

MEMORANDUM

May 21, 2015

TO: MEMBERS, PORT COMMISSION
Hon. Leslie Katz, President
Hon. Willie Adams, Vice President
Hon. Kimberly Brandon
Hon. Mel Murphy
Hon. Doreen Woo Ho

FROM: Monique Moyer
Executive Director

SUBJECT: Request Approval of (1) Findings that the project proposed by TMG Partners, a California corporation ("TMG Partners") for premises located at Pier 38 in the Central Waterfront on The Embarcadero at Delancey Street is consistent with the Burton Act and the public trust for commerce, navigation and fisheries, and (2) Lease No. L-15892 between the Port of San Francisco and TMG Partners or its affiliate for a term of 25 years (This action constitutes the Approval Action for the project for the purposes of CEQA, pursuant to Section 31.04(h) of the San Francisco Administrative Code.)

REVISED, CORRECTED REPORT ISSUED MAY 26, 2015

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

At its meeting on April 28, 2015, the Port Commission heard an informational presentation regarding a new Lease No. L-15892 between the Port of San Francisco and TMG Partners for premise located at Pier 38 in the Central Waterfront on The Embarcadero at Delancey Street with a term of 25 years ("Lease"). The April 28, 2015 presentation was accompanied by a staff memorandum dated April 24, 2015¹ which outlined the proposed vision for the lease.

This staff memorandum further describes the proposed terms of the Lease in greater detail. Material additions to the April 24, 2015 staff memorandum are presented herein

THIS PRINT COVERS CALENDAR ITEM NO. 11A

¹ <http://www.sfport.com/modules/showdocument.aspx?documentid=9722>

as double underlined text; other technical additions are show in single underlined text and deletions are shown in strike through. In particular, updates have been provided related to terms for (1) rent credits for substructure improvements, voluntary seismic upgrades, sea level rise adaptation measures, and certain capital improvements in the last five years of the Lease, (2) a three (3) month due diligence period at the start of the Lease during which TMG can conduct seismic and environmental investigations and terminate the Lease, (3) a plan for low cost community events 12 times per year, (4) the guaranty for completion of the initial improvements, and (5) the accompanying Resolution for approval.

Summary

Following a Pier 38 developer solicitation process that resulted in the selection of TMG Pier 38 Partners, LLC (“TMG” or “Tenant”) as the most qualified respondent, Port staff and TMG have developed a proposed site plan and business terms for the Pier 38 bulkhead project. On November 18, 2014, staff presented an overview of the proposed project scope, initial business terms and a status on the regulatory approvals. This memorandum revises, clarifies and, in certain instances, eliminates certain business terms that were presented on November 18, 2014.² These changes improve rent payments to the Port, incentivize substructure improvements, and provide a Port capital investment option.

In general the following business terms for the proposed lease were negotiated and amended:

1. The 50% rent credit for Tenant’s initial capital investment is limited to base rent and expires after Year 20;
2. The Port set-aside of 25% of base rent for substructure repairs is replaced with incentives for both Port and Tenant to invest in substructure repairs;
3. Base rent is adjusted to equal fair market rent after Year 20;
4. Participation rent to Port is increased;
5. A performance standard for special event use is defined;
6. Provisions to address sea level rise are added; and
7. A Port capital investment option is included.

In addition, this memorandum provides an update of the regulatory approvals, including a finding of trust consistency for this project.

Repeat Item

The intent of the April 28, 2015 presentation was to allow the Port Commission to provide input and direction to staff, and for the public to review and comment on the proposed project and deal structure. The Commission generally supported the proposed terms, but suggested that the special event use be expanded to include community-oriented events and requested a Local Small Business (LBE) utilization plan. Port staff and TMG have negotiated a community-oriented event provision, and

² <http://www.sfport.com/modules/showdocument.aspx?documentid=9106>

have finalized lease negotiations, as further described herein. A copy of the proposed lease is on file with the Port Commission Secretary. TMG Partners has submitted an LBE utilization plan which is Exhibit E to this report.

Port staff received comments from the California State Lands Commission regarding the public trust analysis of the project contained in Exhibit C. Changes to that analysis, including references to community-oriented events, are shown in track changes to that exhibit.

Port staff is now requesting Port Commission approval of the lease to execute the terms and conditions described herein.

Background and Strategic Objectives

On September 25, 2012, the Port Commission authorized staff to issue a Request for Proposals (RFP) with the objective to restore and re-tenant the Pier 38 bulkhead, bringing it back into economic use and to provide on-going revenue to the Port.

The Port issued the RFP on November 16, 2012.³ In March 2013, the Port received proposals from two developer teams: 1) San Francisco Waterfront Partners, LLC and 2) TMG. The development teams presented their qualifications and proposals to the Port Commission on June 11 and August 13, 2013.

On December 12, 2013, the Port Commission awarded the Pier 38 bulkhead rehabilitation opportunity to TMG and directed Port staff to negotiate a lease on terms and conditions that reflect the Port's goals, as described in the RFP.⁴ In general, the Port's goals include: 1) repair the bulkhead building needed to meet building code and other regulatory requirements; 2) develop a strategy to re-tenant the bulkhead and generate on-going revenue to the Port; 3) encourage office, visitor-serving commercial and maritime uses that complement adjacent waterfront development; and 4) revive this historic structure and bring people and business activity to the waterfront. This project is limited only to the bulkhead and a portion of the shed as described in the development solicitation and does not extend to the total rehabilitation of Pier 38. The solicitation was limited to this smaller area due to continued uncertainty of complete Pier 38 rehabilitation feasibility.

Pier 38 consists of two structures. The Pier 38 bulkhead structure is a two-story wood framed concrete building which resides along the Embarcadero. It was built in 1936 and consists of approximately 13,000 square feet previously used as office and retail space. The pier shed is a single story, high ceiling warehouse building consisting of approximately 97,000 square feet. A portion of the pier shed which includes a mezzanine area had been used for office use consisting of approximately 10,000 square feet. The RFP defined the bulkhead rehabilitation project as consisting of the

³ <http://www.sf-port.org/modules/showdocument.aspx?documentid=4934>

⁴ <http://sfport.com/modules/showdocument.aspx?documentid=7078>

bulkhead and the office portion of the pier shed (also referred to below as the west pier shed).

The Port selected TMG which is a joint venture partnership with TMG Partners and Premier Structures, a certified Local Business Enterprise (LBE). As required by the RFP, TMG has demonstrated the ability to renovate, manage and operate the bulkhead space and upgrade the life safety and other code improvements needed for occupancy. The improvements consist of base building core and shell improvements and tenant improvements, including repairs to the building façade, roof and windows, mechanical systems, seismic bracing, interior tenant improvements, Americans with Disabilities Act (ADA) upgrades such as an elevator, accessible bathrooms, and paths of travel and energy efficiency upgrades. In addition to the bulkhead improvements, TMG will make necessary repairs to the floating dock and gangway, enhanced public access improvements on the north apron, and make critical repairs to the substructure under Parcels A and B, including piles, beam and girders (as shown in Exhibit A).

TMG proposes to invest approximately \$11.89 million in the project of which \$8 million are hard costs, \$2 million are soft costs, \$1.5 million are initial Tenant Improvements, and \$0.38 million are initial leasing commissions (see Exhibit B). This is a preliminary budget based on an early stage of design and will change. The current hard and soft cost budget of \$10 million represents an increase of \$2.8 million from the budget of \$7.2 million represented to the Port Commission on November 18, 2014. The drivers of the cost increase are public access improvements, the current construction climate, and an increased contingency of 20% (from 10%). Seventy eight percent of the improvements will be made in the bulkhead building (Parcels A and B), 10% in the Pier Shed (Parcel C), and 12% in North Apron (Parcel D).⁵ The budget estimates includes the developer has calculated a use program that will not trigger a seismic upgrade of the entire pier. Undertaking such seismic upgrade would render the project financially infeasible.

Proposed Uses

Parcels A&B – Bulkhead/Shed Ground Floor

As shown on Exhibit A, the bulkhead and directly adjacent portion of the shed will continue to be used primarily for office space on the first and second floors for a total of approximately 21,000 square feet. In Parcel A (shown on Exhibit A), the northern portion of the first floor of the bulkhead/shed west will be used as a restaurant consisting of approximately 3,500 ~~4,912~~ square feet. In the area of the main Pier 38 arch, the center drive aisle will remain to serve both vehicular and pedestrian access. On the south side of the center drive aisle on the ground floor of the bulkhead and adjacent portion of the shed, there will be approximately 1,000 ~~12,150~~ square feet of

⁵ Pier Shed - Parcel B improvements include: repair of roll-up doors and clearstory windows, roof patching, asphalt floor patching, new fire sprinkler distribution system, provide event space electrical power, etc. North Apron – Parcel C improvements include: new concrete and asphalt paved surface, exterior space lighting and power, new deck railing and gate, benches and tables, trash receptacles, light poles, etc.

office space and an office lobby. Restrooms for office and restaurant employees and restaurant patrons will be located in this area.

The office space will be targeted to creative- and technology-oriented users. TMG believes that they can attract such users because of Pier 38's unparalleled waterfront location, the unique character of the bulkhead and the attractiveness to an open floor plan with minimal interior divisions.

The 3,500-4,912 square foot restaurant space, required as part of the RFP, would activate the northern portion of the pier apron and the adjacent Brannan Street Wharf. This dining area would be a distinctive use along The Embarcadero and the waterfront and would represent a public amenity.

The second floor of the bulkhead/west shed area, comprising Parcel B on Exhibit A, will be used for approximately 9,000-16,915 square feet of office space.

