

CITY & COUNTY OF SAN FRANCISCO PORT COMMISSION

MINUTES OF THE MEETING MARCH 10, 2020

1. CALL TO ORDER / ROLL CALL

Port Commission President Kimberly Brandon called the meeting to order at 2:04 p.m. The following Commissioners were present: Kimberly Brandon, Willie Adams, Gail Gilman, and Victor Makras. Commissioner Doreen Woo Ho was out sick.

2. APPROVAL OF MINUTES – February 25, 2020

ACTION: Commissioner Gilman moved approval; Commissioner Makras seconded the motion. All of the Commissioners were in favor. The minutes of the February 25, 2020 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 Gilman moved approval; Commissioner Makras seconded the motion. All of the Commissioners were in favor.

At 2:05 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/non-Port representative: (Discussion Items)

- a. Property: Pier 40, Bays 4 through 10; South Beach Harbor Dock Slips 59, 61, 63 S02 and S03

Person Negotiating: Port: Michael Martin, Deputy Director, Real Estate & Development; Jeff Bauer, Senior Leasing Manager; Crezia Tano-Lee, Manager, Business Strategy

*Negotiating Parties: Kathi Pugh, representing Bay Area Association of Disabled Sailors (BAADS)

Under Negotiations: ___ Price ___ Terms of Payment X Both

- b. Property: The Kneass Building, 671 Illinois Street

Person Negotiating: Port: Michael Martin, Deputy Director, Real Estate and Development; Rebecca Benassini, Assistant Deputy Director for Waterfront Development; and James Hurley, Development Project Manager

*Negotiating Parties: Katherine Doumani, Friends of Dogpatch Hub

Under Negotiations: ___Price ___ Terms of Payment X Both

c. Property: Pier 9

Person Negotiating: Port: Andre Coleman, Deputy Director, Maritime; Mark Lozovoy, Assistant Deputy Director

*Negotiating Parties: Matt Brasler, representing Bay Area Council

Under Negotiations: ___Price ___ Terms of Payment X Both

5. RECONVENE IN OPEN SESSION

At 3:25 p.m. the Commission withdrew from closed session and 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

Michael Gregory, Heavyweight Trucking - I want to bring to your attention that I was awarded a job with Granite Construction for a about 80,000 tons of material export.

When I got the paperwork back, they pushed the number back down to about 1,000 tons, which I thought was kind of strange. When I called the company out on it, he told me in fact that he was going to use me, but he wasn't going to use me for the whole portion. He was going to bring in his team from the South Bay which I thought was unacceptable due to the fact that they're not LBE certified like we are. It's kind of jacked up that these big companies come in and use us to get the credit and then funnel the work out to their own people. If there's some way that we could soon address that situation, I appreciate it.

Commissioner Brandon - Which project is this?

Michael Gregory - It's the horizontal on Mission Rock.

Commissioner Brandon - What company were you contracted by?

Michael Gregory - Granite Construction. I've been working with them about a month and a half getting the numbers that satisfy them for the job. They told me that it was mine due to the fact that the numbers was great but I guess they had another agenda.

Elaine Forbes - We'll look into it.

9. EXECUTIVE

A. Executive Director's Report

- Port Contract Open House – March 19, 2020 at 8 a.m. @ Pier 1
- New Downtown San Francisco Ferry Terminal Ribbon Cutting Ceremony – March 20, 2020 at 10 a.m.
- COVID-19 Update

Elaine Forbes, the Port's executive director - The first two items I was going to report on are both canceled events. One was our planned Port contract open house and the other was a ribbon cutting for the downtown San Francisco Ferry Terminal. Both of those events have been canceled at this point.

As you all know, Mayor Breed declared a local health emergency on February 25, 2020 for the city and county of San Francisco to prepare for COVID-19. On March 3rd, our maritime director and I became aware of a potential issue on the Grand Princess. That evening, we had a conference call at 9:00 p.m. with our city counterparts and the U.S. Coast Guard. By the next morning of March 4th, we had assembled from the federal side: Health and Human Services (HHS); the Center for Disease Control (CDC); FEMA; the Coast Guard, Cal OES, the California Department of Public Health and our own emergency management and Port staff.

We continued to address the Grand Princess for the entire week. I'd like to let everyone know that we have a lot to be proud of in our maritime staff. Our maritime director, Andre Coleman, was tremendously responsive, professional, calm, accurate and just terrific in our unified command structure. Joe Reilly,

who served as our planning chief, was incredibly professional, on the job, calm, collected and has a lot of experience with the unified command structure, and it showed. Dominic Moreno was working on the weekend as was Mike Nerney. The entire maritime staff went way above and beyond for this response. I couldn't be prouder of the work they did to support the effort.

It was extraordinarily helpful and rewarding to see all the federal and state counterparts work so seamlessly together and see the decision makers work the problem to the ground and make the best decisions as quickly as they could to protect the health and safety of the local community as well as the passengers and crew on that vessel.

The Grand Princess is in Oakland today, as everyone knows. We want to express our gratitude to the city of Oakland for stepping up and to everyone involved. We hope the very best for the passengers and crew aboard that vessel and are pleased that everyone is getting the healthcare they need and that the local community is being protected in the disembark and all of our labor partners, ILWU and everyone who's really stepped up to resolve this situation, which is an important thing as we deal with COVID spread in our community.

That brings me to the larger issue of COVID-19 and where we are as a city. The numbers in San Francisco are still small but our mayor has been loud and clear that we are to prepare as aggressively as possible because all of the science shows that we have an opportunity now to prevent spread that could keep us on a much better trajectory than if COVID-19 becomes more seeded in the community.

There has been lots of direction from the mayor and DHR for how we are to change our behaviors at work and at home so that we can keep ourselves safe. You will notice the room today is very different than it's been in the past. This is reflective of the best guidance we've gotten on how to prevent spread. I want to go over a little bit about what we are doing as a city to minimize the spread to the maximum extent possible so that we can handle this public-health epidemic, and we can recover as a community.

First and foremost, we're encouraging our employees who can do so to telecommute. Telecommuting is a great way to avoid getting sick or having to come to work when you're sick. We are absolutely aggressively pushing telecommuting to the extent that it works for the employees' requirements on the job. We are also having ability to telecommute into meetings. We're limiting our one-on-one meetings to those that we need to have happen and offering opportunity to teleconference in. All of these things are important.

For events that are discretionary in nature, we're just canceling those for the next two weeks. In our public buildings that Port owns, there's been a health directive around those discretionary public events. We don't have any of those scheduled over the next two weeks. We weren't canceling any events in public

buildings because they weren't, in fact, scheduled but we're applying that also to in-person meetings just for due diligence and to do everything we can to keep everyone safe and the spread down.

We're telling everyone to stay home if they're sick. That's very important. Whether it's a cold or a flu, stay home if you feel symptomatic. We are telling everyone to wash their hands and providing hand sanitation. Cover cough and sneeze. Avoid touching your face.

Personally, as I'm implementing these protocols, it's amazing how often I used to touch my face. Don't touch your face. We're not shaking hands or getting into personal contact with others. You can see we're practicing social distancing, which is about an arm's length apart or about four feet apart just to be especially carefully and diligent.

All of these things, social distancing, staying home when you're sick, offering telecommute, canceling discretionary events, being more thoughtful about in-person meetings and providing telecom opportunities will work to reduce the spread of COVID-19.

We all have an opportunity and obligation to be part of the solution at this time. Again, I want to reiterate from our mayor and our director of public health, we have an opportunity right now to reduce potential spread. This window will close to use in the future. It's really important that everyone pay attention and change your personal behaviors to be part of this solution.

Commissioner Adams - Once again, I want to thank Director Forbes, Andre Coleman, Mike Nerney and all the maritime staff for all your hard work and for your due diligence. I was in Australia last week. I was being kept abreast. Sunday, I was in the airport in Sydney and I got a call from Governor Newsom. He laid out when they were going to bring the ship in, how they were going to discharge everybody. He had over 1,000 people from California on the ship, people from Britain, people from Canada and where everyone was going to be taken and how the airport in Oakland was convenient.

