staff and CBBC have negotiated terms for a new, interim five-year lease as described in the staff report attached to this Resolution; and
- WHEREAS, The new lease will be directly negotiated with CBBC as a public bid is impractical due to uncertainties presented by the development rights for the premises pursuant to the May 25, 2010, Port Commission approved Exclusive Negotiation Agreement (“ENA”) with Seawall Lot 337 Associates, LLC, to negotiate terms for the development and lease of SWL 337 and Pier 48; now, therefore, be it
- RESOLVED, That the Port Commission delegates to the Executive Director or his or her designee, the authority to consent or approve amendments or other implementing documents wherever the New Lease requires or permits; and, be it further
- RESOLVED, That the Port Commission awards, subject to Board of Supervisors’ approval, the lease on the terms described in the attached staff report and authorizes and directs the Executive Director or her designee to forward the Lease to the Board of Supervisors (the “Board”) for approval, pursuant to the Board’s authority under Charter Section 9.118, and upon the effectiveness of such approval, to execute the Lease; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director to enter into any additions, amendments, or other modifications to the Lease that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligation or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Lease contemplate 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 the Lease, and any such amendments hereto.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of October 25, 2011.***

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Secretary