

# CITY & COUNTY OF SAN FRANCISCO PORT COMMISSION

## MINUTES OF THE MEETING MAY 28, 2019

### 1. CALL TO ORDER / ROLL CALL

Port Commission President Kimberly Brandon called the meeting to order at 2:45 p.m. The following Commissioners were present: Kimberly Brandon, Willie Adams, Gail Gilman, Victor Makras and Doreen Woo Ho.

### 2. APPROVAL OF MINUTES – May 14, 2019

ACTION: Commissioner Adams moved approval; Commissioner Gilman seconded the motion. All the Commissioners were in favor. The minutes of the May 14, 2019 meeting were adopted.

### 3. PUBLIC COMMENT ON EXECUTIVE SESSION

### 4. EXECUTIVE SESSION

- A. Vote on whether to hold a closed session and invoke the attorney-client privilege.

ACTION: Commissioner Adams moved approval; Commissioner Gilman seconded the motion. All the Commissioners were in favor.

At 2:46 p.m., the Commission withdrew to closed session to discuss the following:

- (1) CONFERENCE WITH LEGAL COUNSEL AND REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8. \*This session is closed to any non-City/Port representative: (Discussion Item)

- a. Property: Seawall lots 323 and 324 and portions of Davis and Vallejo Streets, located at Broadway and The Embarcadero  
Person Negotiating: Port: Michael Martin, Deputy Director, Real Estate and Development  
Negotiating Parties: TZK Broadway, LLC: Darius Andersen

Under Negotiations: \_\_\_Price \_\_\_ Terms of Payment X Both

### 5. RECONVENE IN OPEN SESSION

At 3:30 p.m., the Port Commission reconvened in open session.

ACTION: Commissioner Adams moved approval to adjourn closed session and reconvene in open session. Commissioner Gilman seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Adams moved approval to not disclose any information discussed in closed session. Commissioner Gilman seconded the motion. All of the Commissioners were in favor.

## **6. PLEDGE OF ALLEGIANCE**

## **7. ANNOUNCEMENTS** – The Port Commission Affairs Manager announced the following:

- A. Announcement of Prohibition of Sound Producing Electronic Devices during the Meeting: Please be advised that the ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing of or use of a cell phone, pager, or other similar sound-producing electronic device.
- B. Announcement of Time Allotment for Public Comments: Please be advised that a member of the public has up to three minutes to make pertinent public comments on each agenda item unless the Port Commission adopts a shorter period on any item.

## **8. PUBLIC COMMENT ON ITEMS NOT LISTED ON THE AGENDA**

Flicka McGurrin, Pier 23 Café – I understand that two RFPs on SB40 were sent out without letting us know. I would like to request a copy of the RFP that was sent out to the public.

Elaine Forbes – When we let out RFPs, we will ensure that we reach out to our tenants so they are aware of the opportunity to bid or submit proposals. We will talk to Flicka and provide her the information.

## **8. EXECUTIVE**

### A. Executive Director's Report

- American Association of Port Authorities Commissioners Seminar – June 18-22, 2019 at the Grand Hyatt Hotel, San Francisco

The American Association of Port Authorities Seminar for Governing Boards and Commissions is scheduled on June 18-20, 2019 at the Grand Hyatt Hotel here in San Francisco. Port Commission President Brandon and I are scheduled to attend. A welcome reception is scheduled on the evening of June 18<sup>th</sup>. On June 19<sup>th</sup>, I will be participating as a speaker

together with Randa Coniglio, the President and CEO of the Port of San Diego, on the topic of Infrastructure on Steroids. A boat tour of the waterfront is scheduled on Friday, June 20<sup>th</sup>. Please let us know if you are interested in attending any of the events.

- Fitch Rating

Elaine Forbes - Fitch has just completed their annual review of the Port and their rating assigned to our revenue bonds. I am pleased to report that they have reaffirmed the rating at A, with a Stable outlook. As usual, their biggest concern has to do with our large deferred maintenance backlog, and the amount of capital projects for which no funding has yet been identified. San Diego Unified Port District is a comparable peer for the Port of San Francisco and was rated A+ with a Stable Outlook. San Diego has a better-funded capital program. At this time, they don't see our rating going up to hit San Diego's A plus but they do note that we are managing our capital budget extremely well and getting more of our surplus revenue into capital. Congratulations to us all.

Commissioner Brandon - I would like to congratulate our director for being one of the San Francisco Business Times most influential women this year. I hope you have a wonderful time at the ceremony.

Elaine Forbes - Thank you so much.

B. Informational presentation by the City Attorney's Office regarding Conflicts of Interest and Misconduct: a general overview of the law.

Andrew Shen - I'm a deputy city attorney in the city attorney's office. I was asked to come to today's commission meeting to give you a brief refresher about some conflict of interest and ethics guidelines to keep in mind. This, of course, is no substitute for the legally required annual training that you all undergo. This is more in the spirit of being a brief refresher on some of these topics. I want to quickly move through some common scenarios. Please feel free to jump in and ask questions as I'm going through this brief presentation. Also, feel free to give me a call at any time if you have any questions about any of these topics. I'm fairly easy to get a hold of through either Michelle or Director Forbes. Please feel free to reach out at any time.

I'm going to go through five very brief scenarios this afternoon. The first is a scenario in which a commissioner, spouse or partner works for a nonprofit organization seeking a grant from the department subject to a competitive bidding process. This grant is subject to the commission's approval. The question here is, are there any conflicts? Are there any issues that a commissioner should be aware of? The answer is yes. There are certainly some conflict-of-interest rules or guidelines to keep in mind.

As you all know, recusals from particular government decisions are triggered by financial interests. Things such as organizations or entities, even a non-profit organization that employs a commissioner or official spouse or partner is something that can trigger a conflict of interest. In general, when there is a conflict of interest, recusal is required. This is especially true for contracts. Conflict-of-interest laws regarding contracts, grants, agreements, MOUs are very, very strict with severe remedies and severe consequences for all involved.

Hypothetically, I had posed that the spouse or partner had worked for the nonprofit organization in question. But serving as a board member, even a volunteer board member can sometimes trigger these conflict-of-interest rules as well. If you're ever in a situation roughly analogous to that, please check in with me. In this scenario, I had posed that this grant or this agreement was subject to a competitive bidding process. The simple fact that a grant or agreement is subject to a competitive bidding process does not automatically cure any potential conflicts. Competitive bidding is important for its own reasons but it does not necessarily cure all ethics issues that could arise in these kinds of circumstances.

The second scenario is a gift scenario involving a business lunch. Let's imagine a contractor doing business with your department invites you out to lunch to share her thoughts about upcoming projects or things on the horizon for your department or commission. Let's say the contractor offers to pick the bill up for lunch. Any ethics concerns? Yes. There are certain concerns that comes up with gifts. There's a wide array of laws, rules, exceptions to rules that come up with gifts but here are some of the basic ones. Under local law, we have established something called the restricted-source rule, which generally prohibits any gifts worth more than \$25 from anyone doing business with your department or commission or seeking to personally lobby you within the past 12 months. With that hypothetical I just described, the contractor that was offering to pick up the bill would be a restricted source. Anything that contractor offers would be presumptively subject to this \$25 gift limit.

In addition, as you are all aware as Form 700 filers, you also have certain gift-reporting obligations. Any gift worth more than \$50 or a cumulative series of gifts worth more than \$50 over a calendar year also must need to be reported on your Form 700. There are certain common gift exceptions such as gifts from family members that you don't need to report. But this kind of gift or lunch is something that would be subject to disclosure on the Form 700.

Commissioner Woo Ho - If you each pick up your own tab for lunch, that's acceptable?

Andrew Shen - Absolutely correct. One of the commonsense approaches to the situation is simply split the bill. A couple of other non-strictly ethical concerns about things that I should point out in this scenario is that a commissioner has an ongoing duty of confidentiality in terms of anything that

the commissioner is privy to by virtue of his or her official position that is not generally public.

Obviously, commissioners should be well aware of what's confidential and what's non-confidential when speaking to people outside the city. I should also add further that, even though it's strictly not an ethical concern, obviously if this contractor is approaching you in a competitive bidding situation or something that could be heading toward a competitive situation, that could raise concerns about impartiality as well, again a strong concern that we have although not a strictly ethical one.

Third, a brief scenario that I want to quickly walk through with you and this is about gifts and tickets. I do get an awful lot of questions about tickets to events. This could involve tickets to a private event like a Giants or Warriors game. It could involve tickets to an event held on city property so something like Outside Lands, for example, held in Golden Gate park. I also get a lot of questions about tickets to nonprofit fundraisers, in particular like 501(c)(3) nonprofit fundraisers, usually something like an annual fundraising gala, something of that sort. Tickets to a private event, such as a Giants or Warriors game, for example, would be subject to the restricted-source rule I mentioned previously so the \$25 gift limit depending on who is offering it to you. It can also be subject to Form 700 disclosure. Again, the threshold for Form 700 disclosure is \$50, not too difficult to get there with a Giants or Warriors game ticket.

