



## MEMORANDUM

July 8, 2022

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. John Burton  
Hon. Gail Gilman

**FROM:** Elaine Forbes   
Executive Director

**SUBJECT:** Request approval of: (1) a resolution rescinding Resolution 07-29 which prohibits Port from paying brokers' commissions and adopting a new interim broker-policy that permits payment of brokers' commissions and fees for Ferry Plaza East Building and Piers 33 ½, subject to the limitations set in the proposed policy (the interim "Broker Policy") and (2) a resolution authorizing the pursuit of a proposed multi-site offering using a broker-assisted, competitive solicitation process to lease the Ferry Plaza East Building behind the Ferry Building and a restaurant space in Pier 33 ½ Building

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolutions Nos. 22-37 and 22-38

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### EXECUTIVE SUMMARY

Port staff seeks approval to use a broker-assisted competitive solicitation process to find prospective tenants to lease the Ferry Plaza East Building and the restaurant space in Pier 33 ½. On April 12, 2022, Port staff made an informational presentation to the Port Commission and the public that the Port has two vacant properties that are ready to be leased and activated as a key part of the Port's economic recovery initiative to meet strategic objectives, and sought feedback on using: (1) a multi-site offering strategy, which is operationally more efficient than issuing individual requests for proposals (RFPs) to find tenants to lease these Port properties and (2) a broker-assisted competitive solicitation process ("Broker-Assisted-RFP" or "B-RFP"). The Port Commission provided feedback directing staff to return to the Port Commission after

**THIS PRINT COVERS CALENDAR ITEM NO. 11B**

conducting additional due diligence about leasing strategy and to solicit stakeholders' feedback regarding solicitation of tenants for the properties involved.

Since receiving that feedback, Port staff has continued to work with the City's Real Estate, a Division of the City Administrator's Office ("RED"), to select a capable brokerage firm from RED's pre-qualified brokers list to perform a scope of services to assist with finding potential tenants for these spaces. Port staff has also received input from stakeholders, including the Northern Waterfront Advisory Committee ("NAC") on May 18, 2022, staff of the San Francisco Bay Conservation and Development Commission ("BCDC"), and the waterfront community about the proposed leasing of these two properties.

Except for this Executive Summary, the remainder of this report includes updates to the April 8 staff report, shown in underline and ~~strike through~~ and has the following additional information:

- A. The proposed interim Broker Policy (Attachment A) to help the Port compete more effectively in the commercial property leasing market and provide guidance and parameters for broker participation, commissions, and fees;
- B. A summary of updated offering conditions and parameters, include the required minimum business terms for the anticipated lease; and
- C. An updated Tenant Selection Process under the B-RFP.

Taking the proposed actions is in the Port's interest as it will help Port staff to continue to implement the Port's economic recovery initiatives that include Port's long-term leasing strategy to re-tenant Port properties, particularly restaurants and retail spaces. The remainder of this staff report: (1) provides the basis for rescinding the existing prohibition to pay broker commissions in leasing Port properties, (2) describes the proposed new interim Broker Policy for application to FPBE and Piers 33½,, and (3) the proposed multi-site offering, including conditions of the offering, required tenant qualifications, and the tenant competitive selection process. Port staff recommends that the Port Commission adopt the resolutions attached to this staff report.

A summary outline of this staff report includes the following:

- I. Strategic Plan Alignment
- II. Background
- III. Profile of the Spaces to lease
- IV. Summary Market Conditions and Measures to address the Conditions
- V. Solicitation Strategy
- VI. Benefits Desired of this Offering
- VII. Recommended Offering Terms
- VIII. Next Steps

## I. STRATEGIC PLAN ALIGNMENT

A successful solicitation strategy that considers the profiles of the spaces to be leased and market conditions will support two of the Port's Strategic Plan objectives:

- *Productivity*: Reactivate Port's vacant retail spaces in a timely manner by attracting tenants to invest in Port property and generate economic benefits for Port, tenants, and stakeholders.
- *Stability*: Maintain the Port's financial strength by maximizing the value of Port property and increasing economic benefits

## II. BACKGROUND

At the February 13 and April 13, 2021 Commission meetings, staff reported on how COVID-19 pandemic has impacted Port due to economic disruptions and recommended measures addressing the impacts. Recently, at the February 22, 2022 Port Commission meeting, staff presented the proposed Port's *Fiscal Year 2022-23 and 2023-24 Biennial Operating and Capital Budgets and the Acceptance and Expenditure of Federal Stimulus*,<sup>1</sup> which includes, among other things, development of a long-term leasing strategy to re-occupy Port properties, particularly restaurants and retail spaces as one of the recommended economic recovery initiatives.

Because more Port retail/restaurant spaces may become vacant if current market conditions continue to persist, a leasing strategy using the assistance of the brokerage community is proposed so that multiple, current vacant spaces or spaces that may become vacant in the near-term, could be offered for lease. This strategy will include new leasing incentive concepts and some of those approved under Port Commission Resolution No. 21-16, including (1) rental rate discounts; (2) rent abatement for tenant-funded improvements to Port property; etc.

