



MEMORANDUM

January 20, 2023

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

FROM: Elaine Forbes 
Executive Director

SUBJECT: Approval of Lease No. L-17004 with The National Liberty Ship Memorial Incorporated, a California Corporation, for the berthing of the SS Jeremiah O'Brien at Pier 35 for a term of ten years with one (1) 5-year option to extend, for a term of up to 15 years.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 23-04

STRATEGIC OBJECTIVE

The proposed agreement supports two key goals of the Port's Strategic Plan:

- *Engagement:* Promote the richness the Port has to offer through education, marketing, and maintaining strong relationships with Port users and stakeholders.
- *Economic Vitality:* Attract and retain maritime and non-maritime commerce to contribute to the long-term viability of the Port and the City.

EXECUTIVE SUMMARY

The National Liberty Ship Memorial, Inc. (NLSM) is a California Non-Profit Corporation which maintains and operates the S.S. Jeremiah O'Brien as a National Liberty Ship Memorial. The SS Jeremiah O'Brien is one of two remaining fully functional Liberty ships of the 2,710 originally built and launched during World War II. From its long-term berth at Pier 45 in the heart of Fisherman's Wharf, the vessel remains a fully operational passenger

THIS PRINT COVERS CALENDAR ITEM NO. 11A

vessel, hosting regular shoreside tours and underway excursions. In addition, the vessel is listed on the National Register of Historic Places and is a National Historic Landmark as a living memorial to the seamen of the U.S. Merchant Marine who served in World War II.

The NLSM entered Lease No. L-13525 with the Port of San Francisco (Port) on October 1st, 2004. That lease expired on June 30th, 2021 and has been on month-to-month holdover since that date. Following on the events of the terrible fire at Pier 45 in 2020, and the temporary relocation of the vessel to Pier 35 North, the Port has now negotiated a new ten-year lease with one (1) five-year option with the NLSM to relocate the SS Jeremiah O'Brien to Pier 35 North.

BACKGROUND

Port and the NLSM entered into Lease No. L-13525 on October 1st, 2004 for space at Pier 45. Under the terms of its current lease, the NLSM is allowed to operate the premises as a Historic Vessel Berth & Cultural Attraction. The contract terms require the payment of base rent as well as a percentage of gross sales for various categories of retail operations. Lease L-13525 expired on September 30, 2014 and remained on holdover status with Port consent. On May 23, 2020, a four-alarm fire broke out at Fisherman's Wharf destroying Shed C on Pier 45. Approximately 150 firefighters were able to contain the fire and prevent any loss of life, but the fire destroyed Shed C, and required the temporary relocation of the SS Jeremiah O'Brien to Pier 35 North to escape the flames. While the ship was able to escape unscathed, the shoreside support equipment located in the shed was a total loss necessitating an amendment of the lease to rationalize the premises. The vessel remained at Pier 35 throughout the fire recovery process, finally returning to Pier 45 on March 23rd, 2021.

Prior to the vessel's return to Pier 45, the Port and NLSM entered into the First Amendment to the lease, which updated the Premises to reflect the current shoreside conditions of the Pier 45 berth after the destruction of Shed C. At that time, the lease expiration date was also extended to add term until June 30th, 2021. Since July 1, 2021, NLSM has been on month-to-month holdover with Port consent.

On April 4th, 2022 consistent with Port Commission Resolution 20-41, the Second Amendment to the lease forgave certain rent payments due to Port during the COVID-19 pandemic. Throughout the challenge of the pandemic, the NLSM remained in good-standing and positively collaborated with Port staff to ensure the continuity of their own business and to support the surrounding community during the Fire and Pandemic recoveries.

Since returning to Pier 45, NLSM Staff approached Port staff to discuss the potential of berthing the S/S Jeremiah O'Brien at Pier 35 to operate as a Historic Vessel Berth & Cultural Attraction. The Tenant is in good standing and has demonstrated to Port staff that it has the business acumen and financial wherewithal to continue to operate a retail business involving a historic vessel. Port staff has also determined the proposed use is consistent with the Port's Waterfront Land Use Plan and the proposed draft Waterfront Plan.