Parcel C – Pier Shed East

Approximately 20 parking spaces⁶ will be provided solely for tenants of the refurbished office space. There will be no public parking under this lease.

A portion of the pier shed, or approximately 45,000-38,880 square feet, will be used intermittently (i.e., 1 to 2 events per month) for temporary special events. Events will be staged on an "as-is" basis. Occupancy will be determined through the permitting process, but it is likely that the maximum number of users would be less than 500 per event. Events will be permitted individually by the Port and the San Francisco Fire Department through a "Temporary Public Assembly Permit". Events will likely include corporate events, private parties, trade shows and other private invitation only events.

TMG will maintain a drive aisle through its premises so that Port may retain access to the eastern end of the shed that is not within TMG's premises. The Port retains the right to use the eastern end of the shed of approximately 4052 square feet for any use with the condition that that use will not hinder TMG's ability to hold special events. In addition, this use may be subject to any required BCDC permit conditions.

Parcel D&E – Maritime Berth Area & Public Access

Within the 45,000 square foot water area comprising Parcel D, TMG will repair the existing gangway and floating dock of approximately 1,900 square feet on the north side of Pier 38. The floating dock will be made available for water taxi operators. Short term guest berthing will also be permitted. The refurbished gangway and floating dock will open to the public during the daytime. The refurbished apron and the floating dock area represent approximately 6,200 square feet of new public access.

⁶ The staff memorandum for the November 18, 2014 Port Commission presentation stated that there would be approximately 40 parking spaces.

Parcel E includes the concrete marginal wharf, wood timber north apron and the floating deck and totals approximately 7,4007,478 square feet. The north apron portion will be refurbished to allow approximately 4,300 square feet of new public access from the Embarcadero.

Parcel D – Maritime Berth Area

~~This submerged area for water taxi and guest berthing will be included as part of the lease. The square footage will be determined as part of the lease; an initial estimate is approximately 50,000 square feet.~~

Proposed Lease Terms

<i>Approximate Square Footage of Rentable Premises:</i>	Parcel A Bulkhead/Shed <u>Ground Floor:</u> <u>24,500</u> <u>17,062 square feet</u> Parcel B Bulkhead/Shed <u>Ground Floor:</u> <u>16,915 square feet</u> Parcel C Shed East: <u>38,880 square feet</u> Parcel D Maritime Berth Area: <u>45,000 square feet</u> Parcel E North Apron: <u>7,478 square feet</u> Total: <u>426,900</u> <u>125,335 square feet</u>
<i>Length of Term:</i>	25 years to 2040
<i>Lease Commencement:</i>	The earlier of: 1) TMG obtaining all required regulatory approvals, 2) 6 months after Board of Supervisors approval of the lease if the Port does not grant a 3 month extension option due to TMG's failure to diligently pursue regulatory approval, or 3) 9 months after Board of Supervisors approval if Port grants a 3 month extension. If TMG fails to obtain all approvals within 9 months of Board of Supervisors approval (or 6 months of such approval if the extension option is not granted), then either party may terminate the lease. Lease is expected to commence by Fourth Quarter 2015. <u>TMG has a 3 month due diligence period to examine seismic risk and environmental risk, and may terminate prior to Lease Commencement due to seismic or environmental conditions within that period.</u>
<i>Rent Commencement:</i>	TMG is obligated to pay rent beginning 12 months after lease commencement. Rent is expected to commence by Fourth Quarter 2016. There is a 12 month construction period in which no rent is paid.

<i>Base Rent:</i>	Base rent starts at \$25,000 a month (\$300,000 a year), and is escalated every five years based on a Consumer Price Index, but not less than 10% or more than 20% increase every five years. Base rent is re-set to fair market value after Year 20. ⁷
<i>Percentage Rent:</i>	<p>TMG pays to Port 20% of gross revenues TMG receives from Special Events up to \$750,000 and 15% of gross revenues TMG receives in excess of \$750,000. <u>The parties will share revenues from any successor Parcel C use.</u></p> <p>TMG pays to Port 15% of percentage rent that TMG receives from its restaurant subtenant. The payment will be due once a year following final reconciliation of restaurant percentage rent revenues.</p>
<i>Performance Standard for Special Events Use:</i>	<p>TMG must generate \$750,000 per year from special events for at least 1 of 3 consecutive years. If TMG does not meet this standard, the parties will agree on a different use that (i) is consistent with occupancy limits and (ii) generates higher revenue. Failure to achieve this target will not constitute a default under the Lease.</p> <p><u>If, for thirty-six (36) consecutive months no Special Events has occurred within Parcel C such that Parcel C remains unused and vacant (other than the accessory parking for up to twenty (20) automobiles described in the Basic Lease Information), then Port shall have the right, at its sole option, to propose to Tenant potential subtenants for the subleasing of Parcel C that would conform with the subleasing requirements of this Lease and Tenant shall consent, in its reasonable discretion, to the subleasing of Parcel C to such proposed subtenants.</u></p>

⁷ The staff memorandum for the November 18, 2014 Port Commission presentation did not provide any market re-set.

<u>Community Events:</u>	<ul style="list-style-type: none"> • <u>TMG will make Parcel C available with no fee other than cost of space (event security, janitorial, insurance, etc.) to community groups for two weekend events annually, reserved 6 months in advance.</u> • <u>TMG will make Parcel C available with no fee other than cost of space to community groups for up to 10 events annually, reserved within 30 days of the proposed event if space is available.</u> • <u>Community events may be up to two days in length, including set-up and clean-up. Community groups are responsible for obtaining event permits.</u>
<i>Port Participation on Sale or Transfer:</i>	Port receives 6% of net transfer proceeds from the initial sale or transfer of TMG's interest in the lease and 15% of net sale or transfer proceeds for subsequent sales or transfers. ⁸ The Port does not participate in any refinancing proceeds.
<i>Construction of Initial Improvements:</i>	The lease requires TMG to invest approximately \$7,996,033 in capital investment into base building core and shell improvements such as structural and interior upgrades to the floor slab, beams and girders, new wall enclosures, new stairs for circulation and exiting, Americans with Disabilities Act-compliant bathroom and elevator, new plumbing, new heating, ventilation, and air conditioning system, new electrical service and distribution, new store fronts within the exterior roll-up up doors opening evaluation, installing rolling doors to access the drive aisles, replacement of a portion of the steel sash windows consistent with the Secretary of the Interior's Standards for the Treatment of Historic Buildings ("Secretary's Standards"), and other interior and exterior improvements.
<i>Rent Credit for Initial Improvements:</i>	50% of base rent (i.e., in Year 2 total annual rent is \$300,000, the net annual base rent to the Port will equal \$150,000). Rent credits may be taken for base building core and shell improvements only and costs must be

⁸ The staff memorandum for the November 18, 2014 Port Commission presentation stated: "The lease provides 15% of net proceeds to the Port from sale or transfer of the lease above a 12% return on invested equity." Since there had been conflicting interpretations of the calculation of "return", Port staff again believes that this provides greater clarity in administering the lease.

	certified by Port prior to application of any rent credits. Rent credits expire at the end of Year 20. ⁹
<i>Substructure Inspection:</i>	TMG is obligated to perform a Rapid Condition Assessment (“RCA”) of the pier’s substructure every three years (or another schedule as mutually agreed) by a qualified engineer who will recommend necessary repairs and time period for when such repairs should be made.
<i>Sea Level Rise:</i>	<p><u>At any time, the Chief Harbor Engineer may determine that there is a need for pier flood mitigation measures at the Premises. “Pier Flood Mitigation Measures” may include temporary public access closures or sandbagging or more permanent measures such as relocating under-pier utility infrastructure, short perimeter flood walls, or raised first floor elevations. The Parties will meet and confer for up to nine (9) months to determine (i) the Recommended Mitigation Measures that should be implemented, (ii) the allocation of costs and responsibility for implementation, and (iii) the schedule for completion. Neither party is obligated to build pier flood mitigation measures.</u></p> <p><u>If the Parties cannot agree, and the Chief Harbor Engineer determines that failure to construct flood mitigation measures poses a threat to public health and safety, the lease will terminate.</u></p>
<u>Rent Credits for 1) Port-Approved Capital Items in the Final Five Years of the Lease or Flood Mitigation Measures, or 2) Substructure Repairs or Voluntary Seismic Upgrades to the Bulkhead Building</u>	<p><u>If TMG elects to invest in capital items in the final five years of the Lease approved by Port in its sole discretion or Flood Mitigation Measures approved by the Port in its reasonable discretion pursuant to the sea level rise adaptation provisions of the Lease, TMG will receive a rent credit for its investment equal to 25% of the base rent payable from Years 21 – 25 up to the amount of the investment plus an interest equal to prime plus 2% from the date of completion to Year 21.</u></p> <p><u>If TMG elects to invest in substructure repairs or voluntary seismic upgrades to the bulkhead structure approved by the Port in its reasonable discretion, TMG will receive a rent credit for its investment equal to an</u></p>

⁹ The staff memorandum for the November 18, 2014 Port Commission presentation stated that rent credits would be allowed for the twenty-five year term. In addition, there had been a provision that an additional 25% of annual total rent would set aside as a substructure reserve fund. This provision has been eliminated.