Between December 1993 and April 2007, Port Commission, under its Resolution No. 93-151, had a policy allowing payment of brokers' commission. In April 2007, the Port Commission, under its Resolution No. 07-29,<sup>2</sup> rescinded this ability to pay brokers' commissions based on the low property vacancy rates at the time and overall healthy market conditions. It was thought then that this rescension would not harm Port's ability to lease space and would benefit the Port by ceasing the payment of brokers' commissions. Understanding the cyclical market, the Resolution provides that Port staff may recommend paying brokers' commissions to aid Port's ability to lease vacant spaces if market conditions change dramatically. We are now in a dramatically changed market conditions, as confirmed by brokers contacted by Port staff and recent news articles, particularly, the San Francisco Business times, with excess supply of spaces

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<sup>1</sup> February 18, 2022 Staff Report Fiscal Year 2022-23 and 2023-24 Biennial Operating and Capital Budgets and the Acceptance and Expenditure of Federal Stimulus - [https://sfport.com/files/2022-02/02222022\\_Item%207A%20FY22-23%20and%2023-24%20Biennial%20Operating%20and%20Capital%20Budget%20Action\\_final.pdf](https://sfport.com/files/2022-02/02222022_Item%207A%20FY22-23%20and%2023-24%20Biennial%20Operating%20and%20Capital%20Budget%20Action_final.pdf)

<sup>2</sup> See Resolution here: <https://sfport.com/media/7782>

and constrained demand as further detailed later in this staff report. Retail, restaurant, and similar public gathering spaces have been particularly hard hit by the COVID-19 pandemic.<sup>3</sup>

Based on current market conditions, the Port economic recovery initiatives, and the benefits of using brokerage services to procure tenants, Port staff is now requesting the rescission of Resolution No. 07-29 and adoption of a new interim broker-policy that permits payment of brokers' commissions and fees for work on FPBE and Pier 33 ½ and subject to limitations set forth in the proposed policy (the "interim Broker Policy"). The following key conditions are recommended for inclusion in the new interim Broker Policy to mitigate the risks Port may face in using a broker and are included in (Attachment A to the attached resolution:

1. **Valid Contract Required:** A fully executed City-Broker contract is required for the Port as landlord to recognize being represented by a particular broker as awarded by and contracted through RED. Broker submission of a letter of interest from a tenant. Any other expression of procuring a tenant to lease Port property does not qualify for payment of broker's commission or fee.
2. **Both the broker and tenant must register with Port of San Francisco:** The broker must register the prospective tenant on the form provided by the Port to ensure that the broker and tenant meet Port's requirements for a prospective lease, including a valid Port or City-Broker contract, detailing specific financial terms, and demonstrating the tenant's qualifications. Any obligation by Port to pay broker's commission arises only when a lease is signed, any applicable deposit is made, and sufficient rent is clearly achievable and received in order to cover a substantive portion of the brokerage commission as negotiated.
3. **Port exclusively determines when to lease its property:** The determination of when and if property of the Port should be leased, and the terms thereof, are decisions to be made solely and exclusively by the Port and no obligation is imposed upon the Port to pay any commission by reason of the fact that a broker presents to the Port a proposal for the lease of Port property.
4. **Broker Commission Payment Structure:** Broker Commissions will be paid up to the initial term of the lease only, excluding any lease renewals, and will be established at competitive market rates, as affirmed by the City's Real Estate Division. Based on our initial feedback, commission rates are expected to fall between approximately 4-7% of rent due.

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<sup>3</sup> Note that one question arose during the April 2022 Port Commission meeting about formula retail or chain restaurants on Port property. The City does have zoning in particular locations within San Francisco where such uses are only allowed by conditional use permits and not by right. None of those restricted areas are located on Port property therefore formula retail and chain restaurants are not restricted by zoning on Port property. Each retail or restaurant lease will come before the Port Commission for approval however, so these types of Port tenants do go through a public hearing process.

5. **Manner of Payment and Payment Sources:** Broker's commissions are intended to be paid primarily, if not entirely, from rents the Port collects under the applicable lease the broker helped procure and are not to be paid from any other Port's funds, except for funds the Port authorizes to pay Broker Commission and fees. Port may pay broker's commission on a monthly basis or quarterly basis or as negotiated.
6. **Limitations of Payment of Commissions:** Port will not pay broker's commission: (a) on leases procured by Port through a request for bids or proposals, except if the Port provides for an exception in the RFP authorization; (b) existing Port tenant lease extension or expansion, whether or not the tenant used a broker to negotiate the original lease agreement; (c) the broker has a direct or indirect proprietary interest in the tenant; and (d) on leases with tenants that contact the Port directly and the Port has rejected the broker's representation of the tenant.

### **III. PROFILE OF THE SPACES TO LEASE**

#### ***The Pier 33 ½ Space***

This vacant retail/restaurant space includes approximately 3,500 square feet of floor area with a full kitchen, storage and food preparation area, dining room, and lounge. It is located on the marginal wharf between Piers 33 and 35 with direct views of San Francisco Bay. It is near Alcatraz Landing, which drew over 1.3 million visitors per year prior to the COVID-19 pandemic and near multiple office buildings and residential dwellings. It could accommodate approximately 120 persons seated based on prior restaurant operations in this space. An adjacent area with up to 4,000 sq. ft. ("SF") is also available to rent for storage, trash/recyclables management and deliveries.