HISTORIC VESSEL POLICY

In February 2005, in its Resolution 05-12, the Port Commission adopted the Historic Vessel Policy, a copy of which is attached for reference as Attachment 2. The Policy acknowledges the historic vessels then berthed at the Port including the USS Pampanito and the SS Jeremiah O'Brien at Pier 45 and the ships at the San Francisco Maritime National Historical Park on Hyde Street and outlines the criteria under which the Port would consider a proposal for the berthing of additional Historic Vessels, as defined by the Policy. Given that the SS Jeremiah O'Brien is proposed to be moved from its historic location to Pier 35, staff reviewed the Policy to confirm that the new location is consistent with the Policy. The Policy expressly identifies several locations as desirable for the berthing of Historic Vessels, including Pier 35. Further, Port staff believes that the proposed tenant and use continue to satisfy the criteria and underlying principles set forth in the Policy.

MARITIME EXCURSION LEASE RENEWAL POLICY

In April 2010, in its Resolution 10-16, the Port Commission adopted the Maritime Excursion Lease Renewal Policy which set out the circumstances under which the Port will consider a renewal, amendment or extension of a Maritime Excursion lease as defined in the Policy. The stated purpose of the Policy is to protect maritime uses and expand excursion uses. The Policy largely mirrors the Retail Leasing Policy as applicable to maritime excursion operations. There are a number of requirements, conditions and obligations outlined in the Policy, a copy of which is attached for reference as Attachment 3. Port staff believes that the proposed lease renewal meets all of the conditions of the Policy, summarized as follows:

1. NLSM proposes tenant-financed, maritime use improvements (such as structural or life-safety improvements) to Port facilities. The proposed improvements will be completed at Tenant's sole cost and without rent credits.
2. No use modifications are proposed that would exceed the existing proportion and character of current uses; the operation at Pier 35 will largely replicate the operation at Pier 45.
3. Port approves the location for excursion service.
4. The Tenant is in "Good Standing".
5. Proposed capital improvements will be completed at Tenant's expense and Tenant is scheduled to complete the improvements within the first 5 years of the Lease; failure to complete the improvements could result in revocation of the extension term. In addition, Tenant will make improvements to its own property to enhance access to the SS Jeremiah O'Brien, including for disabled visitors.
6. NLMS has demonstrated the financial capacity to undertake and complete the proposed improvements.
7. The new lease is subject to review and approval by the Port Commission. Board of Supervisors approval is not required for this maritime lease per Charter Section 9.118(c).

If a lease renewal proposal is approved, the Policy requires the following:

1. Tenant must be the excursion operator.
2. Market rent will be established at the execution of the renewed lease.
3. The Port will charge a participation rent on all concession revenue.
4. The Port will charge a participation rent on all retail sales.
5. Tenant will disclose all gross revenue.
6. Port may participate appropriately in proceeds from sale, transfer, assignment and refinancing. Port will retain the right to approve all ownership and capital changes.
7. Tenant will adhere to CEQA and will comply with all other laws including SF City laws and regulations.
8. Upon completion of an existing lease, the Port reserves the right not to renew the lease due to a proposed project at the location, existing area considerations and other land use considerations.

Port staff believes all of the obligations listed above are appropriately incorporated into the new lease. Further, the space that the Tenant is interested in activating was previously used as the Tertiary Berth for Cruise Operations and is not a space that Port staff view as a suitable competitive solicitation site. Additionally, prior to the return of the SS Jeremiah O'Brien to the Premises after any out-of-water inspection, maintenance or repair, NLSM will be required to submit a Conditions Report certifying that the vessel remains in seaworthy condition.