With respect to events held on city property, sometimes these offers do sort of make their way around the city. Something to keep in mind is that, if it is a ticket to event held on city property and even if it's offered to you by another city official or city department, please keep in mind that these tickets can also be subject to gift reporting and limits unless your attendance at the event fulfills a public or governmental purpose.

Certainly, it's legitimate for a public official, like police chief, fire chief, those kinds of personnel, to attend these large public events where lots of people are congregated. Otherwise, there's a strong obligation on the part of a public official attending using a free ticket to justify why they're using and getting that free admission.

Lastly, tickets to 501(c)(3) nonprofit fundraisers -- I find that a lot of commissioners are very involved in charitable activities. They tend to get invited to a lot of annual galas and such. There is a gift exception that applies to tickets to nonprofit fundraisers. If the nonprofit holding the event is directly offering you the ticket in question, you can accept and it's not subject to any limits or reporting requirements. Under the law, such a ticket has zero dollars' worth of value. You could accept up to two so for yourself and a guest. One thing to keep in mind, however, about the scope of this exception is that, if the ticket is offered to you by a third party such as a contractor or vendor or some other private entity that bought a table at the event and has some extra seats

and you get invited to the event through manner, some of the other limits and disclosure requirements do apply. This nonprofit fundraising exception only applies if the ticket is given to you directly by the nonprofit putting on the event.

Fourth, political fundraising, this is something that I get asked about a lot. What are the rules of the road in terms of commissioners who are involved in local politics and may support local candidates or certain measures that are coming up on a ballot? There's a bunch of rules to keep in mind. I know many of you have been on this commission or other commissions for a while and are well aware of these. Let me just briefly cover them. First is that no public official is allowed to be engaged in any political activity on city property. There are some exceptions when the city property in question is generally open for political activity, like the front steps of city hall, which I'm sure many of you have seen have been used for political events and political rallies.

In addition to generally no political activity on city property, no public officials can solicit campaign contributions from any other city employees or officers even if they are not in a direct reporting relationship. It's sort of an across-the-board ban. In addition, and this is a relatively new rule, commissioners may not fundraise for their appointing authorities. People who are appointed by the mayor, for example, are not allowed to fundraise for the mayor as a general matter. That is a relatively new rule that came into effect earlier this year. In addition to this, commissioners are also subject from a fundraising limit or fundraising prohibition from certain people appearing before their commissions. These are people who may be pursuing certain types of contracts, may be pursuing certain kinds of permits, etc. With parties that could come before a commission meeting like this, please be aware that there are certain political activity restrictions that could come into play.

Lastly and this is another relatively new rule, commissioners and others with supervisory authority cannot ask subordinates to volunteer on any political campaigns even if it's not for the commissioner's own attempts to run for office but can generally not solicit someone to volunteer on a campaign.

Commissioner Woo Ho - Can you clarify one thing? When you said commissioners may not fundraise for their appointing authorities, are contributions to their appointing authorities by themselves covered or not covered?

Andrew Shen - That's a great question. Commissioners can make their own contributions on their own behalf. The fundraising ban is soliciting contributions from others. Organizing a fundraising event, "bundling" contributions, gathering contributions from other folks, that's what's prohibited. But commissioners can still contribute on their own behalf of their own volition.

Commissioner Makras - On the appointing authority, is it the office or the person holding the office?

Andrew Shen - Also a great question. Appointing authority runs with the office, not with the person. For example, someone who was appointed by Mayor Lee to his or her current position would be prohibited from fundraising for Mayor Breed even though Mayor Breed may have not actually appointed that person to the commission.

Last situation and this is fundraising of a different sort. As I mentioned, it's great that a lot of commissioners are very involved in charitable activities. But here, we're not talking about fundraising for an elected official or a ballot measure. We're talking about fundraising for the benefit of a non-profit organization. Many commissioners are also board members of 501(c)(3) nonprofits throughout the city. As it goes along with those such appointments, generally they have to do some fundraising for that nonprofit. A couple things to keep in mind even for this kind of fundraising is that there are certain restrictions on using your city title in connection with such fundraising again for the benefit of a nonprofit organization. Also keep in mind there are certain new behested payment reporting requirements that apply as well if a target of such a solicitation is someone that comes before your commission. There are certain reports and disclosures you may need to file with the Ethics Commission documenting that activity.

Commissioner Gilman - This is not just being a board member. If you are a CEO of that organization, would it apply to you as well.

Andrew Shen – Yes, some of these nonprofit fundraising restrictions don't require you to have a specific official position even with a nonprofit. It can include a CEO or ED and a member of a board. It could include someone on a fundraising committee or honorary committee. Those sorts of things could be captured by this rule.

That's a brief rundown of the items. This is all in the spirit of a refresher on these topics. There's a lot more information on these topics on the government guide, which is a publication that my office produces on the Ethics Commission's website. Please feel to reach out with any questions at any time.

Commissioner Adams - It's been a long time since I've seen you. As a commissioner, you're out there trying to be a power broker, trying to talk to developers or something like that and trying to negotiate and stuff like that. Would that be out of character?

Andrew Shen - Certainly, those kinds of communications is something that a commission such as yours could adopt certain policies or expectations around. It's not necessarily something that every commission has in place. Certainly, some commissions take those kinds of activities very seriously. In the spirit of transparency, for example, you may want to have some policy or general approach to it.

Commissioner Adams - I mean if you're out there on your own trying to negotiate or something like that, you could be undermining what's happening with whoever else like the staff is negotiating. I think we just live in a time where there's just so much transparency. People need to do the right thing. I just wanted to know how that works.

Andrew Shen - Again, that would be a policy decision for the commission about whether it wants to develop an understanding or approach or expectations on those sorts of issues. Obviously, I also understand the other perspective as well, which is that commissioners should be out there engaging the community, hearing from people not necessarily just in formal proceedings like this but in more informal settings as well. I think it's very good for all commissions to have a shared understanding about what's the accepted or expected approach on those sorts of situations.

Commissioner Brandon - Andrew, thank you so much for that refresher. We really appreciate it.

## 10. CONSENT

- A. Request adoption of the Final Mitigated Negative Declaration and the Mitigation Measures and Improvement Measures for the Fire Boat Headquarters Project (2012.0893ENV) located at Pier 22½ on The Embarcadero at Harrison pursuant to the California Environmental Quality Act; and

Request approval of a 50-year Memorandum of Understanding (MOU) between the Port of San Francisco and the San Francisco Fire Department

(This action constitutes the approval action for the project for the purposes of CEQA, pursuant to San Francisco Administrative Code Section 31.04(h).)  
(Resolution No. 19-21)

- B. Request retroactive authorization to modify Construction Contract No. 2786, Pier 94 Backlands Improvement Project, to extend the substantial and final completion date. (Resolution No. 19-22)

ACTION: Commissioner Makras moved approval; Commissioner Woo Ho seconded the motion. All of the Commissioners were in favor. Resolution Nos 19-21 and 19-22 were adopted.

## 11. REAL ESTATE & DEVELOPMENT

- A. Informational presentation on competitive solicitation strategy for selected historic pier facilities in the Embarcadero Historic District.



Rebecca Benassini, Real Estate and Development – I'm joined in person and abroad now by my co-writers Diane Oshima, Michael Martin and David Beaupre, who I want to acknowledge in helping me bring this item before you today. We have an informational presentation on the historic piers rehabilitation program. We'll go over in brief some of the background information. Then, we want to talk specifically about some of the direction we heard back in February and the additional items we've done since then and then go forward with some next steps and get some input from commissioners on those next steps.

You'll recall that the focus of the historic piers rehabilitation program is on the Embarcadero Historic District, the largest collection of finger piers in the United States. Also, we all know and love that it's one of our key economic visitor ship and transportation hubs in San Francisco. It was so special that the Waterfront Land Use Plan update process spent a concerted and diligent amount of time on developing these new public trust objectives framework just for the historic piers in the Embarcadero District.

The key item that came out of that process was recognizing that historic preservation is a trust goal in this National Register district and recognizing that led the working group and others including State Lands Commission staff to understand and agree that supporting historic rehabilitation as a trust goal means that you have to get there with financially feasible projects. That led to the inclusion of high-revenue-generating uses such as office in those piers to support those trust goals.

It's wonderful. We love it. It's three miles of more than 20 historic resources, six of which have been rehabilitated. We've been able to do six but we want to do a lot more. As we go through the presentation, we'll talk through how we get from the green circles shown here are Pier 27, Pier 15, Piers 1½, 3 and 5, Pier 1 and the Ferry Building, which have been rehabilitated. We want to get to as many of the others as we possibly can as quickly as we can.

In February, we came forward with a presentation and recommendation on going forward with a first cluster of RFPs focused on the northern waterfront and the piers which we thought could most readily achieve a successful outcome. We recommended additional study of the South Beach piers. I'll refer to them as the South Beach piers. That includes piers 26, 28, 38 and 40 and then, we also had some other solicitation strategic items we wanted your input on including staggering the release of RFPs.