There would be no human interaction to get people off, get them to the different bases, so they could get quarantined and that they're going to leave over 1,000 of the crew members, mostly Filipinos. They're going to leave and maybe take that ship up to Alaska and let them be quarantined at sea. We found out on Sunday they were going to hire our members of the ILWU. It was a seven-hour meeting.

I just talked to our guys on the ground over in Oakland. The discharging of the passengers are going well. They got all the California people off. They're getting the rest of the passengers off. They got about 900 passengers off yesterday. They hope to get 1,000 passengers off today and hopefully the rest tomorrow, the latest by Thursday. They give protective gear. The mood is good. They said what was really emotional to them when they were tying up

the ship when they were there was the people on the ship came out and started clapping. They were just so happy to be getting off the ship and to see help was coming. They were low on food.

To me, this was a humanitarian effort. That's what this is. This is our responsibility. I want to give a shout out to the Port of Oakland because this ship took off out of the Port of San Francisco. As Americans, we've gotten a wakeup call because close to 3,000 people have died in China. Italy is on a lockdown. This is a virus. It's affecting the economics, the stock market. You see everything that's happening behind this. This is a wakeup call. We need to take every precaution.

I want to give a shout out to Governor Newsom. This is not something that you want to have happen to you in your first term as governor but we have to deal with this. I know that Oakland was a little apprehensive because a lot of time Oakland felt like they're the stepchild. There's a community that always deal with environmental racism, dumping. They wanted to bring coal over into Oakland. I was listening to the lady on the board of supervisors over there. They were concerned that Oakland was being used as a scapegoat. I believe they're using everything possible to get the passengers off, get that ship out of there.

Once again, thank you, Director Forbes and Andre. This is important. The people whose lives could possibly be saved will always owe a debt of gratitude not only to Oakland but to the Port of San Francisco.

Commissioner Brandon - I, too, want to thank Executive Director Forbes and Andre and Joe and Dominic and Mike and the whole maritime staff that stepped up for this effort because, as Vice President Adams said, this was a humanitarian effort. We all needed to pitch in wherever we could but we do have to stay vigilant and make sure that we are taking care of ourselves and our surroundings to make sure no one else gets it. Thank you everybody. We're practicing social distancing up here too.

B. Informational overview presentation by the San Francisco Ethics Commission Executive Director on recent updates to the City's ethics laws and resources available to support compliance by City officials and employees. (Verbal Report)

LeeAnn Pelham, Executive Director, Ethics Commission - Good afternoon, commissioners. Thank you, Director Forbes and to your Commission Secretary, Amy Quesada, as well. Like many of you, I use the Ferry Building regularly. I want to add my thanks as both a city employee and a Bay Area citizen for the excellence that we see coming out of this department every day.

Clearly, we are in a city in very much of a crisis mode with this public health incident. It has upended business across the city. What you heard from your director today is indicative of the continuity of work and leadership that we're seeing from inside the city at a particularly troubling time. It's uncertain. There's a

crisis in public confidence about how much we can do with something that is really maybe unmanageable. But we have excellent people, from my observation, working very hard. I wanted to add my thanks to that.

I was here four years ago when I first took on this role as ethics commission director at the request of your staff as well. I would say, we are in a different type of crisis on the front of government service and trust in our government service and that happens.

I'm here to give you a bit of a highlight of some of the new items that have taken effect over the last several years. We have been reaching out to departments as we can with our resources to try and support city officials and city workers in understanding not just the letter of law but the spirit of the law.

Why do we have a lot of rules that can seem quite complicated at times? I'm not here to try and make people better at being subject-matter experts on ethics. These are complicated rules. Our office is here to provide assistance. Your city attorney's office is here to provide assistance as well.

I wanted to take a few moments to go through some highlights. If you have any questions, I'm happy to answer those as well. I did prepare and we'll be able to provide to you and circulate the digital version of this presentation.

It's much longer than I'm going to get into this afternoon but I wanted to take the opportunity to try to tailor the information that you'll have to the Port specifically where those documents are relevant and given that we have some particular deadlines and requirements coming up that I wanted to take the opportunity to remind you about.

As a brief overview, we do have a fundamental transparency requirement of government service for public officials throughout California coming up on April 1st. You know this very well. It's the opportunity to make sure that we're taking stock of our own economic interest that could be affected by our work.

I wanted to touch on that briefly, the requirement for an annual refresher on ethics that is also here to help support you and other city employees in their work and provide you some information about individual assistance and then some new laws.

Also, some general tips and tools for avoiding conflicts of interest. Those are things that can sometimes creep up without thinking about it. It's an opportunity at this time of year every year to stop and take stock and think about it very consciously and put some good practices in place that'll carry us over the course of the year.

There are some additional provisions that took effect last year after an extraordinary joint meeting and work with the board of supervisors and the ethics commission that responded to putting new requirements in place that really try to

expand preventing conflicts of interest and the appearance of conflicts of interest so that our work can be and can be known and trusted for its integrity.

I also have some information about some general everyday ethics reminders, gifts. Some of these you're very familiar with. If you're not, there are links here that you'll see and some information about political activities that are new provisions on the books and then, finally, just some resources from our office and how we can assist you and how we're supporting this work citywide throughout city government.

Our ethics commission is a place that you can consider a resource for you. Our website, SFethics.org. We try and tailor it every few weeks or months depending on what's going on. For folks who have a responsibility to report their financial interests to ensure that we are avoiding conflicts and detecting them when possible, good government starts with good reporting. The place to start is our ethics commission website.

We've been working with staff throughout the city to make sure folks have this information. There, you will find a lot of resources and tools available to you. I mentioned that the economic interest filings, also known as the Form 700 is a requirement that's throughout the state of California. These are really our tool to help identify at least once a year through this annual filing that's due April 1st the kinds of financial interests that we may have the opportunity to influence in the conduct of our official duties.

It does not require us to report everything we own. It requires us to look at our disclosure categories and identify what we may have the opportunity to influence in the conduct of our official duties. There are certain types of reportable financial interests. I've listed those here.

I wanted to highlight for you, in this presentation where there's that little information icon, those are live links that, when you get the presentation or you take a look after or if the public wants to take a look after, these will take you directly to more information about these requirements, again, far more information than we have time to cover today.

I do hope you'll have some chance to look at that if that is useful to you as you work to comply with the provisions of the law. There also is an opportunity that the city and state has created for public officials to have annual ethics refresher.

This is sort of building on a state requirement, AB 1234, where all individuals who file statements of economic interest, because we make or participate in making government decisions, we have a chance to influence those decisions and to potentially influence the interests that come before us.

There is a required training, as you know. The one thing I would say over the last couple of years we have done to try to streamline this process is to sync it chronologically so that you take it at the same time that you file your Form 700.

It used to be a cyclical thing. It was hard to remember. When you go to the place to file on our website, you have your training opportunity. You can complete it then, and you can complete your filing as well.

This link takes you to information about that training requirement, that also is due by April 1st of this year. I would underscore for the public who might be following your meeting that the statements of economic interest are public documents. That's to help let the public know that we want them to hold us accountable. It's okay to look. It's okay to ask us questions. Simply because we disclose something on one of these forms doesn't mean we have a conflict of interest. It does mean that there is something we've got to be careful about and maybe ask for advice about so that we can avoid stepping into a problem area or even getting close to it.

There is information on our website where people can look at individual forms. People can search across forms. We work very closely with open data in San Francisco. So we have information across 6,000 forms filed by over 500 economic interest filers who have been filing online with the ethics commission by law since 2014. These are public-disclosure documents and the public should be aware of that. If there are questions, there are lots of places to access that information on our website.

One thing that is a new provision that took effect about a year or so ago it's what we call our no-file, no-vote. There are consequences, obviously reputational. There are consequences of late fees, potential enforcement for not filing. But most importantly, there's a consequence that, if you do not file, you cannot take action on matters that are before you in your role as a commissioner. You would be disqualified from acting should you not have filed either your Form 700 or your certification of having completed ethics and sunshine. This was a way to say we want to try and be more serious as a city about having these issues front and center on a daily basis.

Certainly, that starts by at least having completed once a year. There are some consequences in the law for that. We would encourage you to take a look for more information. Mostly, we encourage you to file by April 1st. So there are none of these issues and that, again, that it can maximize public's confidence in what we do. The conflict-of-interest provisions of the law are meant to, again, detect and avoid potential conflicts where it's foreseeable that the decision that we make might have an impact on a financial interest, either ours or others.