	<u>additional 25% of the base rent payable from Years 21 – 25 up to the amount of the investment plus an interest equal to prime plus 2% from the date of completion to Year 21.</u>
<u>Rent Increases in Years 21-25 if the Port Funds and Constructs Flood Mitigation Measures or Substructure Upgrades</u>	<u>If Port elects to invest in substructure repairs or Flood Mitigation Measures, such investment plus an interest equal to prime plus 2% will be repaid as additional rent in the same manner as a commercial landlord would pass through permitted capital expenses (i.e., the capital expenses would be amortized over the useful life of the capital improvement at a rate of the Port's cost of taxable debt). Rent increases associated with Flood Mitigation Measures will not exceed 25% of the then-current Base Rent.</u>
<u>Completion Guaranty:</u>	<u>TMG Partners, a California corporation and the parent of the TMG LLC affiliate that will execute the Lease, will provide a guaranty guaranteeing the timely and lien-free construction of the Initial Improvements in lieu of a performance bond.</u>
<u>Future Substructure Repairs:</u>	<u>Neither party is obligated to perform any additional substructure repair.</u> <u>If TMG elects to invest in substructure repairs, TMG will receive a rent credit for its investment equal to 25% of the rent payable from Years 21 – 25 up to the amount of the investment plus a reasonable rate of return from the date of completion to Year 21. This repayment structure applies only if the Port has no outstanding investment in the project.</u> <u>If Port elects to invest in substructure repairs, such investment will be repaid as additional rent in the same manner as a commercial landlord would pass through permitted capital expenses (i.e., the capital expenses would be amortized over the useful life of the capital improvement at a rate of the Port's cost of taxable debt).</u>
<u>Sea Level Rise</u>	<u>The Chief Harbor Engineer may determine that the facility is prone to flood risks due to future sea level rise. The Parties will meet and confer regarding flood mitigation measures.</u>
<u>Lease Termination Due to Red Tag</u>	<u>If Port "red-tags" or condemns the whole pier, then the lease will terminate.</u>

Financial Review of the Terms

The Port retained BAE Urban Economics, an economic consultant, to review TMG's pro-forma. BAE concluded that the proposed rent structure is estimated to generate between \$7.8 million and \$12.5 million in nominal dollars to the Port over the 25 year term. The modification to the deal terms from November 14, 2014 improved Port rent between 223% and 293%. TMG is projected to achieve an internal rate of return of between 9.7% and 16% by year 25. The key factor driving a higher return for TMG is special events revenue in Parcel C.

The table below shows the projected revenues to TMG and the Port from the proposed terms over 25 years.

	Base Case (low)	High Case
Projected Value of Port Rent		
1. Base Rent	6,119,685	6,119,685
2. 20% Special Events Revenue, 15% after \$750K	1,721,324	6,381,305
Projected Port Rent	\$7,841,009	\$12,500,990
Value of TMG Net Operating Income	\$33,934,218	\$54,319,494
Projected Internal Rate of Return	9.7%	16%
Return on Investment of \$11.8 million	185.4%	366.8%

Base case: \$250K special events gross revenue escalated 3%, general vacancy 3% plus releasing risk, project cost of \$11.89M, substructure investment of \$2.4M in years 13 & 15 and out year releasing commissions of \$1.4M are treated as expense. The base case does not include TMG or Port participation rent from the restaurant.

High case: \$1M special events gross revenues escalated 3%; all other factors are the same as the base case.

The Port's Five Year Financial Plan Fiscal Year 2015-16 to 2019-20 reviewed by Port Commission on February 6, 2015 includes \$275,000 of revenue from Pier 38 during the forecast period. The projected revenues from this project in the base case have improved 276%, to \$759,181 from the Five Year Financial Plan.

Port Capital Investment Option

- At the Port's request, TMG has offered an opportunity for the Port to make a capital investment in Port infrastructure and public access in this project and earn an equity return on this investment.
- The Port faces \$1.1 billion of unmet capital need over the next 10 years. Port staff continues to investigate opportunities to generate ongoing revenue to tackle this problem.
- Capital investment would be structured in the lease as a tenant improvement allowance meaning the Port would provide cash for a tenant improvement allowance.
- The Port's tenant improvement allowance would be repaid by additional rent back over the term of the lease. The amount of the additional rent would depend on the economic performance of the project.
- But, the Port's return on the capital investment would be the same as other equity investors in the project.
- The lease will include this option at the Port Commission's sole discretion.
- If the Port Commission and the Board of Supervisors approves an appropriation to enable the Port investment option, the Port will transfer the funds by the later of October 30, 2015 or 15 days after the Lease Commencement Date.
- Port staff offers this innovative feature so that the Port Commission can consider a higher risk/ higher return option to generate ongoing revenue to address the Port's capital backlog. The Port earned 0.65% on cash in the City's Treasury in FY 2013-14.

The following represents an example to illustrate the structure of the capital investment option. The Port Commission elects to exercise the option to make a capital investment in the project equal to 20% of the initial project budget of \$11.89 million. The Port makes a capital investment of \$2.38 million dedicated solely to repair/improvement of Port infrastructure and creation of improved public access for the project; TMG and TMG's equity investors contribute \$9.51 million. The project would distribute return of-capital and return-on capital from available net cash flow. The preferred return would be calculated at a rate ranging from 8% to 10% per annum. Available net cash flow would first repay the Port's \$2.38 million investment and the equity investors' \$9.51 million investment on a pari passu basis (subject to dilution based on future capital investments). If there is additional net cash flow after the return of capital and the payment of the preferred return, such proceeds would be shared among the developer and equity investors, including the Port, based on an agreed-upon percentage. The developer would receive up to 50% of the remaining net cash flow; the investors would receive at least 50%.

BAE Urban Economics (BAE) has projected the potential returns to the Port from a \$2.4 million capital investment into infrastructure and public improvements in the project. BAE's analysis is based on an assumption of an 8% annual interest rate, and 50% investor sharing in cash flow after the capital investment is repaid with interest.

	Base/Low Case	High Case
Total Port Investment	\$2,378,137	\$2,378,137
Return on Capital with 8% interest	2,699,225	2,650,961
Estimated year investment is repaid with 8% interest	11	8
Additional Cash Flow	2,043,809	4,106,469
<i>Total Additional Rent</i>	<i>4,743,034</i>	<i>6,757,430</i>
Additional Rent Less Port Investment	<u>\$2,364,897</u>	<u>\$4,379,293</u>
Return on Investment	99%	184%

Amounts in nominal dollars. Interest of 8% compounds quarterly.

BAE conducted sensitivity analysis which considers economic risks to the project and the assumptions underlying the base case. BAE concluded that increases in development costs and reduction or elimination of the special events revenue are the primary risk factors to consider. BAE conducted analysis of construction cost increase of 25% and no revenue from special events which also assumes that the 45,000 s.f. area is rendered unleaseable for storage. In this scenario the Port recovers its \$2.4 million capital investment with 8% preferred return by the end of the 25 year lease term. However, such recovery would still be 100% greater than the Port's more traditional capital investments on which no direct monetary return is received.

Like other Port capital investments in facilities the Port controls, the return on investment would be at risk. However, the Port owns the improvement and making capital investments to maintain and improve the Port's assets is fundamental to the Port's Public Trust mission and core business operations. The risk profile of this investment would be different for the Port compared to other investors because the Port will own these improvements in the case of bankruptcy and upon termination of the lease.

The lease will include the option for the Port Commission to make an investment in Port infrastructure and public access for this project. The Port Commission must elect this option and Port staff must secure appropriation authority through the Board of Supervisors by October 30, 2015 to exercise this option. As is our practice with any Port capital investment, Port staff will review this capital investment opportunity in the Port's Capital Planning Committee (CPC) and score the project to analyze opportunity costs. Evaluation of opportunity cost will compare unfunded projects to this opportunity. Port staff will present these findings and analyses to the Port Commission in summer of 2015 for the Port Commission to review and provide further instruction to staff, including approval if applicable.

Local Business Enterprises

The Port encourages the participation of local business enterprises (LBEs) in TMG's operations. As noted above, TMG's partner, Premier Structures, is an LBE. In consultation with the City's Contract Monitoring Division, TMG agrees to implement good faith outreach efforts to solicit further LBE participation in its operations and provide annual reporting of its efforts to the Port. TMG has identified areas where LBE participation may be implemented: 1) suppliers of goods and equipment, janitorial services, valet parking, printing and some design services for interior signage, etc.; and 2) events: marketing design, website and social media services, suppliers of goods and equipment, janitorial, printing, etc.

The proposed project is not a development agreement for purposes of the San Francisco Administrative Code provisions related to LBE participation in subcontracting. TMG Partners has prepared a voluntary LBE Utilization Plan to offer contracting opportunities for Contract Monitoring Division ("CMD") certified LBE firms as shown in Exhibit E to this report.

Veronica Sanchez Consulting, a certified woman-owned LBE, developed the plan which includes the creation of a project specific website and good faith outreach efforts to notify LBEs of upcoming contract opportunities; the creation of clear and objective selection criteria in project solicitations to maximize LBE participation; and a commitment that at least 20% of all contract costs for the project are awarded to CMD certified LBEs.

TMG Partners will also develop and distribute a "Buy San Francisco List" comprised of LBE firms offering services frequently used by event promoters, such as photographers, florists, and printers. The "Buy San Francisco List" will be posted on the project website and distributed to event management companies working at Pier 38. Finally, the plan provides bi-annual reporting requirements to monitor TMG Partners' progress in meeting the plan's LBE subcontracting goals. TMG Partners' reports and updates will be incorporated into future quarterly contract activity reports.

Climate Change

Repair and re-tenanting of the Pier 38 bulkhead may result in these improvements being placed at risk as sea levels rise over the next decades. The lease includes provisions to address future flood mitigation measures, should these be needed to protect the property or public safety (i.e., along the public access apron). During the term of the proposed lease, there is some risk that the maintenance of the substructure of this facility will be more difficult and expensive to maintain.