At that time, the key feedback we heard was for staff to do additional work on considering a master or a single RFP. We also heard the concept of pairing additional piers, good-condition piers, poor-condition piers to create a financially feasible cluster and to really do more work on the South Beach piers and come back with that additional work.

Since February, we've done a number of different internal meetings. We've been working with the model that the consultants put together for us during the

waterfront plan. We've done additional due diligence on the solicitation. Focusing on the pairing concept, the upside or the good potential outcome of pairing better and worse-condition piers, I think we're supportive of. It presents a cross-subsidy potential. The potential downside is pairing geographically disparate, geographically disconnected better and worse-condition piers.

In our minds that led to two offsetting downsides. One is an increase in entitlement risk as our private partner goes out and works with communities in different parts of the waterfront. They might face an additional entitlement risk in working with those geographically disparate communities. We also thought that we would then get a limited benefit from construction mobilization.

They'd have to mobilize in two separate parts of the waterfront. We found that there is a benefit if they are geographically located close together because they can get some efficiencies in that operations and maintenance of that construction project. Overall, we thought the point was very good in that you want to cluster piers together that, together, if one doesn't get it done, the second one gets it over that financial feasibility hump. We did this concept from that perspective.

The other concept we looked into in a lot of detail was the master RFP or single RFP. That also presents a cross-subsidy potential. It also has an efficiency of solicitation. You would issue one RFP rather than multiple RFPs. However, we've found that there are a number of risks which in our view is too high to undertake this sort of an RFP process. They include the ones I mentioned before. If you have geographically disparate locations, you face more entitlement risk, less construction mobilization efficiency.

We think we would decrease the size of the bidder pool a bit because it would be a very high capital project because it would be so much larger. We're concerned about our lost ability to have this diversified counterparty risk where, if we have multiple RFPs going at once, we have multiple teams working with different sources of capital. If one of them doesn't come through, at least we have another bird in the hand.

The last thing that we're worried about is a combination of four and five, which is we worry about our negotiating position being made a bit worse off because it would be so costly for us to walk away from a large RFP. We would be losing what we've been putting out in the public as what we view as precious time right now to move forward with these RFPs as we've confronting deterioration and sea-level rise and how we feel as though we have a finite time right now to work on these RFPs.

On the other item we were asked to delve more deeply into was looking at the South Beach pier. Piers 26, 28 and 38 and 40 are shown with some of their key attributes, their current revenue, their current tenant types. We also thought it was instructive to look back on what attempts we've made in the past either to work directly on these piers or to do work on rehabilitation projects that might

inform these piers. It's sort of a checkerboard of hits and misses, some kind of bad historical precedence like the Pier 38, 2013 through 2016 attempt to rehabilitate the bulkhead, which ultimately failed, counterbalanced with we have received a lot of interest in Pier 38 as a development site since that time and during that time. Although, we would need to go forward with an RFP to get there. Also, on Pier 40, it has had a lot of historical investment. Prior to the Port taking control of Pier 40 just very recently, the redevelopment agency made a significant investment in the marina and public access.

In 2009, they also made a significant investment in the shed and ended up removing the bulkhead and creating that surface parking lot. They also advanced a concept of a mixed-use development site there. There have been a lot of fits and starts on each of these piers that have informed how we might go forward with them. In looking at all of these piers next to one another, we believe that the best course of action is to learn from a Pier 38 and Pier 40 cluster RFP.

The reason for letting that inform our next steps on Pier 26 and 28 is that we want to enjoy the significant level of revenue that they currently provide the Port and we couldn't readily replace at this moment. We want to learn how the Pier 38 and Pier 40 process goes. We think it could be replicable for Pier 26 and 28. Focusing on the ones we are recommending that you consider for a potential RFP, Pier 38 we think is the best opportunity.

It's a special and attractive site. If you've been by these piers, you come upon this one. It's in this incredible open location. It's right next to a site that we've invested quite a lot of money in the Brannan Street Wharf. It has had a lot of attraction to private partners through the RFP process for a large-scale development. We've had limited success in interim leasing due to the existing code violations. We've done a little bit of investment in the outside and in the fenestration. But we haven't yet been able to get over the fact that there are a number of code violations to interim lease the site. As you heard in February 26th when I gave you that presentation, on its own it doesn't reach financial feasibility. The costs are so high at Pier 38. We do think that Pier 40 provides the sort of injection of a lot of different attributes, if combined with Pier 38, the two of them together would be a financially feasible project.

First and foremost, we want to recognize that Pier 40 provides support for the South Beach harbor and water recreation resources. We think an RFP with the two of them would be attractive to the public because we could at least maintain if not enhance the water recreation, public-oriented uses that are there today. There's also an existing revenue stream from Pier 40 that a private partner could leverage to get the construction and investment going in Pier 38. There's also a parking lot area that's fairly large that could be intensified with different types of uses, even built upon to generate more revenue.

The last item is that the pier shed could be intensified in terms of mezzanines. In terms of mezzanine space and still maintain the provision of some of the

spaces it's currently providing space for, water recreation support services. That was what was reviewed by the redevelopment agency about 10 years ago. There's already been sort of development concepts put out including some CEQA work on the concept. Pier 40 is actually in a relatively good position to move forward in terms of development.

We like that cluster but we still like the northern piers cluster as well. Our recommendation today is to pursue the two RFPs, one for South Beach, one for the northern piers. From a timing perspective, we suggest overlapping but a staggered release of solicitations such that one solicitation is out at a time. We want to have one out at a time, allow that to close, allow us to select the next party and then release the next one right after. We also are recommending two -- slightly more definition to the northern piers RFP and more flexibility for the South Beach piers' RFP.

Many of the criteria that we suggest for the northern piers are very standard RFP criteria that we would put in any RFP. The one specific to the northern piers are the early public activation strategy. We view Pier 29 with its tie to the Pier 27 pier providing some special stability that could allow it to be an early activation site prior to a significant amount of investment in Pier 29. That's something we would put in the northern piers or talk to the public about putting in the northern pier's RFP. The other important bullet for the northern piers is we think it's such a significant size, scale of an RFP solicitation, we can get a lot of different types of spaces for the public, for visitors, for maritime and water-dependent uses just because the scale of the RFP is so significant.

Focusing on the South Beach piers, in addition to the typical RFP criteria, we think that it's special in that it currently has water recreation offerings at the site but there's not a lot. There could be more. The space isn't utilized that intensely. The second item is we think you would look at targeted locations for activating sites. We've run various types of model, full rehabilitation for Pier 38, make it total public assembly very intense building spaces. That costs a lot of money.

The market might come back with some other ideas of activating different parts of Pier 28 that might make more financial sense. We want to have a little bit more openness on the South Beach to different approaches in terms of where we make investments, where we keep things a little bit more industrial and where we welcome the public into the piers.

We are seeking your advice and interest in how we would order these piers understanding that the RFPs would be of sort of different flavors. You know where the northern piers are, big, you know, high tourist, lots of different activity down there. They're in better condition. It's a larger offering, might attract a larger type of a private partner. We're suggesting more defined RFP criteria that we would go to the public to speak more about with those RFP criteria would be and come back to you.

With the South Beach piers, moderate to worse condition piers but a smaller RFP offering with more flexibility on the RFP criteria. Those are the character of the piers that we'd love to hear your thoughts on what might make the most sense in terms of ordering. This process where Brad, Diane and I and others are all kind of joined at the hip. All of these processes have to stay together and stay in close communication. I'm attending seawall team meetings. I come to Brad and to Steven with my staff reports.

We're trying to stay closely connected because we're all feeding information into one another. The waterfront plan draft amendments will be released. If you direct us to do so, we'll be going out to the public with our RFP criteria. Meanwhile, on the seawall team, we are feeding them different bits of information. They're feeding us information about how we could leverage this project to bring more money to the seawall program. All three of these are working in tandem. We are very set on doing that because we know we're just going to benefit one another by doing that and not step on one another's toes.

Focusing in on the next steps for this RFP program that we're speaking about, if you direct, we'd be working over the summer to go through those RFP criteria with the various advisory group members and solidifying what their thoughts are and what is really important to the public for any project at these sites. We'd then come back to the commission after the summer with the action item to release the RFPs. If you so authorize, we'd release the first RFP late in the year and then release the second RFP once that first RFP closes.