The goal really is to try and prevent biased decision making and ensure that we're doing open and objective decision making without any regard for our own financial interests. This is a given but it is something that we often need to reinforce with ourselves. If it's not front of mind, it sometimes can get lost in the very busy and very important work that all of you are doing every day.

This annual requirement to do a disclosure, to do training, it is really to try and help keep conflicts-of-interest issues and conflict-of-interest questions front of mind, so you can follow up as you need to.

There is a provision that was also enacted about a year or so ago that extends the conflict-of-interest concept and this is specifically as to board and commission members. This is something that prevents a public official from using public position to seek or obtain anything of value for the private or professional benefit of himself or immediate family or for an organization with which he or she is associated. If you have questions about if your name is being used to do fundraising for a nonprofit, for example, if you are a member of a nonprofit or on a board of a nonprofit, if you have questions about whether your title as a public official should be used, please call our office. Please talk to your city attorney.

There are provisions that we want to make sure that you inadvertently don't violate this new provision. It is really meant to delink any sense in the public's mind that city positions are being traded for private gain. This is something that I wanted to highlight, particularly again this live link will take you directly to the code section. But most importantly, please, if you have questions about that, contact our office and ask.

When we've identified that there might be conflicts of interest either through our Form 700s or through other means, there is now also a requirement that boards have put in place regularly for recusal so that there is a public forum that acknowledges a recusal. A stepping away from acting on the matter took place. It is a public document. It is easily fileable online in our office. It's a digital form. It's not something you have to write by hand and submit to our office after trudging down to 25 Van Ness. Although, it is a lovely office. We want to make this requirement to file easy. We also want to make it public. So we have places on our website where people can go and look for who's disclosed. What was the basis for the disclosure? It just, again, provides transparency about where there might be actions taken to uphold good decision making where conflicts aren't taking place.

This is an example with a link to the recusal disclosure form. This is just a sample of what the form looks like when it's seen online by the filer and by the public. Again, these are meant to be tools for you going forward to see where this information is, how you can comply with it easily and then how the public can access that information transparently.

There is also a new provision you may be familiar with under state law, a provision that says, if elected officials request what are called behested payments at a certain level, that there is a disclosure requirement elected officials have been required to disclose. In the last year or so, a behested payments reporting requirement was initiated for city officers. So there is a requirement that, if you ask or request a behested payment generally for governmental or legislative type of purpose, if you behest a payment from

somebody who is a participant to a proceeding in front of you and it totals \$1,000, you have a requirement to disclose that within 30 days.

There are additional mechanisms in the law that help support you in reporting that. But this is something that is fairly new. It was tailored from the state's requirement as it applies to elected officials. But again, the concept here was that the city was taking a further aggressive stand in wanting to make sure that there was public transparency around places where decision makers and private money and people who have interests before you as public officials are converging.

This is trying to uphold integrity and decision making by providing transparency when those circumstances happen. There's information here about when the requirement is due, how you can comply and you can link to those sites to find that.

Now, importantly, every city department does have what's called a statement of incompatible activities. This is a document where I've just highlighted in three sections here the kinds of restrictions that apply. It's tailored to each department. These have been on the books for about 10, 12 years. These speak to restrictions on gifts, perhaps, on other types of activities whether compensated or uncompensated.

I'm not going to spend the time going through the details here. I've tried to flesh it out a bit thoroughly specific to the Port, so you can see this. The first is there are times when incompatible activities, whether compensated or uncompensated, could conflict with your officials duties and therefore are prohibited. This shows a schematic of what those are, again a link to the Port statement directly from this page. There are also activities and this speaks to employees more that activities that have excessive time demands may be incompatible with one's duties.

Finally, if there are areas that are subject to review by the Port, there are some areas where activities may also be deemed incompatible and therefore are prohibited. These supplement state and city laws but they are something that is meant to tailor guidance for departments to know when something may or may not be doable given the specific mission and the nature of the department's work.

Turning to gift rules, there hasn't been a significant change there. You're probably familiar with the fact that the state, through our political practices commission, which is the agency at the state level that governs these laws and promulgates regulations around these laws for officials across the state, they periodically update the amount of gifts that individuals can take before they are deemed impermissible under the law. That number to remember is \$500, \$500 from a single source. There is provision under city law that, if somebody is attempting to influence the work that you're doing or a particular matter before you, there's a much lower limit of no more than \$25 per year per source, \$25 per instance.

You can take sort of a de minimis of \$25 up to four times a year and no more. Then, \$50 is something to remember. That's where it might be required to be disclosed based on your disclosure category. Gifts are a type of income. They would need to be reported, and they could, depending on their level, constitute a conflict of interest. Those are questions to keep in mind as you file your Form 700 this year.

I want to talk briefly about the use of public resources. This is something that you'll find discussed in your statement of incompatible activities. It also is something discussed at length in the city attorney's good-government guide and that's linked directly to the city attorney's page here through the link at the bottom of this slide.

Political activities rules are not meant to keep us away from politics. We all have issues we care about. We all have candidates that we care about. Depending on your role in the city and county of San Francisco, however, there may be restrictions on what you can do when and certainly with public resources.

I find most people have questions about is the no soliciting of campaign contributions from city employees. It is impermissible for a city official to solicit another city official or employee knowingly for a political contribution to a city candidate. This is something that isn't often discussed or there might be some confusion around. We've got a link to the section here. Again, if at any time you have questions about something, please call in advance of taking the action because we can then provide assistance and guide you. But we can't do that after the action has been taken.

Obviously, no political activity on city property or on city time. There is another couple of provisions that are new in the law. One in particular, Section 3.231(b) - and that is effective on January 1, 2019, no members of boards or commissions can engaged in fundraising on behalf of their appointing authority if that appointed authority is an elected city officer.

For example, if you all are appointed by the mayor, this law prohibits you from fundraising on behalf of the mayor or for a candidate running for the office of mayor. Again, this may be fairly new. Other cities around the country do have something like this on the books as well. Again, the goal of it, even though it may sound onerous or maybe it sounds great because it frees up some of your activity during the course of the year. But it is really meant, again, to delink any sense, misguided or not, that there are activities or appointments tied to one's political fundraising prowess. This is something that also we think has helped to reinforce confidence in the integrity of how the city goes about its work.

I'll just end briefly with the ethics commission as a resource. Again, we were created in 1993 by the voters of San Francisco to provide information and guidance to city officials, to elected officials, those who are in departments making decisions to really try and help create a culture where it's okay to ask about is something right or wrong to do, where we can help provide information

and outreach and education about rules that can sometimes be very complicated because we want to help people keep far, far away from any violation of the law or a breach of an ethics standard that we have in the city.

To do that, we have a broad functional range of duties. Public disclosure, you'll see lots of it on our website, providing outreach sessions like this, tailoring sessions to smaller work groups. We want to help departments do that as needed because we want to reinforce throughout the city the voters' vision for strong and good and excellent service in public service. We can't do that alone. We depend on working with all of our colleagues throughout the city every day and through the leadership that you all bring to your work as well.

I hope you will consider us as a resource. I hope members of the public who are following your work and hearing this will also take a look at the website and see where there might be questions or information that they're interested in. This is just an example of the place you can go to on our website tailored specifically to city officers. Here are kinds of disclosure and requirements that apply. There's a page you can go to and link through onto these requirements that I've mentioned earlier.

We are also set up to be an independent enforcement authority in the city. We do not have the kind of enforcement authority that a district attorney does or a police chief does but we have the ability to call people out when there has been a violation that we have detected. We call that out on behalf of the voters and San Franciscans by having people account publicly for their violations if they engaged in them and also by fining them monetary penalties personally and having them acknowledge the violation publicly.

We can levy fines up to \$5,000 per violation or three times the amount that was not reported or unlawfully contributed, expended, gave or received. We do have a responsibility to refer matters directly to the district attorney and the city attorney's office. We initiate investigations. We initiate our own process of reviewing complaints. We have an independent commission that are each appointed by a different elected official because the voters set us up to try and have some independence from some of the political winds that pass through city over time. We are working hard to transform our own work and to be as effective and resourceful to you all as we can.