Update on Permitting and Regulatory Approvals

California Environmental Quality Act (CEQA)

An Environmental Evaluation application was filed in July 2014. On March 31, 2015, the City Planning Department issued a Class 32 Categorical Exemption certificate¹⁰ for the Pier 38 project. This exemption concludes the environmental review of the project and allows the Port Commission to take action on the lease. The Categorical Exemption can be reviewed through the following link:

<https://aca.accela.com/ccsf/Cap/CapDetail.aspx?Module=Planning&TabName=Planning&capID1=14HIS&capID2=00000&capID3=01STO&agencyCode=CCSF&IsToShowInspeciton=>

If the Port Commission approves the proposed Lease through the attached Resolution based on these categorical exemptions, its action constitutes the “Approval Action” (as defined in S.F. Administrative Code Chapter 31, as amended, Board of Supervisors Ordinance Number 161-13). As such, the CEQA decision prepared in support of this Approval Action will be subject to appeal within the time frame specified in S.F. Administrative Code Section 31.16. Typically, an appeal must be filed within 30 calendar days of the Approval Action¹¹.

San Francisco Bay Conservation and Development Commission (BCDC)

Port staff and TMG have met with BCDC staff several times to review and discuss the BCDC permitting requirements of the project. Following these meetings, TMG prepared a proposed Public Access Plan (see Exhibit C) and presented it to BCDC and Port staff. The project includes additional dedicated public access areas on the north apron and floating dock as well as improvements to this area and additional amenities to the existing Embarcadero Promenade.

The Pier 38 bulkhead and shed are considered to be within BCDC’s “shoreline band” jurisdiction. The major requirements within this area are the provision of maximum feasible public access consistent with the project, and visual and physical access to the Bay.

¹⁰ The California Environmental Quality Act (CEQA) allows for certain exemptions from CEQA. The Class 32 exemption is issued for in-fill development projects that meet the following conditions: a) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as applicable zoning designation and regulations, b) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, c) the project site has no value as habitat for endangered, rare or threatened species, d) approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality and e) the site can be adequately served by all required utilities and public services.

¹¹ For information on filing an appeal under Chapter 31, **see the Port Commission agenda under NOTICES and contact the Clerk of the Board of Supervisors at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102, or call (415) 554-5184.**

California State Lands Commission (State Lands)

For most recent Port mixed use development projects with lease terms of up to 66 years, Port staff and its development partners have obtained independent review by State Lands staff to examine each project's consistency with the common law public trust for commerce, navigation and fisheries (Public Trust) and Chapter 1333 of the Statutes of 1968, under which the City of San Francisco holds its grant of lands constituting the Port (Burton Act). At the conclusion of this process, State Lands has transmitted a letter indicating that the project is trust consistent. Project sponsors and their lenders have often taken comfort in a State Lands letter confirming trust consistency. This process is not a legislative requirement and the Port retains a right under the Burton Act to find its own projects to be trust consistent.

The Burton Act granted the Port the authority to manage, regulate, and improve its waterfront, including the repair of its facilities for limited periods not exceeding 66 years. Port staff believes that the approval of this proposed lease having a term of 25 years is within the Port Commission's authority under the Burton Act and that the proposed lease is consistent with the public trust.

The project team and Port staff have met with State Lands staff to present the project, and confirm the rationale for a Port public trust consistency finding. While not requested at this time, TMG and the Port may in the future seek a more formal concurrence from State Lands as to the public trust consistency of this project to the extent both parties determine it necessary or desirable for the financing or leasing of the project. In Exhibit D, staff has included a more comprehensive rationale for public trust consistency that includes the planning context for the project, the history of Pier 38, the Port's objectives for the project, and the proposed program of uses in the project. The analysis in Exhibit D will form the basis of findings that the Pier 38 bulkhead lease is consistent with the public trust and the Burton Act which staff will recommend that the Port Commission adopt as part of its approval of the lease.

Project Benefits

The development proposed by TMG meets the objectives of the RFP and provides tangible benefits for the South Beach community. The project will create 6,200 square feet of public access area and a pedestrian link to the recently completed Brannan Street Wharf. The Port has a growing water taxi program along the waterfront. The planned floating dock will add a new landing adjacent to the Giants ballpark and increase service to the central waterfront.

The over 100 year old bulkhead building has been closed since 2012 because of its deteriorated condition. The project will be restored these facilities using the Secretary of the Interior's Standards for historic rehabilitation. The public/private partnership will leverage limited City funds by generating approximately \$11.9 million of private investment into a Port asset. The Port Capital Investment Option may allow the Port to realize a sizable return on its investment.

Next Steps

Following direction and input from the Port Commission and the public, approval of the Pier 38 bulkhead lease agreement will be presented for Port Commission consideration and the parties have completed lease negotiations. Port staff currently expects that the final lease will be ready for Port Commission consideration at its May 26, 2015 meeting. Following Port Commission consideration of the lease, the Board of Supervisors must approve the lease and the BCDC must issue a permit for Pier 38.

Prepared by: Brad Benson
Director of Special Projects

Elaine Forbes, Deputy Director
Finance & Administration

John Doll
Development Project Manager

Jeffrey A. Bauer
Senior Leasing Manager

For: Byron Rhett, Deputy Director
Planning & Development

Exhibits:

- Exhibit A – Site Plan: Parcels A, B, C, D & E
- Exhibit B – Project Budget
- Exhibit C – Public Access Plan
- Exhibit D – Pier 38 Public Trust Consistency Analysis
- Exhibit E – LBE Utilization Plan for Pier 38

**POR T COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 15-19

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns in trust the Pier 38 site, consisting of approximately 68,000 square feet of shed space, 28,000 square feet of apron space, 7,800 square feet of bulkhead office space, and 180,000 square feet of water space, located at Delancey Street and The Embarcadero in the South Beach Harbor Mixed Use Opportunity Area of the South Beach/China Basin Waterfront area of the Waterfront Land Use Plan ("Waterfront Plan") adopted by the Port Commission; and
- WHEREAS, Pier 38 was originally constructed as a breakbulk storage facility in 1908, with later additions constructed in 1932 and the Pier 38 bulkhead buildings constructed in 1934-36, and is the second oldest of the Port's remaining Pier structures; and
- WHEREAS, Pier 38 is a contributing resource to the Port of San Francisco Embarcadero Waterfront Historic District ("Embarcadero Historic District") listed on the National Register of Historic Places, and is notable for its unique role in San Francisco's maritime history, as well as for its architectural merit; and
- WHEREAS, The creation of the Embarcadero Historic District included Port Commission adoption of Resolution 04-89 requiring that all work (repair, alteration and construction) within the district be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary's Standards"), as judged by the Port's qualified historic preservation staff through the Port's building permit process; and
- WHEREAS, On September 25, 2012, the Port Commission, by Resolution 12-74, authorized Port staff to issue a request for proposals ("RFP") for the lease of the Pier 38 bulkhead building and a portion of the shed (collectively, the "bulkhead building"), and manage the solicitation process consistent with the goals and objectives and the selection process as described in the staff report which accompanied that resolution; and
- WHEREAS, On December 12, 2013, the Port Commission by Resolution 13-51, awarded to TMG Partners, a California corporation, the Bulkhead Rehabilitation opportunity described in the RFP ("Pier 38 Bulkhead Rehabilitation") and directed Port staff to negotiate the terms of a lease

for the Bulkhead Rehabilitation that achieves the objectives specified in the RFP; and

WHEREAS, Port staff and TMG Partners have negotiated terms for Lease No. L-15892 ("Lease") incorporating the material business terms set forth in the Memorandum for Agenda Item 11A for the Port Commission meeting on May 26, 2015, a copy of which is on file with the Port Commission Secretary; and,

WHEREAS, An affiliate of TMG Partners may execute the Lease ("TMG"); and

WHEREAS, The proposed conceptual plans for the Pier 38 Bulkhead Rehabilitation (the "Conceptual Plans") were reviewed by both the Port's qualified historic preservation staff and qualified Planning Department historic preservation staff, and the Conceptual Plans were found to be consistent with Secretary's Standards; and

WHEREAS, On March 31, 2015, the Planning Commission issued a Categorical Exemption, Class 32 (State CEQA Guidelines Section 15332) for the Pier 38 Bulkhead Rehabilitation project; and

WHEREAS, As further described in Exhibit C to the staff report accompanying this resolution ("Pier 38 Bulkhead Rehabilitation Trust Analysis"), Port staff and TMG presented the proposed project to the California State Lands Commission Executive Officer and her staff to describe the manner in which the project furthers the purposes of, and is consistent with, the Burton Act and the public trust for commerce, navigation and fisheries ("Public Trust"); and

WHEREAS, The project includes the following elements: significant exterior public access to enable public viewing of the historic pier; significant improvements to the bulkhead and pier shed in a manner that is consistent with Secretary Standards for the Treatment of Historic Properties; a gangway and floating dock for a water taxi stop and guest docking; a restaurant; maximum feasible interior public access; and office use limited to what is necessary for project financial feasibility; and