Now, based upon the experiences learned during the fire recovery and during the vessel's temporary berthing at Pier 35, the Port and NLSM have negotiated a proposed ten-year lease with one (1) five-year option to relocate the SS Jeremiah O'Brien to Pier 35 North. The use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act.

PROPOSED LEASE TERMS

The schedule below is an outline of the important terms and conditions of the Lease:

<i>Tenant:</i>	National Liberty Ship Memorial, a California Non-Profit Corporation
<i>Premises:</i>	<p>The Premises is comprised of the following:</p> <p>Parcel A: Approximately 732 square feet of paved land at Pier 35.</p> <p>Parcel B: Approximately 18,500 square feet of apron space at Pier 35 known as the Pier 35 North Apron.</p> <p>Parcel C: approximately 48,000 square feet of submerged land</p> <p>All portions of the Premises are public access area and are for Tenant's non-exclusive use and subject to the terms and conditions specified in this Lease.</p>
<i>Term:</i>	Ten (10) years with one (1) five (5) year option provided that the Tenant Improvements are completed.

<i>Permitted Use:</i>	<p>The SS Jeremiah O’Brien shall be permanently berthed at Pier 35 and the Premises shall be operated as a cultural attraction for the historic Liberty Ship SS Jeremiah O’Brien including for ticket and memorabilia sales, exhibits, visits to the vessel and excursions, educational programs (including overnight visits) and memorial services, and special events.</p> <p>Tenant may also use the exterior of the north Pier 35 Shed wall (Shed Wall) for exhibits and other purposes set forth in the Lease</p>												
<i>Transfers/Subleasing Prohibited:</i>	<p>This Lease is personal to Tenant and all Transfers are prohibited unless approved by Port in writing in its sole discretion and subject to any conditions imposed by Port as a condition of its consent to Transfer.</p>												
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Total Monthly Base Rent										
Parcel A	1-12	732	\$146.20										
Parcel B		18,500	<u>\$3,515.00</u>										
			\$3,661.40										
<i>Monthly Base Rent Increases:</i>	<p>On the fifth (5th) anniversary date, and the first day of the extension term, if any, Monthly Base Rent shall increase by five percent (5%).</p>												
<i>Percentage Rent:</i>	<p>Tenant shall pay Percentage Rent in the following amounts:</p> <table> <tr> <td>Ticket Sales – Dockside Tours</td> <td>7.5%</td> </tr> <tr> <td>Ticket Sales – Special Events</td> <td>7.5%</td> </tr> <tr> <td>Ticket Sales – Charters and Excursions</td> <td>7.5%</td> </tr> <tr> <td>Retail - Gift Shop Sales</td> <td>7.5%</td> </tr> <tr> <td>Film & Other Retail Revenues</td> <td>10%</td> </tr> </table> <p>Percentage Rent is not owed on ticket sales for educational programs or funeral, memorial and remembrance services conducted at the Premises or on the vessel while on an excursion.</p>			Ticket Sales – Dockside Tours	7.5%	Ticket Sales – Special Events	7.5%	Ticket Sales – Charters and Excursions	7.5%	Retail - Gift Shop Sales	7.5%	Film & Other Retail Revenues	10%
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<i>Security Deposit:</i>	<p>Eight Thousand Two Hundred Forty-One Dollars and Eighty-Eight Cents (\$8,241.88)</p>												
<i>Capital Investment:</i>	<p>Tenant must complete the following Tenant Improvements at its sole cost and expense and without rent credits or contribution by Port:</p> <p>no later than December 31, 2023, repaint the access gate which separates Parcel A from Parcel B (known as the “Navy Gate”) and install National Liberty Ship Memorial signage and public access signage;</p> <p>no later than December 31, 2023, install approximately 800 liner feet of railing long the Pier 35 North Apron and install Tenant’s ticket booth;</p>												