I very much appreciate you all taking the opportunity to have a brief primer or re-primer on these issues. I know it's only the tip of the iceberg. I very much appreciate and acknowledge that that is a very important step. We appreciate that you've taken it today.

I'm happy to be a resource and leave my card here for you if you have any questions for me or our staff at any time going forward. Thank you to the great work that your staff does every day.

Commissioner Makras - Thank you for the presentation. No questions.

Commissioner Gilman - LeeAnn, thank you for the presentation. As someone who's interacted with your staff and your team, they're very helpful, really diligent. Integrity is really important always. Thank you for the work you do. I have no questions.

Commissioner Adams - LeeAnn, thanks a lot for that because I'm sure you've had a lot of experience. It would be easy for a commissioner, if you didn't really know the rules, to get themselves in trouble. I appreciate you bringing the updates because staying in bounds is important. We know what can happen. I mean, we have a rogue president of the United States. Sometimes, people have to be reined in. You can have whistleblower complaints. I appreciate the integrity and where you're coming from. I think that it is good. You pointed out several of the changes that happened. I hope you come twice a year or at least once a year, so we can be constantly reminded because we do have an obligation to serve the public. They have put a lot of trust. When people go rogue or step beyond bonds, it's a reflection of everybody. Thank you.

Commissioner Brandon - LeeAnn, thank you very much for the presentation. This is perfect timing for a refresher, as we all get ready to file our Form 700s. Thank you for reminding us of all of the new laws and all the new things that we have to do and to make sure that we report accordingly. Thank you very much. Maybe you want to come every March.

10. ENGINEERING

- A. Request authorization to advertise for competitive bids for Construction Contract No. 2830, Mission Bay Ferry Landing Dredging and Site Preparation. (Resolution No. 20-13)

Shannon Cairns - I am the manager of the engineering divisions project management office. I'll be presenting on Item 10A for authorization to advertise contract 2830 for Mission Bay Ferry Landing dredging and site preparation. The timing of this advertisement is important because the Port has \$8.4 million of OCII funding that needs to be used in this calendar year. We plan to use this \$8.4 million to partially fund this contract. The work needs to take place in the in-water work window of 2020, in-water work window being June through November.

Staff last presented this project to you in July 2019. As you may recall, the new ferry landing would be located across the street from the Chase Center and adjacent to Bayfront Park. The design consists of two berths accessed from a single float with a pier and a gangway. The project includes construction of Agua Vista Park. The ferry landing would sit within a half mile of approximately 11,000 new housing units, seven million square feet of new office and commercial space, over one million square feet of new retail space, 70 acres of public open space. It is within one block of the muni T Third line. It will be within easy walking distance of the UCSF Mission Bay Hospital and campus. This project supports two key components of the Port's strategic plan.

The first is livability. It improves the livability of residents and visitors in San Francisco by easing traffic congestion along the waterfront. It also increases the proportion of funds spent by the Port on LBEs. Secondly, it has positive economic impact by allowing new water vessels to dock at the pier, increasing access to the area and supporting new development.

Port staff, as I mentioned, last presented to you in July 2019 when we sought and you granted authorization to advertise for a CMGC contract for preconstruction services for Mission Bay Ferry Landing. After that, Port did advertise as a CMGC contract. We received three bids, all of which were significantly over the Port's estimate for the dredging component of the work. We rejected the bids for that reason.

Even though we weren't successful in awarding as a CMGC contract, we learned a lot that we will be able to apply to this project and others in the future. First thing was we learned that bundling dredging and ferry landing construction did not result in the expected efficiencies and added more complexity for the bidders. We also learned that the type of dredging and debris removal proved to be more specialized than previously anticipated and that cap task in the San Francisco Bay. Finally, we learned that the value engineering ideas offered by bidders did not result in practical options for the Port.

Given these lessons, Port staff recommends dividing the work into two construction contracts. The first one is today's agenda item. Under this, we would solicit bids for dredging and site preparation through competitive low bid. The second future contract, we would solicit bids for the installation of a marine cap mattress, construction of the ferry landing and the land-side improvements. We would award this contract on the basis of best value, which would include a combination of qualifications and price.

Dividing the work into these two separate contracts will provide several benefits to the Port. The first is we would increase the number of firms that are able to bid the separate scope of work thereby increasing competition. The second is we would have more cost certainty earlier in the project because we will have an accepted cost proposal at the time of contract award. Third, we will have time to complete design components that, under the CMGC contract, we were leaving to complete during the preconstruction phase.

By completing these design components, we'll have a more accurate bid at the time of award. We will avoid potential change orders. We will still have dredging take place during the 2020 in-water work window. As I mentioned, this is important to not lose the OCII funding.

On this slide, you can see a list of all the permits and authorizations that we've received so far. The last one in bold is the only one outstanding. We expect to receive that this month. The estimated project budget for this in July 2019 was \$47.1 million. Currently, our estimate is \$58.4 million. The actual project budget will be finalized once the bids are in for all project work. So the current estimate

is based on new information we have received since December 2019. This includes the rejected proposals, debriefs that we had with the proposers after the bids had been rejected, consultation with industry experts and consultation with Public Works and WETA. Cost increases are in the construction management, inspection monitoring and mitigation items and, as I mentioned, the dredging, debris removal and cap.

Port has identified fund sources to cover the increase. To fund this project, the Port will use the \$8.4 million in OCII funds, \$1.2 million in prior-year general-fund allocation and \$3.4 million in currently appropriated Port capital. CMD set the overall LBE subcontracting requirement for this contract at 11 percent so this \$11.8 million contract at 11 percent so that equates to \$1,298,000. That work that we expect for LBEs includes the general engineering requiring an A license and trucking.

This 11 percent is below the 20 percent city standard because 82 percent of the contract is comprised of marine specialty work, allowance, mobilization and demobilization costs. We've been able to minimize the schedule impact due to the unsuccessful CMGC solicitation by separately bidding the dredging work, so it can take place in the 2020 in-water work window.

In July 2019 when we last spoke to you about this project, our schedule reported a June 2020 construction start date and an end-of-2021 construction completion. This new schedule, we've kept to the June 2020 construction start date. We anticipate the construction completion to be spring of 2022.

In summary, the project-delivery strategy that I've presented today will increase competition among the bidders by separating the work into the two different construction contracts. This strategy will also allow us to complete the overall project by spring 2022. We have identified funding sources to cover the project increase in the budget. We have identified new work for LBE truckers. If you grant us the authorization to advertise this contract, our next steps will be to come to you for authorization to advertise for the construction management services contract, which would support the future construction contract at your next meeting.

Then, we would come back to you for authorization to award this contract in April 2020 and come again in May 2020 for authorization to award the construction management services contract. Finally, we would come back to you in fall 2020 for authorization to advertise the best-value Mission Bay Ferry Landing construction contract.

Commissioner Gilman - Thank you, Shannon, for your presentations. I support the item and have no questions.

Commissioner Makras - In principle, I support the item. I want to go back to December when we had the bids and three bids came in. What was our estimate for the total project at that time?

Shannon Cairns - I have a slide that I'd like to show. I think that you're speaking maybe about this.

Commissioner Makras - Yeah. I see the proposal. But our estimate was \$47 million in 2019, correct?

Shannon Cairns - Correct.

Commissioner Makras - When the three bids came in, what were the three bids? Were they over the \$47 million or under?

Shannon Cairns - Yes. The way that the solicitation was done through the CMGC contract, we got bids on the preconstruction services and what we were calling the early construction services. We didn't get bids on the full part of the work because what would happen under the CMGC is we would have a preconstruction services period. Three to four months later, we would come to a guaranteed maximum price for the work. We did receive bids on the preconstruction services. On this slide, you can see that that is table A. Those were the bids that we got for the preconstruction services.

On Table B, the row that shows the \$17 million, that was what we received for the early construction services component. We had a Port estimate for that work at \$10.8 million. The lowest bid we received for that portion of the work was \$17.6 million and that was why we rejected the bids.

Commissioner Makras - So bidder A's total bid was \$51 million, round numbers. Is that accurate the way I'm viewing it? Bidder two was \$23 million, round numbers and bidder three was \$31 million.