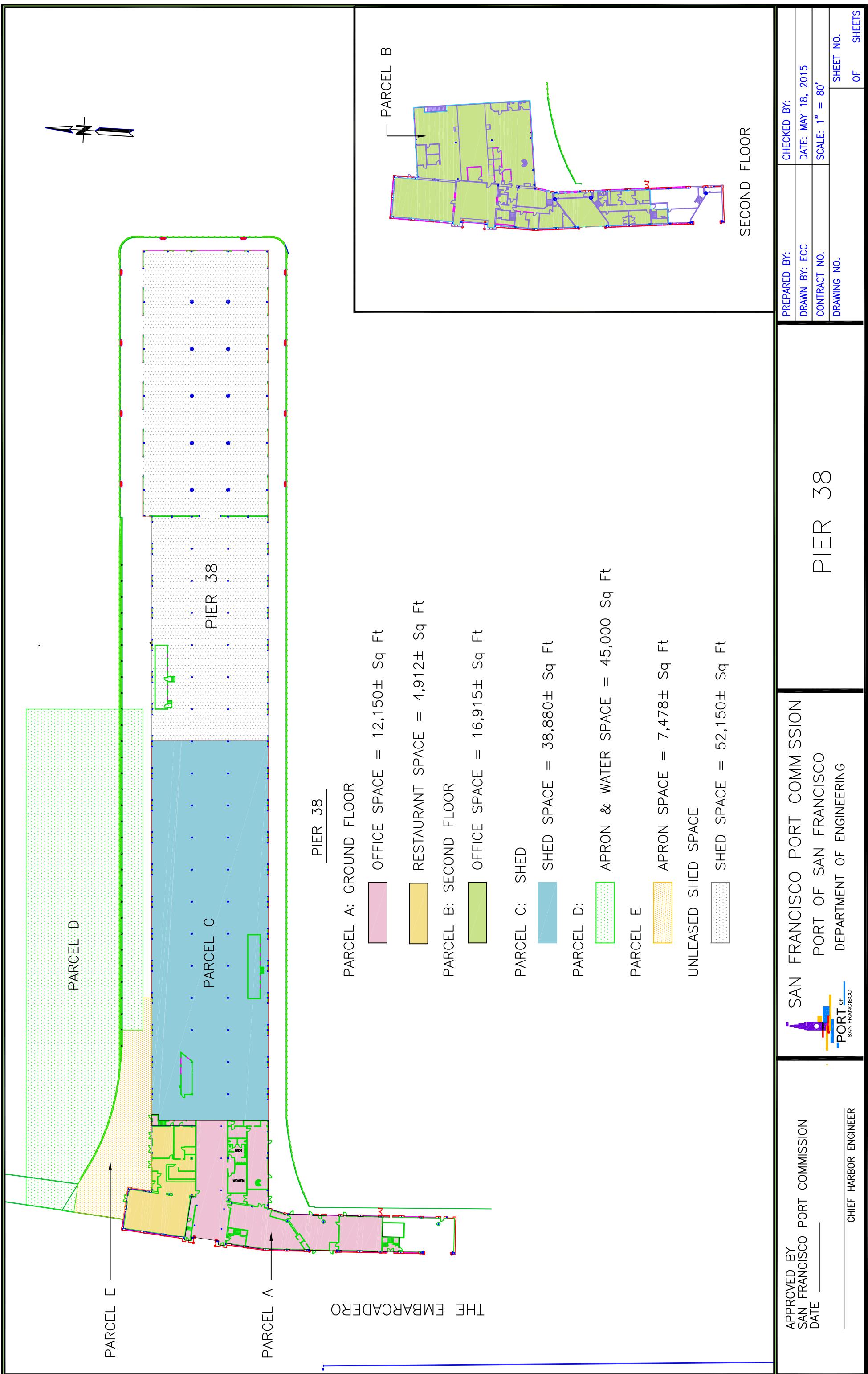
WHEREAS, Port staff intends to return to the Port Commission in July, 2015 to seek direction related to the Port's option to make a capital investment in Pier 38 in consideration for additional rent as further described in the Memorandum for Agenda Item 11A for the Port Commission meeting on May 26, 2015; now, therefore be it

RESOLVED, Based on the Pier 38 Bulkhead Rehabilitation Trust Analysis, the Port Commission finds that the Pier 38 Bulkhead Rehabilitation is consistent with, the Burton Act and the Public Trust; and, be it further

- RESOLVED, That pursuant to its authority under Section 3 of the Burton Act, the Port Commission authorizes and directs the Executive Director of the Port ("Executive Director") to forward the Lease to the Board of Supervisors for approval pursuant to its authority under Charter Section 9.118, and upon the effectiveness of such approval, and subject to terms of the Lease, as applicable, to execute the Lease in substantially the form of the Lease on file with the Port Commission Secretary, and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director, to enter into any additions, amendments or other modifications to the Lease, including preparation and attachment of, or changes to, any or all of the attachments and exhibits that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits or otherwise materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions that the Lease contemplates and effectuates the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such additions, amendments or other modifications; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including the execution and delivery of any and all certificates, agreements, notices, consents, and other instruments or documents) as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions contemplated under the Lease, in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by such person or persons of any such documents; and be it further
- RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Lease.

I hereby certify that the Port Commission at its meeting of May 26, 2015 adopted the foregoing Resolution.

Secretary



PIER38 REHABILITATION PROJECT

Local Business Utilization Plan

Pier 38 Associates, LLC

TMG Partners and Premier Structures, LLC

Submitted to San Francisco Port Commission

May 26, 2015

Prepared by Veronica Sanchez Consulting
a San Francisco Local Business Enterprise

EXECUTIVE SUMMARY

Pier 38 Associates, LLC is committed to good faith outreach efforts in the selection of contractors to ensure broad participation of Local Business Enterprises (LBEs) in the Pier 38 Rehabilitation Project. Veronica Sanchez Consulting, an LBE, will assist TMG in implementing the outreach efforts.

The proactive strategies included in this Local Business Utilization Plan include:

1. ***Identifying contracts*** for LBE participation in the construction and operations phases of this project.
2. ***LBE First!*** - Advertising and soliciting proposals from firms certified with the City of San Francisco's Contract Monitoring Division.
3. ***Setting the following specific LBE goals:***
 - Final Design & Engineering: 20%
 - Construction: 20%
 - Property Management Services (up to eight contracts): 40%
 - Special Event Management Services (up to two contracts): 40%
4. ***Extensive Good Faith Outreach Efforts*** - notifying LBEs of these business opportunities through a proactive strategy which includes the use of a specially created Pier 38 LBE project website, City's Office of Contract Administration's (OCA) website, email tools, informational meetings and follow-up calls.
5. ***Fair Selection Process*** – developing clear specifications and objective selection process.
6. ***Buy San Francisco List for Event Promoters and Pier 38 Tenants***
Pier 38 Associates will develop a list of LBE vendors for distribution to event producers, and Pier 38 office and restaurant tenants.

Reporting

Biannually, Pier 38 Associates will report to the Port of San Francisco's Division of Finance the total amount of payments made to LBE firms for the industry sectors identified in this plan. The information will be provided each year by January 15 & July 15 for inclusion in the Port's Contracting Activity Report to the Port Commission.

INTRODUCTION

The Pier 38 Rehabilitation Project is being undertaken by Pier 38 Associates, LLC, a venture of TMG Partners and Premier Structures, LLC. TMG Partners is a 31-year old San Francisco-based development company that focuses on commercial, residential, retail and mixed-use projects exclusively in the Bay Areas. Premier Structures is a San Francisco-based Local Business Enterprise (LBE) real estate development and construction management company focusing on waterfront and infill projects.

Pier 38 Associates' vision for the revitalization of Pier 38 is to reclaim this historic asset for productive use so it will become a vital contributor to San Francisco's waterfront renaissance. The project will include the following elements:

- *Office Space* – Approximately 20,000 total square feet of office space in the bulkhead and adjacent portion of the shed on the first and second floors. The office space will be targeted to creative and technology-oriented uses.
- *Other commercial* – Approximately 4,700 square foot restaurant on the northern portion of the pier, and approximately 29,000 square feet inside the shed that will be available for special events.
- *Maritime and public uses* - The exterior area will include a water taxi gangway and floating dock on the north side of Pier 38. The refurbished apron and floating dock area will create approximately 6,200 square feet of new public access.

The Pier 38 Rehabilitation Project will generate valuable economic benefits to the Port and desired public access benefits to the adjacent South Beach community. Additionally, this multi-use project presents the Port with a valuable opportunity to advance the City's interest in "stimulating the expansion of small firms or development of new enterprises to contribute to the economic well-being of all San Franciscans." [SF Administrative Code – 14B.1(6)]

The proposed Pier 38 lease is not subject to the Local Business Enterprise Ordinance (SF Administrative Code -14B). However, Pier 38 Associates is voluntarily undertaking this Local Business Utilization Plan (LBE Plan) in support of the City's economic development interests.

The Pier 38 Rehabilitation Project will generate revenue opportunities for LBEs and their workforce, and will offer business development opportunities for emerging businesses certified as Micro LBEs and Small LBEs. By working on this highly visible waterfront project, LBEs will be able to enhance their business portfolio and acquire new experiences by working with TMG Partners' skilled team members. This experience will benefit LBE firms, especially micro LBEs, in future competitions for public and/or private contracts.

Pier 38 Associates' LBE Plan includes: good faith outreach efforts, meaningful goals, a fair selection process and an on-going reporting commitment.

Pier 38 Associates will additionally create jobs for San Francisco residents in the construction phase of this project as required by the City of San Francisco's Local Hiring Policy Ordinance [San Francisco Administrative Code, Chapter 6.22(g)].