The Pier 33 ½ Space has been operated as a restaurant by multiple operators from 1996 through 2017. Its deferred maintenance items and required permits will need to be addressed. More detail about this space is provided in Attachment B, including a site map and photos.

#### ***Ferry Plaza East Building***

FPEB is a prime waterfront, two-story building with approximately 18,312 SF of space offering 360-degree panoramic views of San Francisco Bay, the Bay Bridge, Treasure Island, the city skyline, and much more. It bookends the eastern edge of the Ferry Pier. and the internationally recognized Ferry Building at the foot of Market Street/The Embarcadero bookends the western edge of this pier. The building footprint is approximately 10,500 SF. This footprint is a portion of a 34,659 SF site area on the Ferry Pier.<sup>4</sup>

The building's current floor layout includes about 11,468 SF for dining, bar, and patio space, and 2,368 of kitchen space. Both its interior/exterior should be reconfigured and

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<sup>4</sup> The site area which includes the primary building footprint is essentially the roof of the ventilation structure for the submerged element of the Bay Area Rapid Transit system tube.

updated to address barriers to operational success. These include deferred maintenance items and a reconfiguration to allow patrons indoor and outdoor opportunities to enjoy unobstructed 360-degree views of its setting. It is not a contributing resource to The Embarcadero Historic District, so it can be altered to add grand stairs, enhanced elevated outdoor space for dining, ceremonies, celebration, or just taking in the surrounding views. Port staff will work with the selected prospect to amend the existing BCDC permit if required.

FPEB is readily accessible through all modes of public transportation, MUNI, BART, ferry lines, trolley cars, water taxi, and TNCs (transportation network companies).

While the preferred FPEB use is a unique restaurant with indoor/outdoor areas for eating, drinking, dancing, and small to large group gatherings, it could also be used for assembly & entertainment or an entertainment/nightclub venue or museum & cultural center. Please refer to FPEB Profile, site map, and photos provided under Attachment C to this staff report for a summary of known challenges.

#### **IV. SUMMARY OF RETAIL AND RESTAURANT SPACE MARKET CONDITIONS**

COVID-19 has impacted the San Francisco commercial real estate market in many aspects, including significant declines in office commuters, leisure, business convention, and tourist populations, which in turn has led to reduced occupancy in retail, restaurants, hotel, and downtown offices, according to sources cited in the February 19, 2021 Port staff report<sup>5</sup> and the January 2022 City Controller's Office Economic Report.<sup>6</sup> Due to lack of sufficient patronage and foot traffic, closure mandates, and labor shortages, many retail and restaurant tenants have been forced to reduce their operating hours and/or shift their operations to accommodate more delivery or pick-up business. In worse cases, many retailers and restauranteurs have turned to subleasing their space or simply closing, as they lack the business income or capital to pay rent and keep the business open. Please refer to Attachment D to this report for recent reports about retail market trend in San Francisco. Consequently, the commercial real estate market has seen sizable turnover in the restaurant industry and an overall influx of new available spaces, all of which are competing to attract the fewer circling tenants in the marketplace.

Currently, tenants are seeking spaces where they expect sufficient patronage to sustain their constrained operations and some have reduced the overall size of their space to mitigate the operating costs, staffing issues, and the general concerns about the economy. Landlords are offering incentives to lease space during this time, including offering alternative rent schedule for the first year or two of the lease term,

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<sup>5</sup> See staff report here: [https://sfport.com/files/2022-02/02232021\\_Item%2011B%20Portfolio%20Management\\_final.pdf](https://sfport.com/files/2022-02/02232021_Item%2011B%20Portfolio%20Management_final.pdf)

<sup>6</sup> Status of the Reopening of the San Francisco Economy, January 2022: [https://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/Status%20of%20the%20Re-opening%20of%20the%20San%20Francisco%20Economy%20January%202022\\_finalBR.pdf](https://sfcontroller.org/sites/default/files/Documents/Economic%20Analysis/Status%20of%20the%20Re-opening%20of%20the%20San%20Francisco%20Economy%20January%202022_finalBR.pdf)

rent abatements, tenant improvement allowances or rent credits, and other proactive measures to allow tenants to respond to rapidly changing market conditions.

In February 2021, Port staff presented the Port Commission with an overview of COVID-19 impact on Port Lease Management Portfolio and requested authorization to pursue certain leasing tactics and strategies, including extending tenant improvements (TIs) buildout timeframe to account for longer planning, permitting and construction, offer certain level of rent abatement for new credit-worthy tenants, authorize tiered rents that reflect current market conditions and an eventual recovery,<sup>7</sup> among other items. Considering the current imbalance of supply and demand of retail and restaurant spaces, Port staff ~~is now seeking~~ has sought and received positive Port Commission feedback on expanding Port's re-leasing toolbox to include the brokerage community to re-lease Port vacant retail/restaurant spaces. Port Commission, in adopting Resolution No. 07-29<sup>8</sup> in April 2007, had anticipated going back to using brokers to aid Port leasing efforts when the market experiences conditions of imbalanced supply and demand of leasable spaces.