Shannon Cairns - I would say that the total that you're seeing there is comprised of different components from the bid. On table C, we asked the proposers to give us their construction, general conditions and profit and overhead. So it was sort of a placeholder for that. Table E was their per-month general conditions, should it be going over the cost. We did not yet have a full proposal for the full cost of the project through that CMGC solicitation. So these are estimates based on what they proposed their overhead profit and general conditions to be. Generally speaking, yes, they were placeholder proposals but not a guaranteed maximum price yet. We never got to that point.

Commissioner Makras - But the respective three totals there for one, two and three, \$51 million, \$23 million and \$31 million -- would that be the basis of their bid?

Rod Iwashita, chief harbor engineer - The early construction work was just for the dredging, debris removal and the concrete mattress and then the off-hauling of material. So that's what table B is. Table A is the CMGC preconstruction services. Table C, D and E, there was no construction of the fixed pier or the

float or the land-side improvements that was included in this price. This is just basically the dredging and debris removal work.

Commissioner Makras – Okay. Then, the chart is less than the full bid.

Rod Iwashita - That's correct, sir.

Commissioner Makras - Okay. What I'm trying to get at is, if we have an estimate of \$33.7 million, if all the bids came in over, I get it. But if the bids came in under, then I may have a different view on it because we would be able to get the job done at our estimation or below.

Elaine Forbes - They came in over. The bids for the work, the in-water work, the dredging, the sediment cap, all came in over our estimate for the price of the project. That's why we rejected the bids because that meant our budget overall was over. So it was the first work that we were bidding here, all the bids came in over.

Shannon Cairns – Correct. There was a concern that, if just the first portion of the work that we had an actual proposed cost for was that much over, that we needed to step back and to reassess our total budget and cost estimate for the entire project.

Commissioner Makras - So we rejected all the bids based on our estimate for the dredging at \$10 million, and the cheapest came in at \$17 million.

Shannon Cairns - Correct.

Commissioner Makras - And what did we learn then through the process? Where did we go wrong on the estimate from 90 days before we published it versus the bids coming in?

Shannon Cairns - We learned several things. One was that where we came over was related to the dredging and the debris removal, etc. That was the big part that came over. So while we had developed our estimates, we had a lot of data points. They were recent data points of not just bids that were received but actual amounts that we had paid for dredging. But it was based on the maintenance dredging that the Port does regularly. While we knew that the type of dredging and the debris removal is different from the maintenance dredging and we knew it would be more expensive, we didn't anticipate the magnitude difference of the per-unit cost for dredging that type of dredging.

Commissioner Makras - Okay. Fair. In your 2019 estimate for construction management, you were roughly \$2.7 million, maybe 5 percent of the project. And for the next project, it's increased to almost double. Are we going to see the same construction management fees for all future contracts go double? Or is it just this one contract that it's going to be double? And if it's for this one contract, why?

Shannon Cairns - So there are a few items in that. One item that's within that line item, that dollar amount is mitigation costs. We have a cost for removing debris. I mentioned that that was also something that we learned was much more expensive than what we had anticipated. It's not only construction management in that the mitigation is also the debris removal so that amount went up. We did increase the actual construction management cost as well. That was also related to getting a full appreciation of the complexity of this work. In order to protect the Port and our investment in this project, we need to make sure that we have sufficient construction management on it.

Commissioner Adams - On your estimated project budget, you said \$47.1 million and it's 58. It's over say \$11 million. You said you had funding to cover the over budget? Can you tell me what that is, where it's coming from?

Shannon Cairns - We requested \$5 million from the general fund to cover this part of the project. We also have identified existing Port capital. It's actually from the maintenance dredge contract funds that weren't used. So the \$6.4 million is from existing Port capital.

Commissioner Brandon - Shannon, thank you so much for this report. I know that this is necessary. Just to ease the traffic congestion in the area now, this is truly needed plus all the development that's come online to be done in that area. This is going to be a great addition. But like my fellow commissioners, we have concerns about the increasing price of it and just wanting to make sure that, once we start this road, we can actually complete it. I was looking at the projected budget. On the slide you showed us, you said these funds, the \$11.8 million are coming from potential reimbursement recovery from responsible parties, OCII and general fund.

Shannon Cairns - That's right.

Commissioner Brandon - But in your presentation but that's more than \$16 million.

Shannon Cairns - It's \$8.4 million in OCII funds, \$1.2 million in the prior-year general-fund allocation and \$3.4 million currently appropriated Port capital. So that should be about \$13 million.

Commissioner Brandon - The slide that you showed us is incorrect. That's what I'm looking at, the arrows on the slide.

Shannon Cairns - I think you have one that says project budget with the slide from the staff report?

Commissioner Brandon - This one.

Shannon Cairns - The \$3.4 million is actually from that last row that's the \$6.4 million of potential reimbursement funds. It's \$16.1 million.

Commissioner Brandon - The 3.4 that you're referring to is coming out of where?

Shannon Cairns - The \$3.4 million for the currently appropriated Port capital is from that potential reimbursement. So that potential reimbursement is related to the contamination at Pier 64. There could be an opportunity to get reimbursement for that. That would backfill the Port capital to happen.

Commissioner Brandon - At this point, we have \$47 million and we hope that our general fund request is granted and that we do get a recovery to complete the project.

Shannon Cairns - Right.

Commissioner Brandon - For this contract, are we taking it out of the potential reimbursement as stated on the slide? Or are we taking it from somewhere else?

Shannon Cairns - Port capital.

Elaine Forbes - We're taking it from ourselves, and we hope to be reimbursed the \$3 million.

Commissioner Brandon - So we're taking it from Port capital.

Katie Petrucione - Yes. We're loaning the project the funding with the hope that we will ultimately be reimbursed through the Pier 64 cost-sharing reimbursement.

Commissioner Brandon - Okay. But the funds for this are coming from --

Katie Petrucione - Port capital.

Commissioner Brandon - Port capital, which is \$3.5 million.

Katie Petrucione - The OCII funding.

Commissioner Adams - And the general fund.

Katie Petrucione - The \$1.2 million in general fund that we received in fiscal year 2018-'19.

Commissioner Brandon - And OCII.

Katie Petrucione - Yes.

Commissioner Gilman – This was in the budgets we approved already. Correct?

Katie Petrucione - Yes. So the \$8.4 million from OCII, the \$1.2 million from the general fund that was actually approved in our last biennial budget cycle.

Elaine Forbes - And the Port capital is approved too for dredging. We have money left in our dredging contract that is not expended. So we have an open contract and an allocation for dredging that we have leftover funds that we can utilize here but we want to be reimbursed from the cost-sharing agreement.

Commissioner Brandon - But we would need to be reimbursed to complete this project. Right?

Katie Petrucione - Yeah. As you've identified, we talked about a little bit during the capital budget presentation a couple of weeks ago that we have some gaps in this project. So we are pursuing the \$5 million request from the general fund. We are also pursuing a couple of grant opportunities so a federal grant as well as a state grant. We're still in the process of building the capital stack for this project.

Commissioner Brandon - Great. So for this contract, it's \$11.8 million plus contingencies. And if all of the bids come in over, then what?

Elaine Forbes - We're probably going to have to do some serious work internally before we come back to you.

Commissioner Brandon - Okay. So at this point, we're just putting it out there. And we're just going to see what it comes back with and then, we'll decide how to move forward.

Elaine Forbes - That's correct.

ACTION: Commissioner Adams moved approval; Commissioner Gilman seconded the motion. All of the Commissioners were in favor. Resolution No. 20-13 was adopted.

11. REAL ESTATE

- A. Request approval of a Settlement Agreement and Lease No. L-16653 with the Pilara Family Foundation ("PFF") under which: (i) Port's claims for rent due and PFF's claims for rent credits due under current Lease No. L-14414 for the Pier 24 Annex will be resolved; (ii) Port and PFF will enter into a new lease for the Pier 24 Annex for a term of approximately four (4) years; (iii) the new lease will allow storage, curation and display of a photographic collection and require PFF to continue to provide free public access to view the collection and will allow for rent credits of up to \$5.5 million; (iv) the new lease is subject to approval by the Board of Supervisors; (v) the parties will release each other from potential claims in connection with the Settlement Agreement; and (vi) the Settlement Agreement and new lease include other terms and conditions as set forth in the documents on file with the Port Commission secretary. (Resolution No. 20-14)

Mike Martin, real estate and development - I'm joined today by Assistant Deputy Direct Mark Lozovoy and Deputy City Attorney Rona Sandler, who've been of

great assistance as we've worked through this negotiation with Pilara Family Foundation. We're excited to be back here to walk you through what we're proposing today. Pilara Family Foundation is a nonprofit corporation with the mission of curating and displaying photography, much of which relates to the waterfront. They operate Pier 24 photography at Pier 24 Annex, a location for the storage and display of the collection. Originally, Pier 24 Annex was slated for demolition back in 2007. In fact, the Port had budgeted funds to do so.