Martin Lee - I'm a design principal with HASSELL. I spoke at the last meeting that you had in February. In response to the RFI that was issued, HASSELL proposed an integrated approach to the piers, the seawall lots and the Embarcadero. It was a proposal that brought together global and local expertise to present a bolder vision for the Port. HASSELL has master planned and delivered major public-realm and public-oriented uses internationally. Some of relevance to the Port include Sydney's waterfront in Australia where we breathed life back into the historic structures, bringing the locals back to the water's edge for a variety of experiences. The Darling Harbour Sydney Transformation project is the city's most significant urban renewal initiative in 20 years. Like Darling Harbour, the historic piers is a once-in-a-lifetime opportunity to re-life the waterfront, for San Francisco to stand on the international stage as a world-class, next-generation waterfront, renowned locally and envied globally. As we stand now, we've lost more than 20 piers to the tides. HASSELL responded to the RFI from the Port in the broadest of terms with a historic piers vision for the Port. We've done a great deal of research into the social, cultural and economic value we can unlock for the city as well as the public benefits we could bring on early in the piece with a holistic approach to the master plan for the waterfront. I would request that any process or solicitation that is progressed has the opportunity to possibly be expanded in the best interest of the Port and of the City of San Francisco. In some solicitations, there is a minimum requirement with the opportunity to go

beyond. I would respectfully request that the board consider this as a possibility for this solicitation.

John William Templeton - Last night, I was reading a book about how redevelopment was done in San Francisco and how it was orchestrated as a top-down process that was to the benefit of certain large landowners. The environment that we look at now is the result of those priorities. As our labor leader knows, the historic character of these piers is one of a very diverse group of people who made this city a hub for international commerce and trade and national defense. As we put together this RFP, we need to make sure that historic preservation is not what so often the City of San Francisco has done what I call neutron planning where we just focus on the buildings and forget about the people, but that the vision that we create truly represents what the history of this waterfront has been. I've been working with the Port for 20 years to interpret the African American history. I'm the subject matter expert for National Parks Service on African American history in the West. Today, Dr. Lonnie Bunch, who created the National Museum of African American History, has been elevated to be secretary of the entire Smithsonian Institution. Last month when he was in Los Angeles, we got a chance to talk about these finger piers with him. He was very excited about the opportunity to do something comparable to what's been done in Washington here in San Francisco. We look forward to a vigorous process that keeps all those perspectives in mind.

Commissioner Makras - I support the staff's approach. It's well thought out and will give us all the advantages of having people that bid on the first tranche being able to go into the second tranche if they're not successful. I do support the idea that, if the private sector wanted to include a different pier in there, that we should be open minded to that. We should be prepared to say, because another pier is in, we don't have to go out to bid and start the whole process over. We should allow the creativity of the marketplace to drive it and be open minded to good ideas. I want to loop around to staff's combining 40 and 38. Could you walk me through why you say Pier 38 is not economically feasible? And I'll give you my benchmark. I'm assuming that, if we give it for free and we give them a 66-year lease, they can't make money. That would be unfeasible to me. Walk us through if that's true and that's why you're combining them.

Rebecca Benassini - Good question. The reason we call it infeasible at the modeling level is based upon our consultant at the time during the Waterfront Land Use Plan process produced financial feasibility models for Piers 19 and 38. At that time, Pier 38 was just barely financially feasible if you place a lot of office and restaurant, retail. There weren't a lot of lower-revenue-generating uses at that time. Since that 2017 model, we've added in a couple of items. We've added in some seawall risk-reduction costs. Those are very preliminary at this point, as you can imagine. The seawall team is still working on those. We've escalated construction costs and escalated office rents, which have gone up quite a lot. We've reduced the historic tax credit benefit after the federal tax law. We've made those changes. Making those changes makes that model go negative.

I agree with your perspective. If we put it out to bid, we couldn't have imagined the Exploratorium would come to Pier 15. We couldn't have imagined what comes through the door once we put something out to bid. We do think that, if it's a capital-return-focused entity, they would probably come through the door and try to retrade once they got in the door. They'd try to take tax increment. They'd ask for Port low-cost, capital-repair loans or something along those lines. We're a little bit concerned. We're not fearful. We are concerned when we have a model that's coming out negative. We all know that construction costs are never exactly what we think they're going to be. That's why we call it not financially feasible at the planning level understanding that we can be wrong on all sorts of different assumptions.

We do think that, if we hold the line on all these things that we want, we'll want to have a lot of public activity in the bulkhead at Pier 38. We'll want to have public access around the pier. If we layer on all of these other items that we must have, we are concerned that we're just teetering on feasibility. That's why we suggest Pier 40 because you see how incredibly connected they are and the opportunity you can have in that basin between the two piers to have an interesting water recreation space if both piers were under singular management.

Commissioner Makras - I agree with combining them but I also think the economics have changed from 2017 to today. All of our piers are more feasible than perception and our history has for them. If we don't know the intensity, we don't know the cost. Only the people bidding will let us know the intensity that they plan on each portion of the shed.

My next question is to the director at a previous meeting. We talked about doing something with Pier 30 and 32. Could you walk us through how that will play into this timing, so we can have an understanding that there will be three objectives that we're reaching and how they will interplay with each other?

Elaine Forbes - Excellent question. We do plan to put out Piers 30-32 and Seawall Lot 330 as a combined offering. Like with the historic piers, north and South Beach, we're looking to provide maximum flexibility to the respondents. That respondent can bid on Seawall Lot 330 alone or Piers 30-32 with Seawall Lot 330. We can look at the economics of the piers versus the seawall lot. Our plan had been first piers RFP, whether that be South Beach or north, Piers 30-32 and Seawall Lot 330 and then second piers offering.

We are seeing a world of three competitive solicitations starting in the fall and ending in the fall of the new year. South Beach piers are first and then Piers 30-32 and Seawall Lot 330.

Rebecca Benassini - Issued at the end of year. We wouldn't hold Piers 30-32. We feel like that's sort of a different pool.

Elaine Forbes – That would be issued at the end of 2019. The final piers' RFP early in the new year.

Rebecca Benassini – That's the second, not the final. The program is the second.

Commissioner Makras - Have you looked at Piers 30-32 going with the first one simultaneously because they're not competing?

Elaine Forbes - They aren't competing. That's a very good point. It's really a staff-capacity issue.

Mike Martin - More color on that point, commissioners, at the last Piers 30-32 discussion, the commission asked for a more detailed look at the substructure. We're working with engineering to prepare that and also better define the maritime deep-water berth at 30-32. We're anticipating coming back to you for this same type of presentation in July and then doing the same community work to come back to you with the criteria for selection of Piers 30-32. Because of the staggered start to that community work, we're going to be talking to the same people about those issues. We can certainly try to come back to you but we wouldn't want to hold this up if they were going to different pools but rather come back to you for approval on each one when they're ready.

Commissioner Makras - In the RFP process, walk me through what we would do if you have your RFP bid and you're close to picking someone, and someone comes in with an idea that you like and missed the process. What will you do if you really like it? What is our posture going to be as a landlord for the integrity of how we do it? Because we are setting ourselves up by tiering these bids for people to stay on the sideline and wait for the third one and not bid on the first one.

Elaine Forbes - The key principle is a fair and competitive process. We want to make sure that we talk fully with our advisory groups, talk fully with the commission, make sure we've got what we want in the piers projects very clearly stated, have a concept of the economic return to the Port, the public benefits, the historic preservation, etc. Then, the day the bids close, they need to come in on time, time stamped whether it be noon or 5:00. We wait in the lobby, and we get the bids we get. We impanel a group of people that we think will represent you well and represent expertise who do the screening of those bids. Then, we'll come back from that process with a recommended selection for you. You will hear likely from all of the bidders at that point. You'll know exactly who we think you ought to choose. You give us ability to do so. Then, we enter into the ability to exclusively negotiate with the preferred developer or development team.

If along that process after that 12:00 or 5:00 p.m. deadline somebody comes in with an absolutely fabulous idea, they just didn't make it in on time. The thing that may cause a difference is if we don't really find a preferred development



team, and there isn't a clear winner or we don't feel confident in the proposal. We may cancel the RFP altogether and go back to the drawing board.

Commissioner Woo Ho - Some of the questions and topics, Commissioner Makras has already addressed. But to the last point, I do think that we have let the world know about these piers. We had the RFI. We've had the Waterfront Land Use Plan discussion. We've let the air out on this for a long time. We do have a process, as you suggested. If we could not get a good enough bid on something and we had another person that someone missed the deadline, then we could cancel the RFP. I can't imagine that that's what we would face because this is not something that we have kept secret for a long time. It is important for us to document when we come back again where the other piers are in the process because, just of our recent discussions to make sure that Piers 30-32 and Seawall Lot 330 are on the calendar and that people are aware that it's going to be addressed in due time. I think that's important.

Water transportation has been something that we're very interested in. We think that that's a key element and something that I've asked about in the past. I just don't know how we integrate making sure that, in the RFP, that we do talk about that there is the ability to provide further access for water transportation. I've never really understood yet the answer to my question of, what is the cost of floating piers in order to be able to have better water transportation berths across the waterfront? It doesn't matter which pier I'm talking about but whether that is a way to improve the water transportation system for us, not just for small water taxis. I'm talking about something that's a little bit more substantial, perhaps not as major as a ferry service but at least something that is a little bit more impactful than the current water transportation system that we have and that we should include in our pier solicitations or in RFP solicitation some creativity to tell us how could we tie in water transportation, a better system for water transportation in an innovative matter than what we have today because now it's either very small or very big. We have nothing in between. We have a discussion later about one of our existing operators but it's not necessarily for pure commuting purposes. I think that's something that we should consider.