## **V. PROPOSED SOLICITATION STRATEGIES**

### ***Description of Broker-Assisted-RFP and its Pros and Cons***

Following Port Commission establishing the offerings' objectives and giving direction to staff to pursue finding tenants for these spaces, Port staff, under the B-RFP approach, will take the following key steps to find qualified/capable tenants for these spaces:

1. Seek stakeholders' feedback to inform the offering, proposed objectives, anticipated lease terms, tenant selection criteria, and other applicable policy objectives for the solicitation requirements. Port staff has sought and received positive feedback from relevant stakeholders and will continue to apprise them of Port's efforts to lease these properties.

2. Work with the City's Real Estate, a Division of the City Administrator's Office ("RED"), to select a capable brokerage firm approved by the Office of Contract Administration from RED's pre-qualified brokers list to perform a scope of services to assist finding potential tenants for these spaces. Port staff will work with RED to negotiate recommended brokerage fee or compensation that limits the Port's risk exposure. Port staff and RED have received three expressions of interest from brokerage firms and are currently working to complete RED's broker selection process to determine which brokerage firm is the best fit for the two properties.

3. Review and comment on the broker's proposed plan for the offering, which plan must include Port's policy objectives and requirements, including City ordinances, risk management, and all other required City-lease policies.

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<sup>7</sup> [https://sfport.com/files/2021-10/Item%2011A%20Portfolio%20Management\\_final.pdf](https://sfport.com/files/2021-10/Item%2011A%20Portfolio%20Management_final.pdf)

<sup>8</sup> Port Commission Resolution No. 07-29 cited earlier

4. Work with evaluation team and selected broker to interview broker-recommended tenant prospects that meet the minimum offering terms.
5. Provide updates to NAC and stakeholders and seek necessary feedback.
6. Seek Port Commission authorization to enter an Exclusive Negotiations Agreement to draft a lease.
7. Seek Port Commission approval of proposed lease.
8. Seek Board of Supervisors approval (if required).

*Pros and Cons of this B-RFP Approach*

~~The Pros~~-Pros. These pros continue to be valid, no change)

This approach enables the Port to:

- Leverage the brokerage firm's ready marketing infrastructure
- Obtain timely market deal points from recent transactions to inform a proposed deal structure reflecting the market, including helping a tenant find a seasoned chef, bar operator, and reservation/event manager that might be available to form the team required to operate the proposed restaurant
- Help the Port close a market deal to reduce the length of vacancy
- Gain access to the pool of local, national, and international prospects, as brokers are a prime source of potential users
- Save time finding appropriate tenants through broker's market reach
- Be aware of recent market transactions and latest deal requirements, during this period of continued market tumult
- Facilitate timely familiarization of prospects with the offering requirements and local market conditions
- Gain access to the broker's established relationships with participants in San Francisco ecosystem of commercial leasing, by assisting prospective respondents with information and connecting potential respondents to local professionals, such as attorneys, architects, entitlement planners, etc., that can help the prospect be in an informed position and able to commit to a lease

*The Cons of this approach includes:*

- Cost of brokerage services
- Requires an additional step of hiring a broker for the offering process

***Description of Traditional-RFP and its Pros and Cons***

[This Section continues to be valid as written; hence not changed.]

Under the T-RFP, Port staff will take the following key steps to achieve a timely, cost-effective, competitive solicitation for qualified and capable tenants for the two vacant retail spaces:

1. Seek stakeholders' feedback to inform the offering, including feedback on the proposed objectives, anticipated lease terms, tenant selection criteria, and the proposed measures and methods to achieve applicable policy objectives to include in the proposed RFP.
2. Draft the proposed RFP and return to the Port Commission to consider and authorize staff to issue the RFP.
3. Advertise and market the RFP through community organizations, trade associations, and posted under [Contract Opportunities](#) on the Port Website and all available media channels, followed with outreach to local business organizations.
4. Work with Port Contract Compliance staff and the evaluation team to complete the review of the proposals received.
5. Provide updates to NAC and stakeholders, and seek necessary feedback.
6. Seek Port Commission consideration and authorization to enter into an ENA to draft a lease.
7. Seek Port Commission approval of proposed lease.
9. Seek Board of Supervisors approval (if required).

*Pros and Cons of this T-RFP Approach*

The Pros of this approach includes:

- o No broker's fee or commissions to address.
- o A potential upfront time saving by foregoing broker selection process

*The Cons of this approach includes:*

- o Lacks access to Broker's marketing reach
- o May turn-off prospective tenants who do not want to invest more time than they think is necessary prior to being screened for selection
- o Some consider this process to be invasive, requiring prospective tenants to discuss their concepts, business strategies, etc.
- o Some prospects prefer going through a broker to avoid taking time away from their main business to work on an RFP

- Tenant and broker's concerns about the upfront costs to understand the RFP, finding information about how the property fit within their investment objectives, and the amount of time involved in understanding the lengthy RFP requirements.
- T-RFP has resulted in mixed outcomes in the last 6 years. Port utilized the T-RFP for retail/ restaurant spaces at Piers 33 ½ (Butterfly), Pier 29, and Pier 38 (Carmen's space) and none resulted in a tenant.