At that time, Pilara Family Foundation initiated discussions with the Port and agreed to lease the property in exchange for doing a set of improvements that originally started out at a number under \$3 million but eventually mushroomed to approximately \$14 million. Port staff verified \$8.5 million of that expenditure as substructure core and shell improvements at the time. Under Lease L-14414 and three subsequent amendments, the lease expired in November 2017 and with it expired the \$3 million of rent credits that the Port Commission originally allocated in the lease.

The parties entered negotiations to try to extend their relationship and failed to reach an agreement that met the needs of both sides on a compromise. After two years of those discussions and a number of trips back to the Port Commission in closed session, Port staff issued a 30-day notice to terminate the lease in December 2019. This prompted a one last attempt to try to bridge the gap. I'm happy to say that the parties did come to the table and hammered out an approach that we think works to set things up better going forward.

The proposed settlement agreement is very simple. It acknowledges the \$5.5 million in remaining unamortized but verified substructure core and shell costs as rent credits to address the rent delinquency from November 2017 to the present. The settlement agreement would call for Pilara Family Foundation to pay the Port's attorneys' fees in negotiating the settlement. It is conditioned on the entry of a new lease. That new lease has the following principle terms. It would set the rents at the Port's current parameter rate, which is something that was important to Port staff to move the property up to its current value in light of its condition and location. The current parameter is \$3.40 per square foot per month.

The rent credit proposal is that the tenant may take the remaining amounts of that \$5.5 million of unamortized substructure core and shell costs as rent credits. But that's net of what's used upfront to pay for the rent delinquency that's currently outstanding. The tenant may apply those rent credits for most of the rent payment each month, \$3.21 per square foot, which would leave a payment of about \$5,735 per month. The term would expire when their rent credits are exhausted. Depending on when we actually enter this lease, that'll determine the term based on the point I made about the delinquent rent, having to sort of soak up some of those rent credits before we're able to apply them to the lease.

For example, if the lease was entered on May 1st, we'd calculate that the term would be about four years and a little under four months. The parties were interested in discussing a potential extension in exchange for further capital

improvements to the facility. With time being an issue and being something we wanted to move quickly to remove the cloud over the Port and this tenant in terms of our prior notice of termination, what the lease calls for is it invites the tenant within a year of signing the lease to bring in an extension proposal with backing information on the facility condition as well as a feasibility study on lifting the occupancy limit on the building. We thought that was really important from the Port's perspective because of the outpouring of public support for this tenant and realizing that that occupancy limitation, if removed, could allow more people to enjoy the collection and enjoy Port property. That discussion will be a negotiation and a fully discretionary act on your part whether you want to move forward once we receive that information if we do. We'll try to work through that and bring it back to you if the tenant wishes to proceed with that extension discussion.

The lease provisions are generally in accordance with the Port's form lease with the following notable exceptions. There is not a Port program or project termination right that we see in most of our leases. This was the case in the prior lease as well. We've continued that approach here. The tenant also asked for two additional termination rights than what was in the prior lease. One was in relation to the tenant's obligation to maintain and repair since this lease has a fairly short term. There is a potential scenario close to the end of the term where a maintenance responsibility would come up and would be more expensive than would be worth the rest of the term of the lease.

In that situation, the tenant would be able to give the Port 90 days' notice and, instead of performing the repairs, terminate the lease and give the property back. Similarly, the tenant wished to have just a general termination right with a year's notice, which we also agreed would be appropriate in the context of this short-term new lease. We would retain their security deposit that's on hand from the prior lease rather than marketing it up to the current rent amounts since those rent amounts aren't actually being paid with the rent credits that are involved.

Any transfers would be at the Port's sole discretion. This was important to us. We felt like this was a deal with this tenant who made these improvements and created this attraction on the waterfront. We don't want this to then be transferred somewhere else to someone who may have different ideas for the facility.

That's the general summary of the terms of the agreement. Port staff does recommend your approval. We feel like it achieves the goals set forth in the staff report, continuing these public-oriented operations at the site. To also talk about the public operations, we've also built in a lot more reporting in this lease, so we can understand who's attending, what kind of groups are attending, what kind of special events are happening there. We think that's useful information not only for any extension discussion but also for understanding the ongoing value of this unique property. The rent terms are now reflective of the current market and current facility condition, as I mentioned earlier.

We're negotiating a further lease term so long as we have that back-up information that allows us to assess what the facility needs. We're very interested in resolving the party's claims while avoiding costly litigation.

Simon Snellgrove - I'm director of Simon Snellgrove Pacific Waterfront Partners. We were retained way back when by the Pilara Foundation to seek a site. I had been working with various members of the Port's prior real estate staff, Kirk Bennett and various people, to try to figure out a use for this site, even looked the PSA terminal for the Oakland Airport. So when we were retained, we looked far and wide. I brought them back to Pier 24. He loved it. We did a lot of due diligence. I don't know where the \$3 million budget came from, but I didn't give it to them. We approached the Port staff. In the light of the women's museum having failed and with having wasted a lot of Port's time. Mr. Rhett and Diane Oshima and the Port's planning had not really settled on a cultural use for that area. I wanted at least a 45-year lease, so we could do a total foundation, get historic tax credits, etc. But you know, with the Port staff cooperating, we said, it's too much of a heavy lift. So we did the deal that we did. We built a fabulous museum. Mr. Pilara paid us well to develop it. I'm not here being paid by Mr. Pilara. I'm just here as a citizen. I'm passionate though. I just want to say that the head of the Louvre in Paris, the head of the Tokyo museum, this is a world-famous cultural facility. It fits into what all of us San Franciscans feel. It's a little funky. It's super cultural. It's a great asset for the city. I appreciate Mr. Pilara has kind of fished around about appointments and stuff like that. But I truly believe that has not to do with his self-interest. That has to do with the art is so valuable, so incredible that he doesn't want mobs of people coming. I want to speak in favor of this thing. I hope we can work out. Thank you very much if you've decided to help him. But I'd love to work with you all as a volunteer to see if we can find a more permanent solution.

Mary Murphy – I'm from Murphy, Gibson, Dunn and Crutcher, counsel to the Pilara Family Foundation. I'm here today to respectfully request that you support the staff's recommendation and approve the settlement agreement in the form of the lease. As you heard from Mr. Snellgrove -- and it's reflected in the staff report -- this really is a great asset of the city of San Francisco and of the world. It really is one of the finest private museums in the world. The outpouring of support for the museum is evidence of what a great asset it is for the community. As Mike said, there is a limitation on the occupancy load and that is why the museum is required under the terms of its old lease and the proposed new lease to have a controlled access that doing it in any other way is actually prohibited under both the old lease and the new lease. It's actually lent itself though to a contemplative and really interesting cultural experience for so many people, so many members of the public, certainly for the academic community, for schools, for teachers, for researchers and for artists. It's been an amazing resource and we want to continue that public outreach. It is, I believe, the only completely free museum in the city of San Francisco. The Pilara Family Foundation is committed to continuing to serve the public through this. We're so grateful to you, the commission and to the staff. I want to specifically thank your Executive Director Elaine Forbes, Mike Martin, Michelle Sexton and Rona Sandler, who worked

really hard on this. I know you all have had a lot of other things that you've had to deal with, especially the last few days. I wanted to take a second to thank your staff in particular. They're always consummate professionals. They're great to work with. We feel pleased that we've been able to come forward to you today with a resolution that I think works for and agree with the Port and certainly for the foundation and for the public that really loves this museum and wants to continue to see it flourish on the waterfront. I want to thank you again and your staff who are really fantastic. They're pretty much not completely unsung heroes, but their praises aren't sung enough.