As a separate topic, I'd like to understand the feasibility of floating piers in general, whether that's something we should be thinking about more and more or whether that's just not feasible.

Commissioner Gilman - Thank you so much. This was a really great presentation. A lot of my questions have been answered. I just have one question. I was curious what would happen with existing tenants or lessees of these piers? Like Pier 40 does have individuals who are renting that space. If a new operator comes in, what's our policy for those folks who are currently leasing with us?

Rebecca Benassini - We would look at their individual leases and see whether or not their leases had any particular provisions in them. All of the leases are

on a shorter-term basis. Presumably by the time we're done with this whole process, their leases would be up. Although we are not required to, we would discuss it. We often will look for other spaces along the waterfront where they might be able to be located. In this case, we really do have an interest in making sure water recreation and harbor support services are in the best location and they're in the best location now. We want to maintain some of those things to make sure the harbor is well supported. We'd be of integrating that into the RFP. Whether or not it's one particular tenant or one particular type of use, we would look at making sure that there's a solid continuation of that dedication of space for those functions.

Commissioner Gilman - I do like the idea of combining Piers 38 and 40. It's a smart move to make it a more marketable piece. Since you had in your recommendation and I assumed you wanted our thoughts, I would also say that I would prioritize doing the South Beach piers first. As someone who walks along the waterfront, the northern piers have a lot more activation. They have a lot more spaces for the public. I think they're more vibrant. While it's important to keep that vitality and get these piers RFP'd, I would like to see more activation on the South Beach piers. When there's not an event at the ballpark, it's a pretty desolate area or mid-week at like 2:00 p.m. to be walking around. I would recommend that we move those piers first.

Commissioner Adams - Rebecca, your presentation was smooth. It was good. You really present really well, very articulate. There isn't a hmm, uh. You were right on. I really appreciate the comments of Commissioner Makras and Commissioner Woo Ho and Gilman. But the one thing I will say is that I don't believe in running slick and running loose. The rules are the rules. If you don't get the bid in on time, you're done. That's what rules are for. I don't believe somebody sitting on the sideline sandbagging or whatever. If you're going to get in the game, get in the game, and get out there. That's just my opinion. I can't wait till you come back. This is a great opportunity for us to transform San Francisco and transform these piers. We don't have a lot of money but we can do a lot with what we've got and to transform. There might be some good partners that want to come in and build these piers up. I'm excited about it. This is a great challenge. It's going to be good. I agree with Commissioner Gilman to start out in the south because we've really been working over on the southern waterfront. I think it will just add to where we need to go.

Another thing you said on Pier 30-32, the maritime component is really big. Commissioner Woo Ho keeps hammering on this and has for years. I'm with her on water transportation and stuff like that and how that's going to work to take some of this congestion and get some of these people off the Embarcadero. What are we going to do because more people are flying in airports? More people are open to take public transportation, etc. With the Warriors opening up down there, I think that's just a great opportunity to have more ferries, to have more water taxis and to make it a lot easier for congestion, even for people walking up and down the waterfront.

Commissioner Brandon - Rebecca, thank you so much for this presentation. It was a great presentation. I, too, think this is a wonderful opportunity for us. Commissioner Makras had a lot of my questions answered. I agree with Commissioner Gilman and Adams regarding the southern waterfront because those piers really need attention. We told the community that Pier 38 was going to be released six years ago. I would like to focus on getting that one out first and focus on Piers 30-32 and then the northern waterfront.

I also agree with Commissioner Woo Ho that, when we have these presentations, it would be great to have all of the opportunities listed, so we know the timing and status and what we're doing with all of them. Thank you so much for this presentation. I'm looking forward to the RFPs.

B. Informational presentation regarding the proposed terms of a new 15-year lease with two 5-year options to extend with Golden Gate Scenic Steamship Corporation located at Pier 43½ in Fisherman's Wharf.

Jay Edwards, senior property manager – I'm joined here today by: Tom Escher of Red and White Fleet; Joe Burgard, president of Red and White Fleet; and Kenneth Glosser of Red and White Fleet. I'm supported by Demetri Amaro, who has just been our new recently promoted Fisherman's Wharf property manager, and also Dominic Moreno with our maritime operations group.

As some of you may recall, we were here back in February 2017 for an informational presentation regarding Red and White Fleet's proposed investment of approximately \$4.6 million into landside and shoreside improvements that they were going to perform at their sole cost. In return for that investment, Red and White Fleet has requested a lease term sufficient to amortize those improvements. The ongoing financial performance falls within the parameters of the Port's maritime excursion lease renewal policy, which is further outlined in the staff report.

The item today is an update summary on some new developments that have happened in that framework. Red and White Fleet has been a longstanding partner of the Port of San Francisco and has been operating at this particular site under this current lease for approximately 40 years. The lease expired in 2015 and has been on a month-to-month basis since that time. They've had a long history of active community participation, commitment to hiring a diverse staff, has been a good partner with labor, environmental stewardship and engaged in good business practices with the Port.

On the screen in front of you is the new vessel Enhydra, which is a hybrid vessel, which is indicative of Red and White Fleet's environmental commitment. They've had several other awards through their practices. One is a State of California Waste Reduction award 14 years in a row, a multi-year recipient of the Bay Area Quality Carl Moyer award for surpassing emissions compliance standards, a member of the Passenger Vessel GreenWaters

Program and, most recently, a certified green business with the City of San Francisco.

In addition, Red and White Fleet's equipment and site serve as the resource for WETA's emergency plan. This is a summary of what we're calling the phase-one improvements. These are the shoreside improvements. This investment will enhance the visitor experience, provide improved public access to this site and also improve the employees' working conditions with some improvements that have been made to the booth and has an estimated cost of \$1.6 million.

The phase-two improvements, those are the waterside improvements which comprise the majority of the investment at approximately \$3 million. As part of those phase-two improvements, they're going to add a fourth berth. The fourth berth is going to help consolidate the fleet into one location. It's going to improve the passenger loading and boarding. It's going to reduce the vessel time in each berth. Overall, these will result into significant operating efficiency improvements that should result in improved financial performance to the Port.

There's a photo of the existing waterside facility. This is a photo rendering of what the phase-two facility would look like with the fourth berth. Through this time period from 2017, Red and White Fleet has been very active and achieved substantial milestones including CEQA determination, BCDC permit for the phase one. We've had negotiations on a draft term sheet. We hired an appraiser, Ron Blum Associates. We've also been able to renegotiate the term sheet as of our last commission meeting in anticipation of this meeting today and also as reflective of the most recent appraisal for the site at fair market value.

This is a bar graph of Red and White Fleet's annual ridership. As you can see, it's grown steadily and now leveled off. However, it's been quite a performance to bring these many members of the public to the waterfront. It's one of the most active maritime excursion operations down there at the wharf. They're also improving their offerings, adding special events and charters. They're diversifying their business line.

In 2016, we took all the percentage rents to market and brought those to fair-market terms. We're proposing to consolidate those into a much more manageable percentage rent schedule. Here's the most recent five-year financial performance that's resulted in \$4.2 million of total rent paid to the Port. Part of that is through their base rent, which is the column that you see under base rent. You can see the percentage rent. This has been updated since the percentage rents took effect in 2016.

On the next slide is the projected five-year performance for the new lease renewal. This would result in approximately one million more of rent to the Port in five years. We believe that's going to be generated through the higher-margin business that we talked about previously as well as the implementation of the phase-two waterside improvements.

Beyond this initial forecast, the five-year minimum base rent will be adjusted to reflect their increased gross sales. The base rent will never go below what it was previously. That base rent will provide the Port with a very stable source of revenue. It adjusts to the sales. The percentage rent is paid above that.

In April of this year, Ron Blum Associates (RBA), who has experienced working with the Port on prior engagements such as the Alcatraz embarkation appraisal, evaluated comparable financial terms for maritime excursions and other operations through the West Coast along with retail concessions in the city, such as Golden Gate Park. Not only did RBA evaluate the financial terms but also the lease term relative to the capital invested. Red and White Fleet has advised the Port that to get financing for the improvements to the Port property will require 20 years of lease term for amortization purpose.

The proposed lease term that you see here of 15 years with two five-year options would be consistent with the appraiser's report as well as what is required in the capital markets for debt financing. These are terms that the Port and Red and White Fleet have come to an agreement on subject to your approval.

These are draft lease terms in terms of the tenant improvements. As you can see, Red and White is required to complete these in a time certain subject to, on the second phase, the remediation project that's going to be performed by PG&E. You heard that in a separate commission hearing back in March. The sediment that's adjacent to the Red and White site, that's required to be remediated prior to the commencement of the phase-two improvements and that's one of the reasons we had the delay from 2017 to today.