**Conclusion: Use Broker-Assisted RFP**

Port staff recommends that for the purpose of competitively soliciting these two properties, the Broker-Assisted-RFP is more advantageous than the Traditional-RFP. This approach will enable the Port to leverage a brokerage firm's toolkit. B-RFP benefits outweigh its expected cost, and it is consistent with the Port Commission prior direction to Port staff to conduct outreach to the Broker community when large vacancies occur. Port staff, therefore, is requesting that the Port Commission rescinds the existing prohibition of using a payment of brokers' commission in leasing Port properties and adopt a new interim Broker Policy to allow the use of B-RFP to lease FPEB and Pier 33 ½ space. T-RFP approach works well during normal economic times when there is ample demand and there are no reasons for restaurant tenants to hesitate about deploying capital. It does require issuing series of RFPs, which may, or may not, be efficient for the multiple restaurant space vacancies. This T-RFP approach sometimes work for certain small spaces during periods of high tenant demand and limits supply. It will be a challenge for FPEB because of its size and scale and prospects may not want to spend the time and resources to address its unique challenges as they need to investigate issues/challenges so they can submit a viable proposal – a broker can help here. The Port may have to provide a longer-time period to submit a proposal or provide for possible accommodation to address issues a prospect may discovered that may materially impact their proposal timing.

Both strategies discussed above are consistent with the Port Commission Retail Leasing Policy that requires retail leasing opportunities to be offered through a competitive public solicitation and any lease with a term more than ten (10) years and/or having anticipated revenue to the Port of one million dollars or more requires approval by the Board of Supervisors.

**VI. BENEFITS DESIRED FOR THIS OFFERING**

Based upon the Port policies and economic recovery initiatives, and the existing conditions of these two spaces, Port staff ~~will be~~ is recommending the following as economic benefits desired from this proposed offering:

- Provide economic benefits to the Port in the form of lease revenues and public benefits for both spaces
- Renovate and activate FPEB to complement the Ferry Building's offerings

- Attract local, regional, and state residents, out-of-state and international visitors to FPEB and the Ferry Plaza with a focus on activating the Plaza's eastern edge
- Enhance the day, evening, and night activities of Ferry Pier eastern edge
- Provide enhanced opportunity for people to view the many vista points in and around the Bay
- Provide diversity, equity, and inclusion and local business participation benefits

**VII. ANTICIPATED RECOMMENDED OFFERING TERMS**

With Port Commission approval, the following terms will be provided to the selected broker to inform both the broker in its marketing, and the prospective tenants, in structuring their proposals or responses to this offering:

**1. Respondents proposed design to address the following:**

For Pier 33 ½ Space:

- Reconfigure the interior space as necessary for the anticipated operations
- Address BCDC permit conditions if required

For FPEB:

- Consider changes to the building to maximize views from indoor and outdoor spaces to the plaza, the Bay, Treasure Island, and Bay Bridge
- Improve the appearance of the building in a manner that is compatible with the historic Ferry Building and make other improvements to increase functionality and appeal
- Consider changes to the building that relate to and improve (a) its adjacent public spaces including the plaza to the west and (b) its connection to the public promenade along the south edge of the pier

**2. Permitted Use:**

For Pier 33 ½ Space:

A unique restaurant for eating and drinking; fine to casual dining, recognizing adjacency to existing nearby Port tenants (including Queen's Louisiana Po-Boy Café).

For FPEB:

- A unique restaurant with indoor/outdoor areas for eating, drinking, dancing, and small to large group gatherings

- Assembly & entertainment (*activity that attracts wide diversity of people, uses that benefit from views and can activate the pier edge*)
- Entertainment/nightclub venue
- Museum & cultural, artist/designers (*these also are public-oriented uses but may not draw as many or as diverse mix of visitors/users*)

**3. Term for the two spaces:** Term to be determined based on the capital investment, but most likely will be 5- to 10-year initial term, with option to extend as negotiated. Provide for buildout time to account for required planning and permitting periods.

**4. Rent:** A triple-net rent that is the greater of a minimum base rent and a percentage of gross revenue.

- Minimum base rent per square foot based on tiered system reflective of market conditions, and other factors.
- Minimum percentage rent based on gross revenue over certain thresholds.
- Rent abatement for credit worthy tenant based on capital investment subject to recapture provisions including TI construction completion.

**5. Potential tenant improvement allowance.**

**6. Minimum Capital Investment:** The minimum capital investment sufficient to address interior/exterior reconfiguration/alterations, required code upgrades, Americans with Disabilities Act (“ADA”) requirements, furnishings, fixtures, equipment, etc., and provide an appealing design for the proposed concept.

**7. Experience:** Documented experience successfully operating the restaurant type or use program for a minimum of five years full time during the last seven years. Newly formed entities, such as a joint venture or partnership, are acceptable so long as principals who own an aggregate of 51% or more of the entity meet the minimum experience requirement.

**8. Pandemic or Economic Disruption Provisions.** In addition to force majeure provisions, flexibility will be permitted to allow day and hours of operation to flex with governmental mandates in response to public health emergencies.

**9. Selection Process.** For the B-RFP: Port staff recommends establishing a panel to (a) review the broker’s recommended candidates and investigate their financial capacity, past projects, and proposals, and (b) interview the tenant-candidates to get clarifications to better understanding their proposals. Broker’s recommendation will be based on the offering requirements, including minimum qualifications and a proposal that meeting Port’s objectives. Port staff will make informational presentation on the proposals to the Port Commission and stakeholders and then return to the Port Commission with a ranking or a recommendation of the most qualified prospect.