TARGETED CONTRACTS

Pier 38 Associates has identified the following contracts to target its good faith LBE outreach and utilization efforts:

- 1) Design, Engineering and Construction**
- 2) Property Management Services**
- 3) Special Events Management Services**

1. Design, Engineering and Construction Subcontractors

As part of Pier 38 Associates, Premier Structures LLC, an LBE joint venture partner, will provide project management services for the final design, engineering and construction phases. Paul Osmundson, one of the firm's principals, was Planning and Development

Director at the Port of San Francisco and is familiar with the City's 14B LBE Ordinance. Premier Structures will work with the design, engineering and construction team to maximize LBE participation opportunities. Pier 38 Associates will use good faith efforts to first obtain quotes or proposals from LBEs.

Pier 38 Associates has selected Plant Construction as the general contractor for the Pier 38 Rehabilitation Project. Plant has extensive experience in working on waterfront projects like the Ferry Building and Pier 24 Photography and has successfully implemented LBE programs in a range of developments.

LBE Goals

- Under Pier 38 Associates' direction, both the lead architecture firm and the general contractor will work with their subcontractors to target contracts for LBE participation. High priority will be given to micro LBEs to create business opportunities for emerging businesses.
- 20% goal for LBE participation goal for final design & engineering subcontractors.
- 20% goal for construction subcontractors.

2. Property Management Services

Pier 38 Associates, acting through TMG Partners, will operate and manage the Pier 38 project in-house through its professional asset and property management staff. TMG Partners will enter into contracts for a range of property management services and has identified up to eight contracts for LBEs firms to assist the company in maintaining and operating Pier 38:

1. Janitorial
2. Security Services (guards)
3. Security Equipment Maintenance
4. Fire Protection Contractor (fire sprinkler monitoring)
5. Pest Control
6. Repairs Maintenance
7. Plumbing Maintenance
8. Emergency Restoration

Pier 38 Associates will first advertise and solicit Request for Qualifications from certified LBEs, applying the outreach efforts described below.

LBE Goal

- 40% LBE participation for Property Management Services contracts. This 40% goal is comparable to the citywide goal required by the amended 14B ordinance for public works prime contracts.

3. Special Events Management

A portion of the pier shed (approximately 29,000 square feet) will be used for special events. An event management firm, under license to Pier 38 Associates, will market the space, book events, provide janitorial and security services, and will work with event sponsors and their production companies, who will directly contract vendors for services,

LBE Goal

- The event management firm will target LBE firms for the janitorial and security contracts. Veronica Sanchez Consulting will assist the event management firm with the outreach and selection process.
- 40% goal for janitorial and security contracts.

Buy San Francisco List

To stimulate business opportunities for Pier 38 Associates will develop a “**Buy San Francisco List**” comprised of LBE certified firms offering services most frequently used by event promoters [i.e. caterers, photography, florists, and printing (banners)] for the event management company to distribute to its customers via written material and its website.

OUTREACH EFFORTS

Pier 38 Associates is committed to soliciting and obtaining bids from the broadest possible diversity of LBEs. It will proactively seek LBEs for the contracts identified in this LBE Utilization Plan using the following outreach tools:

1. ***Website*** – Will set up a special project website to post information about the Pier 38 project, contract opportunities and solicitation schedule. A special email address will be set up for vendors to respond with questions. General information about the LBE certification process will be provided on the website for firms not currently certified as LBEs. Additionally, contracts will be advertised on the City and County of San Francisco's Office of Contract Administration (OCA) website.
2. ***Notification to certified vendors*** – Pier 38 Associates, through TMG Partners and the special events manager, will email project information and RFQ solicitations for the property and event management services to targeted LBE firms according to industry sectors who may be able to perform the work. The information will include information on the response and selection process. Veronica Sanchez Consulting will follow up with emails and phone calls and document these efforts.
3. ***Informational meetings*** – For specific contracts like janitorial and security, Pier 38 Associates staff will arrange a site tour for interested vendors to respond to specific questions. Staff will also respond to written questions submitted by vendors in the solicitation process, as needed.

SELECTION PROCESS

Pier 38 Associates and its contractors will develop fair and objective selection criteria for the targeted contracts. The selection process will be designed to maximize LBE participation and meet the LBE contracting goals.

IMPLEMENTATION

Pending receipt of final Port Commission and City of San Francisco approvals, Pier 38 Associates plans on opening Pier 38 for its restaurant and office tenants to begin constructing tenant improvements on January 1, 2016. In summary, the projected economic benefits to LBE firms from the targeted contracts is listed in the following table:

	LBE Subcontracting Goal of Contract Dollars	Estimated Total Costs
Design & Engineering*	20%	\$500,000
Construction*	20%	\$6-8 million
Annual Property Management and Event Management Services	40%	\$150,000- \$250,000/year

* Will include work performed by Premier Structures LLC, a joint venture LBE partner.

Pier 38 Associates proposes the following schedule for soliciting contracts to begin providing services to our tenants.

Contracts	RFQ Release & Selection Process
Final Design and Engineering	3 rd quarter 2015
Construction	3 rd quarter 2015
Property Management Services contracts (up to 8)	4 th quarter 2015
Special Events Management Services (janitorial & security)	4 th quarter 2015

Pier 38 Associates will complete Buy San Francisco by December 2015 for distribution to event producers & other Pier 38 tenants.

REPORTING

Pier 38 Associates will provide the Port of San Francisco's Division of Finance a report summarizing total payments made to LBE firms for the industry sectors identified in this plan and information on whether the goals specified in this plan were met.

Throughout the term of this lease, Pier 38 Associates will provide information about the utilization of LBEs biannually by January 15 and July 15 in time for inclusion in the Port's Contracting Activity Report to the Port Commission.

Below, is an example of the information that will be reported to the Port Commission:

Targeted Contracts	Type of Contract	Total Payments	Total Payments to LBE Firms	Overall % paid to LBEs	LBE Targeted Goal
Design & Engineering*					20%
Construction*					20%
Property Management					40%
Special Events Management (janitorial & security)					40%

* Will include work performed by Premier Structures LLC, a joint venture LBE partner.

Exhibit D – Pier 38 Public Trust Consistency Analysis

For most recent Port mixed use development projects with lease terms of up to 66 years, Port staff and Port development partners have solicited and obtained independent review by the staff of the California State Lands Commission (“State Lands”) to examine each project’s consistency with the common law public trust for commerce, navigation and fisheries (the “public trust”) and Chapter 1333 of the Statutes of 1968, under which the City of San Francisco holds its grant of lands constituting the Port (the “Burton Act”). At the conclusion of this process, the Executive Director Officer of State Lands has transmitted a letter to the Port finding Port mixed use development projects consistent with the public trust and the Burton Act.

The process of consulting with State Lands is not a legislative statutory requirement and the Port Commission retains a right under the Burton Act to find its own projects consistent with the public trust. Project sponsors and their lenders have, however, often taken comfort that State Lands recognizes that a proposed mixed use program in an historic maritime asset can be is-consistent with, and furthers the purposes of, the public trust and the Burton Act, if significant public trust uses and public access are incorporated in the project.

Under the Burton Act (Statutes of 1968, Chapter 1333), the state granted to the San Francisco Port Commission complete authority to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, improvement and control of the harbor of San Francisco which are not prohibited by State law or the City Charter and which are in conformance with the Burton Act. The Port’s authority includes the reconstruction and repair of public or commercial buildings, preservation or restoration of marinemaritime resources and the lease of these facilities for limited periods not exceeding 66 years for purposes consistent with the trusts upon which the lands are held by the State and with the requirements of commerce and navigation.

Port staff believes that the approval of a lease having a term of 25 years is within the Port Commission’s authority under the Burton Act and that the proposed lease is consistent with the public trust. The project team and Port staff have met with the California State Lands Commission (“State Lands”) staff to present the project, and the rationale for a Port Commission public trust consistency finding. While not requested at this time, TMG and the Port may in the future seek a more formal concurrence from State Lands as to the public trust consistency of this project to the extent both parties determine it necessary or desirable for the financing or leasing of the project.

This exhibit to the staff report describes the planning context for the project, the history of Pier 38, the Port’s objectives for the project as articulated in the Request for Proposals and the proposed program of uses in the project. It concludes with the Port staff analysis as to how the project furthers the purposes of the public trust for commerce, navigation and fisheries and is within the Port’s authority under the Burton Act.

Planning Context

In 2001, through AB 1389, the State legislature ratified the BCDC San Francisco Waterfront Special Area Plan (the “Special Area Plan”) as necessary to the health, safety and welfare of the public in the entire Bay Area and declared that the Special Area Plan should provide for, among other things, a historic preservation mechanism to ensure preservation of important historic resources on the piers and the ability of the Port to repair, improve, or use the piers not designated for removal between Pier 35 and China Basin for any purpose consistent with the Burton Act, the public trust and the Special Area Plan. The Special Area Plan contains policies to allow for the repair and rehabilitation of existing piers, pier sheds, bulkheads and connector buildings that are listed on the National Register and/or listed as a California Historic Landmark, consistent with the Secretary’s Standards. Consistent with these policies, State Lands has concurred for various mixed-use projects that preservation of historic structures furthers the purposes of the public trust when combined with other public trust uses and public access (for example, the Ferry Building and Piers 1 ½, 3 and 5, among others), and when the project is consistent with the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

Around the same time as the Special Area Plan was created, the Port Commission in 1997 adopted the Waterfront Land Use Plan (“Waterfront Plan”) pursuant to its authority under the Burton Act. Together with the Special Area Plan, the Waterfront Plan establishes an overall program of harbor development for property under Port jurisdiction. The Waterfront Plan includes Pier 38 within the South Beach/China Basin Waterfront Area and identifies Piers 38 and 40 together as part of the “South Beach Harbor Mixed Use Opportunity Area Transitional Maritime Areas.