Erica Deeman - I am an artist working in the medium of photography. I wanted to say something about Pier 24. I call it the Pier because it's provided me with so much knowledge and community since my time in San Francisco. I've made friends there and community there that still have an impact on my art practice today. I first came to the institution during a class visit back in 2013. I wanted to get in on a class, and the class was full. The teacher recommended that I visit her at the institution. I'd never heard of it before but I was amazed by the access to the works and at no cost. Being a student and loving it so much, I visited it two to three times per week which, at that point, they recognized me and they asked me to be one of their interns. I began interning for them in 2013. They've given me a platform for my work. After about nine months of being there, I shared my portfolio with the director of the space and he really enjoyed what I was making. Therefore, they programmed me into a show, which was called Collected, in 2014. They really helped me develop the work. I was a student, and there was no way that I was able to kind of push myself forward in the way that they could propel me. It's catapulted my career. The Pilara Foundation Pier 24 Photography, all of the people there have got me to a place where I'm nationally recognized. It really has been transformative to think of myself as an intern, as someone who just came there once a week to enjoy the work and to be close to the work, to kind of now be in a position where I'm in other museum collections. I'm also in their collection. I wanted to come here and sing their praises. I'm so happy that an agreement has been made. I hope that it does go through.

Bijan Yashar - I'm an instructor at Berkeley City College. I teach photography. I've been there for about 14 years. I'm also senior adjunct faculty at California College of Arts. In fact, I'm going to start by reading a letter by one of my colleagues at CCA, Chris Johnson, who couldn't be here. This is addressed to you, San Francisco Port Commission.

"Even in a city with as many important photographic cultural assets as San Francisco, the Pier 24 Museum has proven to be a unique and essential resource for inspiration and education. As chair of the photography program at California College of the Arts in San Francisco and Oakland, I can attest to the fact that Pier 24 has become an integral part of our curriculum at all levels because the breadth and quality of its collection in the sophisticated curatorial approaches they bring to their exhibitions. There are two facts that make Pier 24 an ideal resource for educators. First, the museum is free, a crucial factor for teachers and students. Secondly, visits to the museum are by appointment. So it

is possible to view installations without the distraction of crowds. For all these reasons, Pier 24 is an essential asset for schools throughout the Bay Area. I also served as chair of Oakland's cultural affairs commission under Jerry Brown. So I'm very familiar with the complex dynamics between civic and private art institutions. Like the Uffizi Gallery in Florence, Italy, Pier 24 is the generous result of a private collector's vision and therefore invites the public into something more than the familiar and popular art projects found in other museums. When you enter Pier 24, it's instantly clear that you are in the presence of a singular approach to photography. Artworks and descriptive wall texts are elegantly displayed separately so that viewers can appreciate one without the distraction of the other. But most important is the innovative approach to selection and curation that Pilara Foundation together with the museum's director, Chris McCall, bring to their installations. Pier 24 consistently breaks new ground with exhibitions like Secondhand that teaches us new things about the images we see every day and Paul Graham, Whiteness of the Whale, that reintroduces us to artists we thought we knew very well. One important difference is that Florence treats the Uffizi Gallery as the national treasure it is and greatly benefits from its worldwide prestige. San Francisco has an opportunity to demonstrate its support for 24 as it continues to be one of the premier venues in the United States. Please consider this to be an unconditional expression of support for the Pilara Foundation and its efforts to continue its generous and great work at Pier 24. An endorsement by the Port Commission will be viewed as an historic benefit to San Francisco's reputation as a center of cultural excellence. Sincerely, Chris Johnson."

I'm going to second everything Chris has said. I've been teaching for 14 years, every semester.

Keith Silva - I live in Marin and I'm an avid consumer. I'm a customer of the place. I love it. It's magical. It's quiet. It's sacred, and it's intimate. And this settlement that you have before you looks pretty doggone good to me. For a long time, I was a commercial landlord here. Both sides seem to have come out pretty well on this. I would encourage you very much to adopt the settlement. One of the things that I've liked a lot about the pier, aside from its unique curatorial bent, which is very unique, Chris McCall has done a fabulous job over there. He's got a great support staff. It has educational outreach. It does something called the Sultan lectures at CCA, California College of Arts. And those are really instructional. I can't see how anything else like that could possibly happen without the institutional support of someone like Pier 24. There's nothing else like it in the Bay Area. We're really special to have it in our midst. In fact, we're really blessed and special to have the entire institution in our midst. As Erica alluded to, there's nothing else like it in the rest of the world. It's wonderfully educational. I've seen school groups come through there. Their eyes are like saucers. They can't believe what they're looking at, these beautiful, gorgeous prints, wonderfully mounted. The docent staff is hugely helpful. If you have any questions, the staff will tell you in a second a full background on the artist and the piece. So from a consumer standpoint, if you want to just look at it as a business model, from a

consumer standpoint, it's a really successful operation. I would encourage you to adopt the proposal.

Commissioner Makras - Thank you. I would encourage the commission to support this item as presented to us. First, the real issue in this new lease is really a reimbursement of tenant improvements. That's the real crux of it. At the end of the day, I believe the original contemplated it, that we would reimburse them. Go back to 2007, and think of where we were. And the bid came out, and this building was going to be demolished if anything. We have someone that came in and remodeled it beautifully. What's most unique is I think that history is going to prove this is one of the best deals we ever made because the net result of this deal is we get a full remodeled building 20 years later. Look at all the leases that we see over and over and over where they're asking us for the full 66 years to pay off their improvements. In this case, we will have this building back to the city paid for net in less than 20 years. But most importantly, we have to go back to the original time. And I believe that it was everyone's intent that the improvements be made and that the tenant be brought whole for their TIs. So I strongly recommend that we approve this just as presented to us by staff. I'd just leave one more item -- 2007, this guy believe in the Port. He was one of the first ones to walk over that magical line and write personal check, personal money to improve our waterfront. And look at where we're at 20 years later. I hope we have two or three more tenants like this come forward.

Commissioner Gilman - Thank you. I support the item. And I support the resolution that we've come to. I think having art and culture on the waterfront is one of the things we hear from the community and from our community stakeholders the most when we open up any new parcels or RFPs. The folks want to have art. They want to have culture. They want to have public access and this project has all of those components. I do feel the need to say this for the record even though I am fully supportive of the item. I do urge the day-to-day operators and facility folks who facilitate the site to consider allowing some limited access, either day-of tickets or walk-ins. If I'm wrong, you can address it with me offline. But online access only for appointments, I do believe creates barriers for certain populations and for folks who are not as digital literacy or folks who maybe want to be spontaneous as they get off of a ferry visiting our waterfront and seeing that site, to be able to have some continuity for them to visit it while limiting the guests. I understand the artistic intent. My husband is a photographer. He has explained it to me. But I still really believe that we should be providing some broader access. So I really hope the Pilara family and the foundation will consider that. I am still 100 percent supportive of the item.

Commissioner Adams - I don't have amnesia. I think this was one of the toughest kind of relationships because I can remember this was pretty contentious among the commissioners talking a lot. I didn't think the relationship was that good, just being honest. I always believe you should pay your rent. People can say a lot of nice things about this and that and I appreciate what they've done. But it was kind of contentious. I want to thank Mike and Elaine because it was contentious. I know some of the things that were said by commissioners. You can say one

thing in private and another thing here. But I know what was said. I'm just being honest. It was very contentious. I'm glad that you got to a point that you can get to. But I would hope that they would work on trying to have a better relationship with the Port and that's just the honest thing that happened. I think Mike kept going back to the well. And one thing I know about Mike, he keeps plenty in his tank. So we finally got there. I'm going to vote to support it. But I definitely think that the Port and the Pilara family need to work on their relationship because it probably shouldn't have gotten this far. I saw a lot of hating going on. It was not positive. It left a bad taste in my mouth as a commissioner because I couldn't understand how somebody wouldn't pay their rent and butting heads. Sometimes, people want to paint a perfect face, but it wasn't like that. It was pretty contentious.