For the T-RFP: If it becomes necessary to use the T-RFP process, Port staff will recommends establishing a panel to review and rank the respondents based on the evaluation of the proposals submitted in response to the RFP. The evaluation will include investigation of the prospects' financial capability, past projects and performance, and response to oral interviews and other pertinent factors, all as specified as evaluation criteria.

Port staff ~~will most likely~~ recommends the following ~~draft~~ criteria for evaluating the proposals:

**Proposed Concept – 20 points**

- Overall appeal of proposer's concept to meet Port objectives
- Proposer's plan for marketing to increase patronage and drive sales/revenues
- Proposed operations plan, including hours of operation, menu, pricing, staffing, sourcing of product and services and how to maintain customer satisfaction

**Proposed Design and Capital Investment - 20 points**

- Overall appeal, interior design, exterior design if applicable, signage, floor plan, front elevation, and images depicting interior and exterior
- Capital investment plan, including sources of capital funding

**Experience and Financial Strength – 20 points**

- Documented experience operating the type of operation proposed
- Annual gross revenue for calendar years 2018 through 2020 of operation
- Balance Sheet and Credit Rating

**Proposed Rent and Business Plan – 25 points**

- Proposed base rent
- Proposed percentage rent
- Five-year financial pro forma with projected sales, revenue to the Port, expenses, and net income, with a demonstrated ability to fund continuing operations from the cash flow generated by the operation

**Local Business Participation & Diversity Equity Inclusion Program - 15 points**

- Proposed plan to meet Port's LBE and Diversity Equity Inclusion goals

The Port is unable to seek approval for any lease for either of these properties until satisfactory completion of the applicable environmental review, in compliance with California Environmental Quality Act.

**VIII. NEXT STEPS**

Port Staff recommends the Port Commission authorizes the pursuit of this multi-site offering using a broker-assisted, competitive solicitation process as outlined in this staff report. Upon authorization, Port staff will resume coordination with City's RED to select

a broker with whom to negotiate a contract for broker services. The broker contract will be between the City and broker for the benefit of the Port, and the broker compensation will be subject to the provisions of the new interim Broker Policy, if adopted by the Port Commission. Assuming approval of the requested actions, the following is the anticipated time schedule for advancing the multi-site offering:

Anticipated Offering Schedule

	<b>Task</b>	<b>Anticipated Time Period Complete</b>
<b>1</b>	Port-City's RED Broker interview and selection of Broker with Broker contract executed	Within 60 days of Port Commission authorization
<b>2.</b>	Port, and/or broker, and/or prospective tenant work on property marketing, due diligence, and proposal	Within 90 days of executing Broker contract
<b>6.</b>	Evaluation of Proposals and update to Port Commission	Within 60 days of receiving a responsive proposal
<b>8.</b>	Port Commission approval of the prospect with whom to negotiate a term sheet or a lease	Within 90 days of receiving a responsive proposal
<b>9.</b>	Port Commission approval of the term sheet or a lease	By Spring 2023

- ❖ The above schedule is mainly for the FPEB
- ❖ The schedule of Pier 33½ Space is expected to be shorter.
- ❖ Spring 2023 is a target date. Commission approval may be sooner or later depending on success in finding a responsive tenant for the FPEB

**CONCLUSION**

Port staff requests Port Commission's approval of the actions sought in this staff report to allow Port staff to use a broker-assisted competitive solicitation process and working with City's RED to find tenants to lease the FPEB and the restaurant space in Pier 33½.

Prepared by: Ricky Tijani  
Waterfront Development Project Manager

Josh Keene  
Assistant Deputy Director, Development

For: Rebecca Benassini  
Deputy Director, Real Estate and Development

Attachments:

- A. Interim Broker Policy
- B. Pier 33 ½ Space Profile, Site Map and Photos
- C. FPEB Profile, Site Map, and Photos

- D. Recent Reports on San Francisco Recent Retail Market Trend
- E. A summary of updated offering conditions and parameters

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

**RESOLUTION NO. 22-37**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with 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, Between December 1993 and April 2007, the Port Commission allowed payment of brokers' commissions pursuant to Resolutions 93-151, 95-80, and 97-98. In April 2007, the Port Commission rescinded the ability to pay brokers' commissions based on the low property vacancy rates at the time and overall market conditions under Resolution 07-29; and
- WHEREAS, The Port Commission concluded in 2007 that the rescission would not harm the Port's ability to lease space and would benefit the Port, and also acknowledged the cyclical nature of the commercial real estate market and noted that Port staff could recommend paying brokers' commissions to aid Port's ability to lease vacant spaces if market conditions changed dramatically; and
- WHEREAS; The COVID-19 pandemic has impacted the San Francisco commercial real estate market in many aspects, including significant declines in office commuters, and leisure, business convention, and tourist populations, which has led to reduced occupancy in retail, restaurant, hotel, and downtown office spaces, as described in the accompanying staff report dated July 8, 2022. Due to lack of sufficient patronage and foot traffic, closure mandates, and labor shortages, many retail and restaurant tenants have reduced operating hours and/or shifted operations to accommodate more delivery or take-out business, and in the worst cases, retailers and restaurateurs have turned to subleasing space or simply closing, as they lack the business income or capital to pay rent and keep the business open; and
- WHEREAS; Consequently, the commercial real estate market has seen sizable turnover in the restaurant/retail industry and an overall influx of new available spaces, all of which are competing to attract fewer tenants in the marketplace, with many tenants seeking spaces with sufficient patronage to sustain their constrained operations and others reducing the overall size of their space to mitigate the operating costs, staffing issues, and general concerns about the economy; and
- WHEREAS, Many landlords are offering incentives to lease space at this time, including offering alternative rent schedules for the first years of the lease term, rent abatements, tenant improvement allowances or rent credits, and other proactive measures to entice tenants to sign leases; and