The Waterfront Plan identifies the following objectives for the South Beach/China Basin Waterfront Area:

- Preserve and rationalize existing industrial maritime activities in the area.
- Preserve and improve existing maritime uses that provide focal points for public enjoyment of commercial and recreation oriented maritime activities.
- Promote activities and public access to make the waterfront inviting and safe, and improve the living environment of the new and emerging Rincon Hill, South Beach and Mission Bay neighborhoods.
- Take advantage of proximity to downtown San Francisco by providing attractions for the general public, while respecting the needs of adjacent residents.
- Create an integrated series of public access improvements that extend a shoreline PortWalk through the area, and provide a unifying pedestrian connection between South Beach and Mission Bay at China Basin Channel.

- Establish high standards in the design of new development that give rise to a new architectural identity for the shoreline north of China Basin Channel.

Pier 38 is also part of the South Beach Harbor Mixed Use Opportunity Area under the Waterfront Plan, which includes the following Development Standards:

- Permit expansion of excursion boat operations and recreational boating activities at Pier 38.
- Permit consolidation of maritime support services at Pier 38.
- Permit interim uses on Pier 38 until long-term uses of these facilities can be realized.
- Apply “Good Neighbor” standards to bars, restaurants which sell alcohol, large fast food restaurants, and assembly and entertainment uses on Pier 38, unless the Port Commission makes a specific finding that a particular condition is unnecessary or infeasible.
- The design of any new development on Pier 38 should provide appropriate buffers, setback or other design solutions for open air bars, restaurants, and nighttime.

Pier 38 History and the Embarcadero Historic District

Pier 38 was originally constructed in 1908 (with a later addition constructed in 1932) and is the second oldest of the Port’s remaining Pier structures; it was originally utilized as a break bulk storage facility. Pier 38 is designated as a contributing resource to the Port of San Francisco Embarcadero Waterfront Historic District (“Embarcadero Historic District”), which is a National Register Historic District. As a contributor to the Embarcadero Historic District, Pier 38 is notable for its unique role in San Francisco’s maritime history, as well as for its architectural merit.

In 1934 and 1936, the bulkhead building was constructed. As reported in the State Board of Harbor Commissioner’s 1934-36 Biennial Report, “[t]he building is a steel frame structure with metal lath and plaster walls, steel sash, and steel rolling doors at the main pier and railroad entrances . . . The entire second floor is occupied by offices and the first floor is used for offices, ship’s stores and cargo.”

The Embarcadero Historic District was found eligible for the National Register of Historic Places under criterion B in the area of Labor, at the national level of significance, for its association with Harry Bridges, leader of the 1934 Big Strike. Pier 38 was the center of the 1934 strike (known as the Big Strike) as “one of the great battles in the history of the American working class . . . an eighty-three-day drama [that] transformed labor relations

in the Pacific Coast maritime industry and ushered in an era of militant unionism . . .” (Nelson 1988:127)

The Embarcadero Historic District was also found eligible for the National Register of Historic Places under criterion C at the local level of significance in the related areas of Architecture and Community Planning and Development as a manifestation of the City Beautiful Movement. The Pier 38 Bulkhead, constructed in the Mission Revival style, is an outstanding example of the port buildings built between 1912 and 1938 that were provided with monumental architectural imagery that reflected the goals of the City Beautiful Movement — to modernize and beautify American cities including their industrial and working districts — by means of rational planning, up-to-date technology, and architectural design. In recent years, the Pier 38 Bulkhead has fallen into disrepair and is currently red-tagged and vacant.

Port Request for Proposals Objectives

The Port’s Request for Proposals (“RFP”) to rehabilitate the Pier 38 bulkhead building, issued on November 16, 2012, included the following objectives (collectively, the “Port Objectives”):

- Repair the Pier 38 bulkhead building which may include: remedy structural deficiencies, replace or repair mechanical, electrical and plumbing systems, and construct any other improvements, including egress and ADA, needed to meet the City’s building code requirements as well as other regulatory requirements, including consistency with the Secretary Standards.
- Develop the most effective implementation strategy to quickly re-tenant the Pier 38 bulkhead building in order to achieve the Port’s goal of bringing it back into economic use and provide an on-going revenue stream to the Port.
- Encourage the re-tenanting of the Pier 38 bulkhead building to include: office, high technology uses, visitor-serving commercial, entertainment and cultural uses, and, maritime uses that complement adjacent waterfront development.
- Continue the redevelopment of the South Beach waterfront from the Bay Bridge to AT&T Ballpark, by reviving this historic structure, and helping knit Pier 38 into the South Beach neighborhood by bringing people and business activity to the waterfront.
- Demonstrate how the short-term Pier 38 bulkhead building rehabilitation will not inhibit a long-term reuse of Pier 38 (i.e., ensure that the short-term construction and operation would not hinder possible subsequent redevelopment of the entirety or majority of Pier 38).
- Develop a plan to improve the physical appearance of the bulkhead building and pier shed.

- Require that any adaptive reuse will be consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties ("Secretary Standards").
- Require a sustainable development program that minimizes the reliance on private automobiles, uses energy efficiently and, as possible, includes alternative energy sources that comply with the City's Green Building Standards.
- Secure private financial investment to rehabilitate and revive the Pier 38 bulkhead building in the near term.
- Provide business and employment opportunities for local workers and businesses during the design, construction and operation phases of the Pier 38 bulkhead building.
- Provide security for the entire Pier 38.

Proposed Use Program

The Pier 38 bulkhead project contemplates the following uses:

Proposed Pier 38 Use Program		
Use	Approximate Square Feet	
North Apron Public Access	6,080	<u>7,478</u>
Maritime Use – Gangway, Floating Docks & Water Area		45,000
Restaurant		4,912
General Office		29,065
<i>Subtotal</i>	<i>85,057</i>	<i><u>86,455</u></i>
Special Events	48,640	<u>38,880</u>
Total	133,697	<u>125,335</u>

The project provides significant maximum feasible exterior public access and maximum feasible interior public access so that the public is able to view and fully appreciate the qualities that make this maritime resource worthy of historic preservation.

The North Apron public access – an area of the pier that has been closed to the public since the Port red-tagged Pier 38 – will create an important public space facing north, overlooking Brannan Street Wharf, consistent with the South Beach/China Basin Waterfront Area objective of creating maximum feasible public access through an integrated series of public access improvements in the area. Additionally, the public will be able to view into the pier shed along the North Apron and see the historic maritime

character of the pier through new glass windows and doors installed in the roll up doors. TMG will also restore the gangway and floating dock in this area and make the gangway available for a water taxi landing and public berthing. The entire northern portion of the ground floor of the project facing Brannan Street Wharf will be reserved for public trust consistent uses, including the guest dock, water taxi landing, public access, and restaurant.

The ground-level dining establishment promotes the Port's overall program of improvements for the area, integrating the facility with its spectacular City and Bay settings by providing an attractive venue within which workers, residents and visitors to the City may find an intimate waterfront dining environment, transient public berthing facilities for water taxis and recreational vessels, and a high-quality public access network providing close views of the water and the historic structures.

The general office uses in the project are generally restricted to the historic bulkhead building, which previously included office uses and is limited to what is necessary for the financial feasibility of the overall project. A portion of the shed used for special events will take full advantage of its prime water location through the installation of new full height glass that will provide attendees with views of the Bay, The Bay Bridge, Yerba Buena Island and Treasure Island. The special event space will be available for hire to any organization or member of the public that wishes to use it, and will be available as a resource for Port tenants and the City's convention and visitor's bureau, San Francisco Travel. The cargo shed space will remain intact and allow special event guests to view the large volume high ceiling space and the historic pier truss work. All pier rehabilitation work will be done consistent with Secretary Standards.

Port and City Staff Have the Experience and Review Processes Required to Ensure Compliance with Secretary Standards

The Port prepared and submitted the Embarcadero Historic District nomination to the National Park Service in 2006 to list the district in the National Register of Historic Places. The nomination was prepared over the course of a six year period and included historical research, analysis and documentation as well as extensive outreach to historic preservation stakeholders and the public.

The creation of the Embarcadero Historic District included Port Commission adoption of Resolution 04-89 requiring that all work (repair, alteration and construction) within the district be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. This review is performed by the Port's qualified historic preservation staff.

The Port has four completed, and one active, major rehabilitation projects approved or under review by the National Park Service ("NPS") that have or will receive Federal Rehabilitation Tax Credits. The Port has developed a close working relationship with the California Office of Historic Preservation ("OHP") and NPS. Port staff is familiar with the best practices developed by both agencies and is expected to provide an initial

screening of proposals for consistency with the Secretary's Standards. Only those projects that the Port finds consistent with the Secretary's Standards are allowed to advance in the review process to be submitted as applications or amendments for OHP and NPS review and approval.

For non-tax credit projects such as Pier 38, Port staff review of projects includes recommendations that allow projects, or portions thereof, that are inconsistent to achieve consistency with the Secretary's Standards. The Port's historic preservation staff has access to a variety of design professionals (planners, architects, landscape architects, urban designers and engineers) through its Waterfront Design Advisory Committee which is comprised of other design professionals on staff. The Port's historic preservation staff also consults with other qualified historic preservation staff at the San Francisco Planning Department, a certified Local Government, and consultants for purposes of obtaining peer review of a proposal.