Commissioner Brandon - Mike, thank you so much for the presentation. Thank you so much for your patience and your effort to get us to this place. I was here when the original lease was done. I thought we had such a wonderful gift being given to us by Mr. Pilara and all the development that went into Pier 24. For the first few years of that lease, it was not open to the public. It was a private collection. I'm glad that, over time, it was opened to the public. People were able to go but I do agree with Commissioner Gilman. There needs to be more access. It is such a jewel. So many people should be able to see it and should be able to visit. I think it's absolutely phenomenal that it's a free museum with limited access. But I think maybe Mr. Pilara wants to work with the city to get funding maybe from the grants for the arts or the art commission or something because this is a San Francisco jewel. But we are responsible for maintaining the property. We can't continue to do that if we give away our piers and our structures. We have to have income in order to be able to continue to bring so many wonderful people to the waterfront. So like Commissioner Gilman said, if someone were to get off a cruise ship or get off a ferry and say, "I'd love to go. I've heard so much about this wonderful museum. I've love to go see it," but yet they can't because there's such limited access. I, too, think it was extremely unfortunate that we had to get to a place where we became the bad guys in the public's view but we've been able to salvage it. We're going to move forward. Hopefully, we can have this tenant as a long-term tenant. Hopefully, we can and hopefully, we don't look like the bad guy in that process.

ACTION: Commissioner Makras moved approval; Commissioner Gilman seconded the motion. All of the Commissioners were in favor. Resolution No. 20-14 was adopted.

- B. Request approval of a Settlement Agreement and Lease No. L-16661 with the Dolphin Swimming and Boating Club ("Club") under which: (i) the Club will pay Port \$5,913 in settlement for its past use of Port submerged lands beneath its boat dock at its facility located at 520 Jefferson Street in Aquatic Park which is under lease with the Department of Recreation and Parks and Port will waive any other payments and/or claims related to the Club's failure to obtain a lease to use Port property; (ii) Port and the Club will enter into a market rate lease (L-16661) for the submerged lands beneath the dock for a term co-terminus with

the Club's lease with the Department of Recreation and Parks; (iii) the lease will require the Club to continue to provide and promote aquatic activities and allow for rent credits for up to \$30,000 for dock improvements; (iv) the Club will indemnify Port for claims related to its past use and waive all claims against Port; and (v) the Settlement Agreement and Lease include other terms and conditions as set forth in the documents on file with the Port Commission secretary. (Resolution No. 20-15)

Demetri Amaro - I'm the property manager for Fisherman's Wharf from the Port. I'm here to request approval today for a settlement agreement between the Dolphin Swimming and Boating Club and the Port of San Francisco. Dolphin Club was founded just shy of 150 years ago in July 1887 to facilitate water recreation access to San Francisco Bay. In 1927, they relocated to their current location at the foot of Jefferson Street in Aquatic Park. In 1976, they entered into a lease with the Recreation and Parks Department and that lease expires on June 30, 2028.

In 1993, the Port and the rec park department determined that a portion of the dock is actually within the Port's jurisdiction. Since that time period, Port staff have periodically contacted the Dolphin Club in an attempt to properly document their use of Port property and enter into an agreement. Most recently, in late 2019, the Dolphin Club had actually submitted for a construction permit from the San Francisco Department of Building Inspection. At the time that they submitted for that application, the Department of Building Inspection actually let them know that the portion of the dock that they wanted to do repairs on was within the Port's jurisdiction. As such, we would need to be the permitting authority for those portions of the repair.

At that time, they reached out to the Port of San Francisco and we entered into the negotiations that resulted in the settlement agreement before you today. During those negotiations, we had a number of goals the first and foremost of which was we wanted to address the lack of an agreement authorizing the Dolphin Club's use of Port lands. There is about 678 square feet of submerged land that a dock has been built on. We also wanted to allow them to make the improvements to the pier to allow it to be repaired because it is a public-access dock. We wanted to ensure we could protect the public safety. Additionally, we also wanted to protect the Port from liability for past and future uses of Port lands. We also wanted to set the stage for an anticipated Port, parks rec Department and Dolphin Club transaction similar to the Cirque settlement that the Port Commission approved last year.

Additionally, we wanted to continue to guarantee the Dolphin Club's tremendous efforts to encourage access to San Francisco Bay. The settlement agreement itself is structured into four principal parts; the first of which is an augmented building permit for dock work; the second portion of which is a settlement agreement which incorporates a new lease.

The settlement agreement addresses the previous uses, and the new Lease 16661 addresses future uses. In the future, there is a potential assignment of our landlord responsibilities to the rec and parks department. For the augmented building permit for the dock work, currently the Dolphin Club has submitted an application for a building permit to Port staff and it is under review. We're working to hopefully address that as soon as possible to allow the repairs to take place to continue to facilitate public access to the dock.

Beyond the normal terms of our building agreement, we would also add provisions that would assign the operation, insurance and maintenance responsibilities to the Dolphin Club as well as ensure the indemnity of the Port. We want to make sure that those are a portion of the building permit to cover any potential liability that would exist between then and the settlement and lease documentation before you today. The settlement agreement itself would ensure that the Port and club agree to waive all claims against one another for the prior operation of the premises without a lease in place.

The Dolphin Club would additionally agree to pay back rent for the previous four years at the submerged land parameter rental rate. That would result in about \$5,913 being repaid to the Port. Additionally, we would enter into a new lease with the Dolphin Club at the terms set forth in the next slide.

The new lease itself, 16661, in which the Dolphin Club would continue to promote their aquatic activities in Aquatic Park under the terms of their current rec park lease. Additionally, they would pay rent on the dock as it exists in place at our submerged land parameter rent, which is \$0.19 per square foot. And that would escalate annually 3 percent for the full term of the lease. Additionally, the Dolphin Club's hard costs for their pier repairs would be eligible for rent credits. Just a note, that would likely result in no future rent being paid during the term of the lease. Additionally, the security deposit is waived.

In exchange for that, the Dolphin Club would be responsible for maintaining and operating the pier as it currently exists. The Dolphin Club would also indemnify the Port for any claims due to past or future use of the dock. The lease itself includes the normal as-is provisions, hazardous materials, insurance and required city provisions that the Port normally includes. And it is recorded on our standard form lease.

Finally, in the future, if the Port Commission were to approve this transaction, Port staff would work with the rec park Department to assign the Port's landlord responsibilities to rec and park so that the club can have a single direct landlord relationship during the term of the lease. This is very similar to the South End Rowing Club settlement that the Port Commission approved last year in 2019. And the ultimate goal is for all three parties to enter a negotiation and execute a new rec and park club lease that would incorporate the entirety of the premises including the Port property.

To achieve that goal, the Port would enter into a lease MOU with rec park. And rec park would sublease the Port lands to the Dolphin Club so that rec park would be the club's master landlord under that new lease. At that time, we would bring that forward to the Port Commission for your approval as well.

In summary, based on the previous things we've said before, we believe this meets the proposed goals as outlined in the staff report. The issuance of the building permit with the augmented provisions above will improve public safety as well as better protect the Port from liability. Once the final settlement and new lease are approved, those would go even further to protecting the Port. In addition, engaging in a collective negotiation of a new lease arrangement with the club and RPE aligns this settlement with the terms of the previous settlement entered into for the South End Rowing Club. As such, the Port recommends this resolution.

Commissioner Gilman - I'm generally supportive of the item. And I think just to dovetail actually on the last conversation, I think it's really great. It took us 27 years since 1993, but it's good that we're getting our house in order. We're realizing what is property that we have responsibility and jurisdiction over. And to echo what Commissioner Adams said, every entity needs to pay some rent. They can receive rent credits and amortization for their investment, but they need to pay rent. My fellow commissioners echo to me all the time. So I'm supportive of this item. I'm glad we resolved this. And maybe the public moving forward will understand that everyone needs to contribute to the Port. We have a fiducial responsibility.

Commissioner Makras - No questions. I'll be supporting the item.

Commissioner Adams – I'm supportive.

Commissioner Brandon – Demetri, thank you for the presentation.

ACTION: Commissioner Gilman moved approval; Commissioner Adams seconded the motion. All of the Commissioners were in favor. Resolution No. 20-15 was adopted.

12. NEW BUSINESS

13. ADJOURNMENT

ACTION: Port Commission Adams moved approval to adjourn the meeting; Commissioner Gilman seconded the motion. All of the Commissioners were in favor.

Port Commission President Kimberly Brandon adjourned the meeting at 5:07 p.m.