WHEREAS, In February 2021, Port staff presented the Port Commission with an overview of COVID-19 impact on Port Lease Management Portfolio and requested authorization to pursue certain leasing tactics and strategies, including extending tenant improvements (TIs) buildout timeframe to account for longer planning, permitting and construction, offering specified rent abatement for new credit-worthy tenants, authorizing tiered rents that reflect current market conditions and an eventual recovery, among other items; and

WHEREAS; Considering the current imbalance of supply of and demand for retail and restaurant spaces, Port staff has recommended expanding Port's leasing tactics and strategies to include use of the brokerage community and payment of broker commissions to assist in the leasing of the Port's vacant retail/restaurant spaces; and

WHEREAS; Port Commission Resolution 07-29 anticipated future use of brokers to aid Port leasing efforts if the market conditions reflected an imbalance of supply and demand of leasable spaces; and

WHEREAS, The commercial real estate market has dramatically changed since adoption of Resolution 07-29 in April 2007, as confirmed by recent Port staff discussions with brokers and recent news articles, as further detailed in the accompanying staff report dated July 8, 2022 and referenced in Attachment D attached thereto; and

WHEREAS, Based on the current market conditions, the Port's economic recovery initiatives, and the benefits of using brokerage services to procure tenants, Port staff has requested the Port Commission rescind Resolution No. 07-29 and adopt a new interim broker policy allowing payment of brokers' commissions and fees subject to the conditions and limitations set forth in Attachment A to this Resolution (the interim "Broker Policy"); now, therefore, be it

RESOLVED, That the Port Resolution No. 07-29, which prohibits the payment of broker's commissions, is rescinded; and be it further

RESOLVED, That the interim Broker Policy attached to this Resolution as Attachment A is hereby adopted; and be it further

RESOLVED, That the interim Broker Policy will sunset and have no further force or effect upon the earlier date of: further Port Commission action, or a determination by the Port Executive Director that the prevailing market conditions and the state of the Port property portfolio indicate that there are no material benefits to Port's continued use of brokerage services.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of July 12, 2022.***

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***Secretary***

## **ATTACHMENT A** **INTERIM BROKER POLICY**

In order that the Port may compete more effectively in the commercial leasing market, the Port Commission desires to establish an interim Broker Policy to find tenants to fill vacancies at Pier 33 1/2 and FBEB sites and for payment of brokers' commissions and fees to licensed brokers hired directly by the Port or hired indirectly through other departments or divisions of the City, for their services in procurement of tenants to lease Port properties as set forth below.

1. **Valid Contract Required:** A fully executed City-Broker contract is required for the Port as landlord to recognize being represented by a particular broker as awarded by and contracted through the City's Real Estate, a Division of the City of San Francisco Administrator's Office or ("RED"). Broker submission of a letter of interest from a tenant or any other expression of procuring a tenant to lease Port property does not qualify for payment of broker's commission or fee.
2. **Registration with the Port.** Both the broker and tenant must register with Port of San Francisco: The broker must register the prospective tenant on the form provided by the Port to ensure that the broker and tenant meet Port's requirements for a prospective lease, including a valid Port or City-Broker contract, detailing specific financial terms, and demonstrating the tenant's qualifications. Any obligation by Port to pay broker's commission arises only when a lease is signed, any applicable deposit is made, and sufficient rent is clearly achievable and received in order to cover a substantive portion of the brokerage commission as negotiated.
3. **Sole Determination of Port to Lease.** The determination of when and if property of the Port should be leased, and the terms thereof, are decisions to be made solely and exclusively by the Port and no obligation is imposed upon the Port to pay any commission by reason of the fact that a broker presents to the Port a proposal for the lease of Port property. The Port's decision to enter into a lease may be based on the proposed use, the financial offer, the creditworthiness of the prospective tenant and any other factors deemed relevant in the Port's sole discretion. The obligation to pay a commission arises only when a lease is signed, a deposit, including, but not limited to first month's rent, is paid, and the rent paid is sufficient to pay the calculated commission.
4. **Prerequisite of Valid Broker Contract.** There must be a valid City-Attorney-approved broker contract to help procure a tenant for Port's property either (a) between the Port and the broker or brokerage firm, in this instance, this will be deemed a direct contract or (b) between the City and broker or brokerage firm, in this instance, this will be deemed an indirect contract. Broker contracts or indirect contracts, between the City and the broker or brokerage firm are permitted to aid

efficiency in procurement of real property broker services, if it is impractical for Port to form its own prequalified panel of commercial real estate brokers.