	<p>no later than December 31, 2027, install lighting improvements in Parcel B and on the Shed Wall including associated utility connections and repairs;</p> <p>no later than December 31, 2028, install shipboard equipment such as an ADA-compliant accessible gangway or mobility assistance lifting gear, or other equipment designed to facilitate access to the SS Jeremiah O'Brien by individuals with limited mobility; and</p> <p>no later than December 31, 2030, develop and submit for Port approval an ADA-compliant shoreside alternative experience for visitors who cannot otherwise safely access the SS Jeremiah O'Brien.</p> <p>Tenant estimates the cost of the Required Improvements to be at least Fifty Thousand dollars (\$50,000). Completion of the Required Improvements are a condition of the Extension Option.</p> <p>At Tenant's request, Port's Executive Director may extend these deadlines, provided that completion continues to be a condition for exercising the extension option.</p>
<i>Maintenance and Repair:</i>	Tenant is responsible for maintenance and repair of the Premises including certain portions of the pier substructure.
<i>Seaworthiness:</i>	<p>Prior to the return of the SS Jeremiah O'Brien to the Premises after any out-of-water inspection, maintenance or repair, Tenant shall submit a Conditions Report including a Certified determination that the SS Jeremiah O'Brien is Seaworthy. Notwithstanding any other provision of this Lease, absent a Certified determination in a Conditions Report that the SS Jeremiah O'Brien is Seaworthy, the parties agree that the SS Jeremiah O'Brien is prohibited from returning to the Premises.</p> <p>There shall be no rent abatement while the SS Jeremiah O'Brien is in drydock or otherwise absent from the Premises due to concerns about seaworthiness.</p>
<i>Dredging:</i>	Any and all dredging required in order for Tenant to use the Premises shall be the sole responsibility of Tenant.
<i>Operations Plan:</i>	All Permitted Uses must be performed in compliance with an operations plan that describes the activities that will occur on the Premises, including on the SS Jeremiah O'Brien, and how they will be conducted. Tenant must prepare and maintain such Operations Plan to document its procedures consistent with this Lease, Laws, industry standards and best management practices and good house-keeping for all interior and exterior spaces.
<i>Utilities; Services:</i>	Tenant's sole responsibility,
<i>Port's Reserved Rights:</i>	<p>In an emergency, the Port retains the right to move the SS Jeremiah O'Brien to an alternate berth at Tenant's expense.</p> <p>Port and Tenant may mutually consent to temporary berthing of other vessels at the Premises, during Fleet Week for example. Base Rent shall be suspended during any such period.</p>

<i>Port Form Lease and City Requirements</i>	The Lease will be consistent with the terms in the Port’s form retail and maritime leases and include standard provisions regarding Regulatory Approvals and compliance with Laws and permits, Sea Level Rise/Flooding, Taxes, Utilities, Maintenance and Repair, Hazardous Materials, Defaults and Remedies, Indemnity and Waiver, Maritime Insurance, all applicable City requirements and other customary provisions for similar leases.

FINANCIAL ANALYSIS

Under the proposed terms of the new lease, Tenant proposes to pay increased monthly base rent in the amount of \$3,661.00. Further, Tenant proposes increasing the rate of its participation rent to 7.5% across all sales revenue categories. During the first 12 months of the proposed lease, base rent revenues are projected to generate a minimum of \$43,936.80, representing an increase in revenue to the Port of approximately \$13,000.00 annually. In total, the contract will generate a guaranteed minimum rent of \$450,352.00, over 10 years as compared to the current lease. Taken together, this results in an increase in both the rent per square foot and the percentage rent for each category of sales. In addition, NLSM expects an overall increase in gross revenues because of an anticipated increase in attendance based on their recent experiences berthing at Pier 35 post-fire. Pier 35 provides more direct access to the Public, better visual sightlines, and closer proximity to transit; All of which helped to facilitate greater visitorship, even during the pandemic.

Furthermore, the proposed financial terms under the new lease would provide greater revenues to the Port than if NLSM remains at Pier 45 under the terms of its current lease. Under the current expired lease, Port receives the greater of minimum monthly base rent or percentage rent; the currently monthly base rent is \$2,351.00 while participation rent is currently 6% for all categories. During 2021, this generated revenues of approximately \$31,152.00.