Joe Burgard, Red and White Fleet - Thank you for the opportunity to address you. Jay's summary pretty much captured the project. I wanted to first start by saying thank you to the Port staff. We have been working with them for years, particularly the real estate folks, Mike Martin and Jay Edwards, as well as the planning department and the maritime department. As you know, we've been a tenant in good standing for many years. Our project is designed to enhance the utilization of Fisherman's Wharf and improve our opportunities to increase revenue and provide a great experience for the San Francisco visitors. I could go on and on about our company but I think you're all familiar with it. If there's any questions, I'd be happy to answer them.

Randall Scott, executive director for the Fisherman's Wharf Community Benefit District - I'm here today to talk about my experience with Red and White Fleet in the district and representing the community. My first impression of Red and White Fleet was Mr. Escher at the grand opening of Lefty's walking up and shaking my hand and said, "Whatever you need, we've got you." It was a very nice, warm welcome. Since that time, I've learned that Red and White Fleet are great stewards of the area, fantastic partners. They're doers. They don't just talk about something. When they say, "Randall, we're going to participate in your community," they sit on committees. Mr. Escher is a board member. Joe

hopefully will be a board member soon taking Tom's place. When they say they're going to go green, they're the first boat out there that's green. They're an amazing partner in the community because they respect their neighbors. They respect those in which they engage with. I have the utmost respect for them by the way they handle their business and who they are. Overall, I was happy that they invited me to come here and speak about their community engagement because they've done it. They're going to continue to do it. I have all the faith in the world that they're going to bring even more people to the waterfront.

Ellen Johnck, co-chair of the Maritime Commerce Advisory Committee - I invite you to come to one of our meetings because what we not only talk about and discuss policy and program planning at the Port and provide comments to you all and to the staff but we also have all the tenants when they come to speak about their issues, their projects, and we enable the community effort to provide support to the entire group. We've been following Red and White for several years and are very happy to see the progress made on their long-term lease renewal. Long-term leases are something that the MCAC supports the policies in the Waterfront Land Use Plan as a way to encourage and support the sustainability of the maritime industry here at the Port. The idea of long-term leases is good. The committee has said to me that Red and White Fleet represents some of the best business qualities within the maritime community. These are dedication to boating safety, sound environmental practices such as investing in vessel technology to reduce air emissions. One of the other things has been fostering education for the public about the maritime industry and the building of the Port. In addition, we think you'll be very happy with the shoreline and waterfront improvements when they can be constructed. The public access to be created will improve circulation at the site and enhance the connection to the Bay and the Bay experience. We really encourage you to keep working on the lease renewal process, the terms and come to a successful conclusion for approval.

Robert Estrada - I am the regional director of the Inlandboatmen's Union. We represent Red and White Fleet captains, ticket staff and deck department. We have a long and intimate relationship and understanding of Red and White Fleet. While most of that is harmonious and great, you also get the opportunity to see how one another behave when they're through the lens of disagreement. That's the time at which you can gauge your respect for the people at the other side of the table. My respect for Red and White Fleet is sincere. It's solid, and it's well-founded. Their management holds my respect as well. That's probably primary among your concerns would be the stability of the rent and the foundation of the tenants. I don't think you could possibly find anyone on the waterfront or anywhere else that could match their legacy. Their history is tied so deeply into the history of San Francisco waterfront itself that you'd be hard pressed to tease them apart. I imagine looking forward matters. Especially for a company their size, what they've done with the environmental efforts and expenditures and investments that they've put into this new generation of vessels and propulsion systems, they should really be proud of

themselves. The Port should be proud to have them as tenants. I would really hope that they could get their lease renewed as expeditiously as possible so that they could go forward with planning for themselves to see where they are going to be for the next multi-decade foreseeable future. I also think that has nothing to do with the fact that I met my wife on one of their boats 28 years ago but that's my own personal history. I hope you move this along for them and renew their lease and give them the security that they're looking for and that they deserve.

Commissioner Gilman - I want to thank staff for this presentation. I generally like a lot of what I see here from the terms and from the improvements, the improvements being time certain. I just had one sort of theoretical question. It dovetails into some of the conversations we've had around other legacy businesses on the wharf, to have two families that have been there continuously in one form or another for over 100 years I think is so impressive. That nostalgia for me is really meaningful but I'm just curious. Has this parcel or this particular pier ever gone out for competitive bid? Or has this just been 100 years of lease renewals? This isn't about this. This is just more I'm curious because we've had that discussion thematically for other businesses.

Jay Edwards - Commissioner, thank you for the question. I can't answer what happened before the 40 years. We've had a lease with Red & White Fleet since 1975. It's been a 40-year lease. It's been a good relationship. In terms of that site, it's a very small site and they've operated very efficiently.

Commissioner Gilman - Since it's been under our jurisdiction, it's been continuous of a legacy lease that we inherited, and we've been renewing it. I guess that's a better way of maybe asking the question.

Jay Edwards - We haven't renewed it. It's been one lease for 40 years. There was no renewal. Since 2015, they have been on month to month, which, for a business of this size, is difficult to make any improvements. They now have 100 employees that have their livelihood here.

Commissioner Gilman - It was just for curiosity. I support it. I like maritime use. They have a strong, good reputation in the community, a union shop. It wasn't so much about Red and White. It was just more in general. At our last meeting, we spoke about some legacy restaurant businesses along Fisherman's Wharf. I was just more curious of the history of it since it had that unique ability being operated by the same two families for over 100 years.

Mike Martin - I have one additional point to that. I couldn't find it in the staff report but a past staff report pointed out that Red and White or these families have not operated at this site the entire time. They actually purchased this lease and moved into it in 1975. I don't have the specifics with me so it's not stretching back to 1892. In fact, this pier I don't think was there in 1892. The point we're making on that first slide is this family has operated on the waterfront for that long.

Commissioner Gilman - Okay. I misread it.

Mike Martin - This lease is only 40 of those years but I realize that's a long piece as well.

Commissioner Woo Ho - Thank you for the report, Jay. I took a quick tour when I was out there looking at Boudin. I have a sense of what Red and White is planning to do and that sounds very interesting. I'm very supportive of the report. I'm curious because in terms of the overall business and what they're doing to understand the implications of the projections going forward since they've had a little bit of drop in passenger volume. I wasn't sure whether they were increasing the boats because they have an existing number of boats. I know they have the first electric boat out there on the bay, which is terrific, and they're green. I wanted to know whether some of the increase that we're going to now put into base rent, which is higher than the previous base rent. It sounds like the percentage rent has gone down overall. The actual percentage itself is a little bit lower when you now simplify it into two buckets. Is that correct?

Jay Edwards - Overall, slightly.

Commissioner Woo Ho - I'm trying to understand the business strategy from the Red and White side in terms of passenger volume dipping slightly. Does it mean they're charging more? Do they have more boats? I'm not sure what's going on behind to support what the financial projections, which are looking more positive than what we've seen in the last few years. I would like to get a better understanding of that.

Jay Edwards - I think there's a couple factors to help answer the question. One, they've increased the capacity of their vessels. During those peak seasons when they do have good demand, they're able to capture that demand.

Commissioner Woo Ho - Which means what? Bigger boats?

Jay Edwards - Larger vessels, yes.

Commissioner Woo Ho - So they've invested in newer boats?

Jay Edwards - The Enhydra is a larger vessel. It's a new and substantial investment. With that type of investment, that also allows them to pursue a different type of market than they traditionally have been in, getting more out of the bay excursions, which is still one of their core businesses. But they've been able to diversify into charters and special events, which have a higher margin per passenger. Combine that with all the improvements, the phase-two in particular that'll increase their operating efficiency and allow them to get the people on and off the vessels faster, more efficiently. Also, with the fourth berth, they'll have another vessel there on site.



Commissioner Woo Ho - So the fourth berth does not mean they're adding vessels. They're just going to have more operational efficiency with the existing fleet.

Jay Edwards – Yes, that's correct.

Commissioner Woo Ho - I wanted to confirm that that's the understanding.

Jay Edwards – Yes, that is.

Commissioner Woo Ho - They're changing their business mix a little bit, their business strategy. Where are they going to get the business from so that, if we were to look at the passenger count a year or two years from now, we would see it go up?

Jay Edwards - If you look at the revenue and the passenger count, the passenger count has been slightly stabilized.

Commissioner Woo Ho – Yes, or less.

Jay Edwards - Or less but through their higher-margin business lines that they're pursuing, then they've been able to hold the line on the revenue part. They should be able to enhance that with this fourth berth and some of the operational efficiencies as well.

Commissioner Woo Ho - Is there any plan to diversify out of being purely excursion?

Jay Edwards - No. I don't believe so. With the special events and the charters, that's their core business. Their core business is maritime operations on the bay and just making the higher margin more possible with the special events and the charters.

Commissioner Woo Ho - I'm getting back to my basic water transportation question but you've answered it.