5. **Prerequisite of Completed Port Registration Form by both Broker and Prospective Tenant.** When a broker presents a client to the Port, which is to be evidenced by written registration of the client and the broker with the Port on the registration form provided by the Port, and the client leases property in an instance in which the Port does not call for bids or proposals for the lease of said property, a commission computed in accordance with Sections 6 and 7 below shall be paid to the broker if otherwise entitled thereto pursuant to this resolution. For a broker to be entitled to a commission for the lease of Port property, both the broker and the prospective lessee must sign the registration form, the form must indicate on its face that the broker is the prospective lessee's sole and exclusive agent in dealings relating to the subject property.
- 6.. **Broker Commission Payment Structure:** Broker Commissions will be paid up to and through the initial term of the lease only, excluding any lease renewals, and will be established at competitive market rates, as affirmed by the City's Real Estate Division. Based on our initial feedback, commission rates are expected to fall between approximately 4-7% of total base rent due.
7. **Manner of Payment and Payment Sources:** Broker's commissions are intended to be paid primarily, if not entirely, from rents the Port collects under the applicable lease the broker helped procure and is not to be paid from any other Port's funds, except for funds the Port authorizes to pay Broker Commission and fees. Port may pay broker's commission on a monthly basis or quarterly basis or as negotiated.
8. **Limitations on the Payment of Commissions.** Port will not pay broker's commission:
  - (a) No commission shall be payable for leases awarded pursuant to a Port Commission request for bids or proposals.
  - (b) No commission shall be payable in any case where a former or current lessee of Port property leases additional Port property, whether or not the lessee used a broker to negotiate the original lease agreement.
  - (c) No commissions shall be payable for renewals or extensions of leases or other rental agreements.
  - (d) No commission shall be payable in any case where the broker has a direct or indirect proprietary interest in the tenant, as determined by Port.
  - (e) If a lease is granted by the Port to a lessee represented by a broker, and the lease grants to the lessee:
    - (1) An option to expand the premises, the commission shall be calculated only on the rentals for which the tenant has an absolute

obligation and shall not include rentals which may become due if the tenant exercises its option; or

- (2) An option to extend its term, the commission shall be calculated only on the term prior to the time when such term may be extended; or
  - (3) A right to cancel or terminate the lease in the lessee's discretion at sometime during its term, the commission shall be calculated only on the term prior to the time when the lease may be canceled or terminated.
- (f) If a party has previously contacted the Port or its staff regarding the lease of the property in question, the right is reserved and retained by the Port, in the Port's sole discretion, to decline to pay a commission to a broker allegedly representing such party, and the Port shall give notice that no such commission shall be paid to such broker by rejection of the broker/client registration form.

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

**RESOLUTION NO. 22-38**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with 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, The Port has two vacant properties, the Ferry Plaza East Building (behind the Ferry Building) and a restaurant space in Pier 33½, that are ready to be leased and activated as a key part of the Port’s economic recovery initiative to meet strategic objectives, and Port staff wants to offer both properties for lease through a broker-assisted, competitive solicitation process in recognition of the recent market changes brought on by the COVID-19 pandemic; and
- WHEREAS; The Port Commission rescinded Resolution 07-29 (prohibiting payment of brokers’ commissions) and adopted a new broker policy allowing payment of brokers’ commissions and fees (the interim “Broker Policy”) as detailed Resolution No. 22-37; and
- WHEREAS, Under City and Port policy, retail leasing opportunities must be publicly bid, including the Ferry Plaza East Building and the restaurant space in Pier 33½; and
- WHEREAS, Port staff wishes to request bids to lease the Ferry Plaza East Building and the restaurant space in Pier 33½ through a multi-site offering, broker-assisted, competitive solicitation process; and
- WHEREAS, The minimum lease terms, tenant qualifications, tenant selection criteria and process for selecting the most responsible bidders are summarized in the accompanying staff report to the Port Commission dated July 8, 2022; and
- WHEREAS, Prospective tenants or bidders will be encouraged to include in their proposals a plan to meet the Port’s LBE and Diversity Equity and Inclusion goals; and
- WHEREAS, The proposed multi-site offering and the submission of proposals to lease any of the properties will not commit the Port Commission to approve a lease for either of these properties, and such approval will also require the completion of applicable environmental review in compliance with the California Environmental Quality Act; now, therefore be it
- RESOLVED, That the Port Commission has reviewed the goals and objectives for the Ferry Plaza East Building and the restaurant space in Pier 33½, the

benefits desired for the offering, and the anticipated offering terms, all as described in the accompanying staff report dated July 8, 2022, and authorizes Port staff to issue and/or pursue the multi-site offering using broker-assisted, competitive solicitation process in accordance with the interim Broker Policy in order to lease the subject properties as described herein and in the staff report accompanying this Resolution, and be it further

RESOLVED, That the Port Commission authorizes Port staff to take further actions in connection with the multi-site offering as necessary to achieve the purposes described in this Resolution, and be it further

RESOLVED, That Port staff is directed to return to the Port Commission to report on the progress and outcome of the multi-site offering based on the anticipated offering schedule described in the staff report accompanying this Resolution.

***I hereby certify that the Port Commission at its meeting of July 12, 2022 adopted the foregoing Resolution.***

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Secretary