As both a Historic Vessel and an Excursion Vessel, the SS Jeremiah O’Brien is a unique asset unlike any other at the Port of San Francisco, combining the elements of its rich cultural resources with the ability for the public to access San Francisco Bay. As such, the monthly base rent is comparable to other historic vessel berthing agreements while the participation rental rates are comparable with those paid by the scenic excursion companies for their operations. Taken together, the proposed rent and participation rates represent a market rate for a Historic Vessel Berth & Cultural Attraction.

Absent this proposal, Port staff would continue to use the Pier 35 space for the overflow berthing of cruise vessels and intermittent vessel calls. Due to the activation of Pier 30-32 and CARB Shorepower regulations coming into effect in 2023, Port staff expects dramatically reduced demand for utilizing the berth for intermittent vessel calls.

RECOMMENDATION

Port staff recommends that the Port Commission approve the attached resolution authorizing the Executive Director to enter into proposed Lease No. L-17004 with The National Liberty Ship Memorial, Inc..

Prepared by: Demetri Amaro,
Maritime Business Development Manager

For: Andre Coleman,
Deputy Director, Maritime Division

Attachments:	Attachment 1	Proposed Lease
	Attachment 2	Historic Vessel Policy
	Attachment 3	Maritime Excursion Lease Renewal Policy

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

RESOLUTION NO. 23-04

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 Commission adopted the Waterfront Land Use Plan, which lists specific piers, by geographic sub-area, that could be considered as possible facilities for historic ships, including Pier 35; and

WHEREAS, The Port Commission adopted Port Resolution 05-12, the Historic Vessel Policy which recognizes the SS Jeremiah O'Brien as a historic vessel and Pier 35 as an appropriate location for historic vessels; and

WHEREAS, The Port Commission adopted Port Resolution 10-21, the Maritime Excursion Vessel Lease Renewal Policy, to provide clarity, equity and consistency in considering requests to extend or expand maritime excursion operations; and

WHEREAS, The National Liberty Ship Memorial, Inc. is a tenant in good standing under its current lease for berthing and the associated cultural attraction that is the SS Jeremiah O'Brien located at Pier 45, in the City and County of San Francisco which has expired and is on a month to month holdover; and

WHEREAS, Port Staff has negotiated the terms of a new ten year lease with one (1) 5-year option to extend for space at Pier 35 consisting of approximately 19,232 square feet of apron space and submerged land located at Pier 35, for use as Historic Vessel Berth & Cultural Attraction for the Historic Liberty Ship S/S Jeremiah O'Brien ("Lease"); and

WHEREAS, The proposed new Lease complies with the Historic Vessel Policy and the Maritime Excursion Vessel Renewal Policy; and

WHEREAS, The use is a continuation of existing and related uses and is therefore not a project subject to review under the California Environmental Quality Act; and;

WHEREAS, The Lease has an initial monthly base rent of \$3,661.40 plus a percentage of gross revenues; and

WHEREAS, The Lease requires that Tenant complete certain tenant improvements including repairs to the "Navy Gate," installation of apron fencing, and installation of security lighting with a value of no less than \$50,000 at its sole cost and expense and without rent credits or contribution by Port; and

WHEREAS, The Lease supports key goals of the Port's Strategic Plan by retaining an active maritime tenant, activating an underutilized berth, and promoting the richness of the Port through education, community, and strong relationships with stakeholders; and

WHEREAS, Port staff recommends approval of the proposed Lease; and now therefore be it

RESOLVED, The Port Commission hereby approves the terms of proposed Lease No. L- 17004 with The National Liberty Ship Memorial, Inc. as further described in the Memorandum to the Port Commission dated January 23, 2023; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, 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 obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port, 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 January 24, 2023.

Secretary