Commissioner Makras - I conclude that Red and White is a tenant in good standing. I also think that they're a good steward and a good community member in large. I don't support a sole source contract here. I believe that this contract should go out to bid. I believe that there's other operators that would want to bid. I believe it's in the Port's interest to put out as many bids to contract as we could. The competitive nature is one that we believe in, one that we believe brings the highest results. To do a sole source should be an exception. I don't believe the facts associated with this operation are exceptions enough to go forward. I do like the business model. Obviously, I like that we're getting more rent but that doesn't mean we're not going to get it from the marketplace. That doesn't mean we can simply get our appraisal on what fair market rent is, publish it in our RFP, and let the marketplace bid against it.

Doing a sole source prevents everyone in the world from having a shot at this. We recently had the Alcatraz bid. We had more than one operator want it. We had people that were interested in that business. It would benefit the Port to have a bidding process for this. We're cutting ourselves short by doing a sole source to a good operator but there's not enough information. There are not enough facts to warrant a direct 40-year contract with someone. This contract has not been bid for over 40 years. Just look at the environment of who was out there. Look at the environment today on who is going to bid. Why would we preclude ourselves the opportunity to have everyone bid, and see if we can do better? If we put it out to bid, we are not asking Red and White not to bid. We are not saying they're not a good operator. We can say you're a very good operator. We want you to bid but we can also say that to everybody else.

The alternative is we're telling everyone else, "No. We don't want you. We don't want to see how good your bid is. This is good enough." If we believe this is good enough, let's open up our appraisal to the public and let them see it. I believe the bid process will rear a better deal than the deal that's here. I'm not going to try to persuade others to vote differently. I am advocating that the bid process is in our best interest. I am saying no to this contract to go forward because in today's environment, you will not only benefit with the competitive nature, but also the players will expand. Forty years ago, none of us knew what local enterprise was. Forty years ago, none of us looked at MBE and WBE participation. None of us looked at all of these San Francisco components that have made us great.

If we put this out to bid, we have an opportunity to get some of those components in it. Make a deal with someone you've been dealing with for 40 years. You do not have the opportunity to have two people bid this contract and be partners or three people bid this contract and be partners, have someone with great experience, have a woman component to it, have a minority component to it. These are the things you get when you go out to bid. Choose to do sole source. You forego all of that and say we're happy with what we have. I encourage us to open up the door. I promise you and I believe we will have better bids than the one in front of us.

Commissioner Adams - That's one thing I like about this commission. Everybody has a different point of view. It's something to be said about the integrity that Red and White has shown. They have been like an icon on the San Francisco waterfront, a landmark. We have so many different components of our waterfront, whether it's the Giants, Red and White, the history, the museum down there. We have so many different things. I think it fits into it. It's something to be said to have had a 40-year lease. They've been an employer of good paying union jobs here in San Francisco, with San Francisco and what the waterfront stands for. To me, it's not always about getting more money. I guess because I come from a union background and lived in ports my whole life, I've never lived out in the real estate world. I'd look at it's always more than money. Sometimes, it's about community, the aspect that it brings and a need that's needed here in our community. Red and White reflects that. I've seen

Tom at a lot of meetings, just not for maritime. When we had this barn buster here about a month ago when we had about 400 or 500 people here, Tom was out here in the audience. He didn't have to be here. This is a person that genuinely cares about the Port, that's invested in this Port. For me, money is fine and sometimes, it's good. But sometimes, always the highest bidder is not the best person to be there. I look at what's good for this Port, what has stabilized the people of this community with good paying jobs and taking care of their families. I appreciate all that you do. I see a younger generation taking over, going a different direction, coming up, trying different technological things, etc. I see this thing continuing to progress and move forward. You have my support because I'm not a person that always thinks that the best deal is about money.

Commissioner Brandon - Thank you. Jay, thank you very much for the presentation. Thank you, Tom, for being a wonderful tenant for the last 40 years. Thank you for your patience with us because I didn't even realize it had been two years since we saw this. I would think that how we got from \$25,000 a month to \$42,000 a month is due to some type of market research that you did to bring it up to market rate with these new terms. Is that correct?

Jay Edwards - It is correct, commissioner.

Commissioner Brandon - I know that our retail leases are totally different from our maritime leases. In order to keep our maritime business here at the Port of San Francisco, we do things differently. I am in support of this lease extension. It's great that we will be getting almost double the rent, that you have built a great business that is continuing to grow and that the Port is continuing to share in that success. I support this. I look forward to you bringing it back in June.

## 12. ENGINEERING

### A. Informational presentation of alternative construction project delivery methods for engineering construction projects.

Rod Iwashita, chief harbor engineer for the Port - in this informational presentation, I'd like to speak about alternative construction project delivery methods. We have some larger construction projects being prepared for execution in the not-too-distant future. We want to let the Port Commission know that we are looking at different methods for delivering construction projects.

Alternative project delivery methods typically become attractive on larger construction projects and offer additional benefits to the Port. Per the city administrative code, Port staff are allowed to use criteria other than lowest cost when selecting construction contractors on our projects.

The criteria can be related to a number of issues like contractor capabilities, safety practices and records or positive impacts on our neighboring communities. In addition to larger upcoming construction projects like Mission Bay Ferry Landing and projects related to the Seawall Earthquake Safety program, we are looking at our facilities in a more holistic way, which will likely involve executing several discipline-specific sub-projects in a single larger package, which will allow the Port to consider using alternative construction project delivery methods.

The use of alternative project delivery methods is consistent with the Port's stated equity goal to grow the number of local businesses competing for Port contracts by engaging teams that support the diversity of our city. For large projects delivered through design/build and construction manager, general contractor methods, the trades are separately advertised and require specific LBE goals. Each of the alternative delivery methods can provide a positive impact on our neighboring communities when compared to our traditional low-bid method.

I'm here tonight to provide some background on the alternative methods and present advantages and disadvantages for the main types of construction project delivery methods. We have three different alternatives and our baseline design/bid/build or low-bid process. Our baseline design/bid/build low-bid is currently used on almost all of our construction projects. It's a familiar process. It's a relatively procurement and there's a high degree of control for the Port over the design.

The Port develops final construction plans and specifications and solicits bids from qualified contractors. The lowest bidder is selected to deliver the project. This method works best when the pool of general contractors to do the work is large. With design/bid/build, there is no early contractor involvement so no contractor input for project design. Therefore, design/bid/build is best used on projects that do not require unusual or creative construction methods or would not benefit from a coordinated design and construction process, which is typically the case in smaller construction projects.

Typically, we competitively award construction projects up to \$1.5 million using the low-bid process. The best-value design/bid/build project delivery method is similar to the low-bid method but adds extra steps to determine the best-value bid, which may not necessarily belong to the low bidder. To determine the winning bid, the total bid price is divided by a qualification point score. The contractor with the lowest resulting number will objectively be considered to represent the best value.

While best value can be used for projects with a construction value as low as \$1.5 million, Port staff have used a rule-of-thumb threshold of about \$3 million to consider best value as a delivery method. The best value project delivery provides advantages when a project has complex components, complex timing

or you want to emphasize certain policies like contractor safety or the use of small or disadvantaged businesses.

Port staff used this threshold since there can be significant upfront work required to develop the qualification point score rubric and selecting a panel of qualified individuals to score each proposal. These costs are somewhat fixed. We have diminishing returns for smaller projects. In our first use of the best-value process, we estimate approximately three months has been added to our project schedule. This added time will likely reduce as we become more familiar with the process.

Some of the advantages are we consider priorities that are in addition to low cost. In Crane Cove Park Building 49, we took into account contracting and community development criteria, experienced mentoring small disadvantaged businesses and how a bidder encourages participation of small subcontractors and reduces barriers to entry when staffing the project.

On this slide, representing the share of qualification points for the Building 49 construction project, this distribution was weighted to reflect our values of respective project elements. We have 62.5 percent for contractor qualifications and experience, 25 percent for a safety record and 12.5 percent of the points awarded for contracting community development.

In terms of the Port's exposure to higher construction costs, assuming relevant project experience and safety scores were the same for two contractors, contractor A and contractor B, if contractor A had the low bid but scored very poorly on community development, contractor B's cost would have to be within at least 12.5 percent of contractor A's bid. They would also have to score highly on contracting community development criteria to have a chance at winning this bid. The next alternative is design/build. There are a few variations of design-build delivery.

Under any of these alternatives the Port develops the conceptual plan for a project, then solicits bids from joint ventures of designers and contractors to perform both the final design and construction. Design/build is most appropriate when the Port has a clearly defined scope and criteria documents and is willing to trade design input for risk transfer and shorter overall project schedule. We removed one cycle of bidding by doing it this way. Design/build projects are typically reserved for larger projects due to larger upfront efforts compared to low-bid contracting. The Port's rule-of-thumb threshold to consider the design-build process is approximately \$5 million.

San Francisco Airport is using design-build process to deliver most of their \$7 billion capital program. Other projects using design-build include WETA's Richmond and South San Francisco ferry terminals and the Public Works Fireboat Station 35 that you heard about earlier.

The contract monitoring division establishes an overall LBE goal for a design/build project as well as specific LBE goals for each trade package. There is more CMD involvement and oversight related to LBE goals for a design/build and construction manager/general contractor project than the typical design-bid-build project.

Per the administrative code, the Port has the ability to direct the design/build contractor to negotiate subcontracts for trade work up to 7.5 percent of the total estimated construction subcontractor costs, which can help the Port advance its goals of increasing the diversity of contractor participation and maximize opportunities for the disadvantaged contracting community.

Other advantages include cost-effective design and better cost certainty. The Port does lose some control in the design process, however. The construction manager/general contractor (CMGC) delivery method is an integrated project delivery method that encourages collaboration and innovation within the project team. It is similar to design/bid/build in that the owner retains a separate designer with contractual responsibility for the project design. However, the CMGC contractor is retained earlier during the design process to review and provide comments on the constructability. You end up with a more constructible project.

The Port has the benefits of design control with design/bid/build, with the contractor input during the design similar to the design/build method. CMGC is typically best used on larger and/or more complex projects where the Port needs maximum control over the design and construction process and has a trusted construction manager to work with.

The CMGC is hired early in the design process in a pre-construction phase or even the conceptual phase using one of three methods: cost only, best value or CMGC best team value. At approximately 60 to 90 percent design, the Port and CMGC would negotiate a guaranteed maximum price for construction.

If the Port and CMGC are not able to agree to a guaranteed maximum price, the Port may competitively bid out the final design as a design/bid/build process. However, if the guaranteed maximum price is agreed to, the CMGC completes the construction through the issuance and award of competitive trade bid packages.

Subcontractor trade packages are separately bid out and awarded on a low-bid basis. For core-trade subcontractors performing design, preconstruction or design-assist services, work may be awarded based on qualifications only.

The Port has to validate all cost proposals by using an independent cost estimator prior to authorizing the CMGC subcontracting work. The Port may also specify in the CMGC request for proposals that the CMGC self-perform one or more scopes of work.

Like the design/build process, the Port also has a chance to authorize the CMGC to negotiate subcontractors for trade work up to 7.5 percent of the total estimated construction subcontract costs.

The contract monitoring division establishes an overall LBE goal for a CMGC project as well as specific LBE goals for each trade package. There is more CMD involvement and oversight related to LBE goals for a CMGC and design-build project than for design-bid-build. Coupled with the ability to direct the CMGC contractor to negotiate subcontracts for trade work up to 7.5 percent of the total estimated subcontract cost, this, again, can help the Port advance its goals of increasing the diversity of contractor participation and maximizing opportunities for disadvantaged contracting community members.

In summary, there are alternatives to the traditional low-bid construction project delivery method to consider for larger construction projects the Port will be executing in the near future. There is no single superior method. But based on the specifics of a given project, there are guidelines and community benefits to the use of each method.

Commissioner Woo Ho - Thank you very much for this report. This was kind of interesting because I know one of our business expenditures obviously all our contracts out there and to understand how we actually bid out contracts. We do have that as a quarterly report from Boris. I think it would be useful in that report maybe to understand under which method are we awarding those contracts. I do understand there's not one size fits all. It depends on the size of the project, the complexity and probably our own resource expertise to decide which method that we use but we've used all four. It sounds like most of them fall into bucket one, the very first one because of the size of the project. It would be useful for us because what we want to know at our level is probably whether you are on time, on budget and how you've proceeded. We often see more of the exceptions that come here because you need our approval because you're beyond the contingency amount or the timeline. We don't always get a very accurate picture in terms of the overall situation in terms of all the contracts that you're monitoring in addition to what the LBE component, which Commissioner Brandon is a very fierce proponent of, which I think is very important for us to continue to monitor that.

It would be useful for us to understand how you're employing these different methods so that we should keep the MIS going on that so that we just add to that report. That would be very helpful.

At the moment, Rod, do you think the way we're deploying all these different methods, are you satisfied that we're doing a really good job in picking the method?

Rod Iwashita - Moving forward, I am. This is kind of a precursor to Mission Bay Ferry Landing. I want to help set the stage for seawall projects that are going to be coming up. I want the commission to know what tools are available to us to

execute these projects. There are some opportunities out there for us to help our community beyond just the low bid.

Commissioner Woo Ho - Sometimes one is always fearful in the low-bid process that you're just going to experience a lot of change orders later on. It ends up not really being low bid. As a commission member, that's my fear. This was very useful to help us understand that you are choosing some other choices in addition to that.

Commissioner Gilman - Rod, thank you again for the report. Commissioner Woo Ho sort of echoed a lot of what I wanted to say. I'm actually just not in general ever a fan of the low-bid method. I would like to actually push the Port staff to consider the threshold of \$1.5 million for these alternative methods sort of being your threshold on contracting. When we race to the bottom, we get poor results. We get those change orders but we also don't get a commitment to our community. We also quash innovation. Sometimes being innovative and nimble is more expensive. In general, the City and County of San Francisco shies away from that. I really want to encourage us for these alternative methods to get the best product of what we're trying to achieve for the waterfront versus always worrying about the lowest bid because, I agree with Commissioner Woo Ho, oftentimes with change orders, it's not the lowest.

I also think we need to, as an enterprise agency of our size, look at really what's substantive. One bid might be more than another bid a million dollars depending on the scope and the size of project. If it's \$100 million construction project, if that's going to be better design innovation and a better community output, it might be something that we want to consider versus always doing that. I commend you on these alternatives and hopefully we can deepen how much we use them.

Commissioner Makras - I agree with most everything Commissioner Gilman said. I like the alternatives ongoing. I won't speak against low bid but I do like the design and build. I think they bring great results. I do like best value. I would hope that time of completion is weighed in on best value.

Rod Iwashita - That can be a criteria.

Commissioner Makras - If you put time into it, then we know one benchmark of another gain that we're getting beyond the end product. For instance, when we approved the street improvements down Fisherman's Wharf and it's going to be closed over time for two years throughout it, if we had a time completion date that brought that in half, I think all of us would look at that bid a lot more carefully and would probably want it. My guess is everyone would pay something more. We just have to arrive at what more we would all be comfortable with and that's healthy for the bid process. A crew working overtime half a day, four hours a day overtime, one hour a day overtime, all of those will factor into a better product at the end. Thank you. Good presentation.



Commissioner Brandon - Rod, thank you so much for this presentation. It is wonderful to know that there are other ways to do these bids. For best value, why do you say the minimum should be \$1.5 million?

Rod Iwashita - What we're recommending is \$3 million.

Elaine Forbes - It's in the administrative code. But the PUC is going through a public benefits process. It allows for more utilization of best value and other delivery methods and we plan to adopt that. Right now, low bid is required in the administrative code under a certain threshold but we're working to provide more flexibility with PUC being the primary mover on that legislation.

Commissioner Brandon - What's the \$1.5 million? Does that mean anything under \$1.5 million has to be low bid?

Elaine Forbes - I believe right now it's under \$5 million.

Commissioner Brandon - Under \$5 million. Well, let us know whatever we can do to help with that.

Elaine Forbes – Yes, we are working on that. We've been looking at their legislation. They understand we're their little cousin. We're going to be benefitting from that legislation. They're talking to us a lot about how we need the thresholds and what we're looking for in that public benefits package.

Commissioner Brandon - Thank you. We look forward to working with a lot of these alternatives.

### **13. NEW BUSINESS**

Elaine Forbes - I have one item under new business although it's actually an old item but it's been resurfaced today. That's for staff to look at the feasibility of floating piers and the cost structure and approaches to delivery of water transportation infrastructure and berths.

Commissioner Woo Ho - Commissioner Makras brought up whether we have more specific policies as it relates to the ethics presentation. Commissioner Adams mentioned something about the broker community. We should be apprised on what other things are in our ethics policies that is even more detailed than the city so that we're all refreshed on that.

Commissioner Brandon - Or what we may need to include in the policies.

Commissioner Woo Ho - I think that might be a good topic.

Commissioner Gilman - To dovetail on that just because I know many commissioners sit on boards and only because I am a CEO, I hired a private counsel. The behest payment law which just went into effect with this new legislation

is incredibly complicated. I think that should be part of the presentation for most of you who might sit on boards. I hired someone personally to walk me through it because of my own position. I know most of you sit on boards of nonprofits. It's really complicated. It's brand new, just on the books. This was the first reporting period. It might be good to include that in the presentation to go a little deeper.

Elaine Forbes - Very good suggestion, thank you.

#### **14. ADJOURNMENT**

**ACTION:** Commissioner Gilman moved approval to adjourn the meeting; Commissioner Woo Ho seconded the motion. All of the Commissioners were in favor.

Port Commission President Commissioner Brandon adjourned the meeting at 5:50 p.m.