The Pier 38 project is limited in scope and does not significantly change the use of the pier. The scope includes repair, facility upgrades to achieve code compliance, as well as minor alterations and a tenant build-out within the existing historic bulkhead building. The San Francisco Planning Department reviewed and determined the project to be Categorically Exempt from the California Environmental Quality Act. This determination was based in part on a Historic Resource Evaluation by Planning staff that was the basis for finding the project design consistent with the Secretary's Standards.

The Port administers its own Building Code and is its own permitting authority. Applications for building permits within the Embarcadero Historic District are reviewed by Port historic preservation staff pursuant to Port Commission Resolution No. 04-89 to determine whether the scope of work is consistent with the Secretary's Standards and the CEQA determination. Project scopes of work that are inconsistent or exceed the scope of the CEQA determination may require additional environmental review. This additional environmental review would address any potential impacts on the subject resource not previously evaluated. Finally, the Lease requires that TMG maintain the facility, after making the initial improvements, to a standard equal to the Piers 1.5-3-5 project.

The Project as a Whole is Trust Consistent

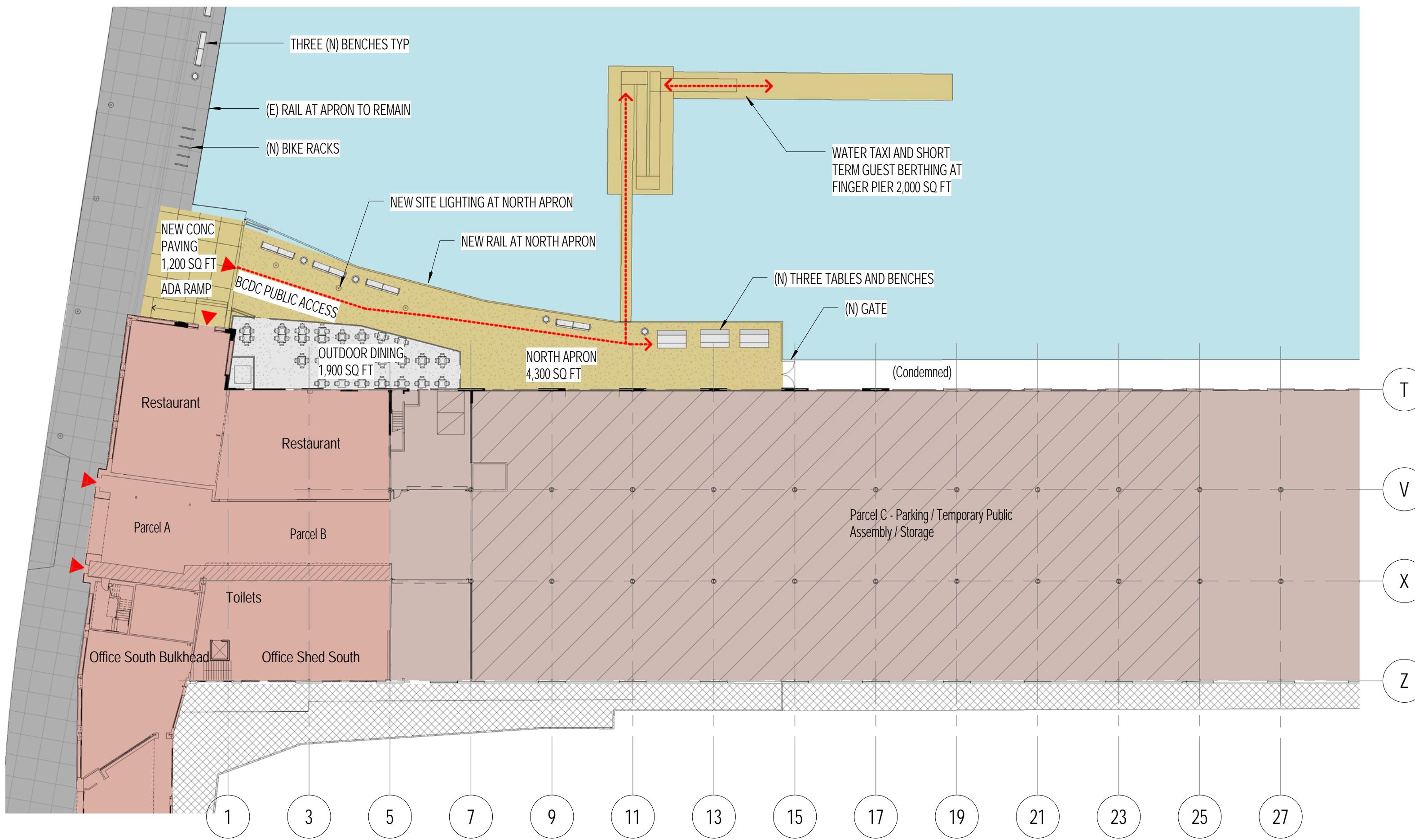
The proposed lease which includes the mixed-use occupancy of Pier 38, with office, ground level restaurant and special event space, would best support the trust objectives of preserving and rehabilitating Pier 38, improving public access and use, and providing maritime facilities through the water taxi and public guest-berthing dock. The project allows the Port to preserve an important maritime resource, one that is both emblematic of the maritime transportation terminal architecture of that era with its integrity of location, design, setting, materials, workmanship, and the presence of many of the original architectural features and details, and the Port's maritime history.

Taking the project as a whole, Port staff recommends that the Port Commission find the project consistent with the public trust and the Burton Act, and that the project

promotes the Port's overall program of improvements for the South Beach/China Basin Waterfront Area, due to the following elements:

- The project provides significant maximum feasible exterior public access so that the public is able to view and fully appreciate the qualities that make this maritime resource worthy of historic preservation through the design of a large public plaza on the north side of the pier shed that provides significant public access through the north apron adjacent to the project and allows the public to view the historic elements of the interior of the shed building from the north apron through new full-height, glass windows and doors;
- Significant improvements to the appearance of the pier shed that can be viewed from the newly constructed Brannan Street Wharf;
- A gangway and floating dock on the north side of Pier 38 for use by the Port's approved water taxi operators and for public guest docking for smaller vessels;
- Historic rehabilitation of the bulkhead building, a significant historic resource, and front of the shed consistent with Secretary's Standards;
- Use of a portion of the ground floor for a restaurant that will attract visitors to Pier 38;
- The project provides maximum feasible interior public access so that the public is able to view and fully appreciate the qualities that make this maritime resource worthy of historic preservation through the use of the historic single story high bay cargo shed as a new special event space that will take full advantage of its prime water location through the installation of new full-height glass that will provide attendees with views of the bay, the Bay Bridge, Yerba Buena Island, and Treasure Island; and
- Use of the bulkhead and a portion of the pier shed for office limited to what is necessary for the financial feasibility of the overall project and for sublease periods of no more than 10 years in a manner that is consistent with historic use of the bulkhead, which will promote the safety and security of the pier and allow for a financially feasible rehabilitation of the pier.

In its red-tagged condition, Pier 38 may be permanently lost as an important public trust asset if the Port cannot repair and re-tenant the pier quickly enough. The Port must conserve revenues to operate, maintain and improve the harbor of San Francisco and therefore the Port cannot directly fund all necessary capital improvements to repair historic Port facilities such as Pier 38 in a timely manner. If the Port is unable to take advantage of private investment to rehabilitate Pier 38, with sufficient economic potential to make its historic rehabilitation feasible, this public trust asset will not be restored and the proposed trust activities will not occur.



Pier 38 Phase 1
TMG Pier 38 Partners LLC

Pier 38 Embarcadero San Francisco

11/07/14

Exhibit C - Public Access Plan

PERKINS
+ WILL

Exhibit B – Project Budget (1 of 2)

Preliminary Breakdown of Development Costs

Estimated based on information provided by TMG 4-13-15

Development Costs		
Reconstruction		305,843
Exterior Vertical Enclosures		1,190,084
Exterior Horizontal Enclosures		169,582
Interior Construction		502,664
Finishes		666,362
Conveying (Elevator)		103,359
Plumbing		560,748
HVAC		570,860
Fire Protection		301,055
Electrical		650,000
Demolition		234,297
Site Improvements		741,555
Substructure Repairs		880,000
Guest Dock		240,000
<i>Subtotal*</i>		7,116,408
Building Permit Fees at	2.15%	152,712
Owner's contingency	10.00%	726,912
Total Hard Costs		7,996,033
Soft Costs	25.00%	1,999,008
Initial Tenant Improvements		1,513,200
Initial Lease Commissions		382,442
Total Development Costs		11,890,683
*Costs include a 5% contingency, a 5% design contingency, and escalation of 6%.		
Items Treated As Expenses		
Substructure Repairs Yr 13 and 15	\$	2,400,000
Re-Leasing Costs Yr 11 and 21/22	\$	1,434,386

Exhibit B – Project Budget (2 of 2)

Preliminary Hard costs by Parcel
Estimated dated 4-13-15

Initial Improvements Budget-Hard Construction Costs

		Parcels A & B: Bulkhead & Shed	Parcel C: Event Space	Parcel D: North Exterior & Guest Dock	Total Project
B15	Reconstruction	285,802	20,041		305,843
B20	Exterior Vertical Enclosures (Note 1)	1,160,523	29,561		1,190,084
B30	Exterior Horizontal Enclosures	114,457	55,125		169,582
C10	Interior Construction	485,920	16,744		502,664
C20	Finishes	630,498	11,163	24,701	666,362
D10	Conveying (Elevator)	103,359			103,359
D20	Plumbing	560,748			560,748
D30	HVAC	570,860			570,860
D40	Fire Protection	132,924	168,131		301,055
D50	Electrical	365,106	242,550	42,344	650,000
F30	Demolition	186,831	22,326	25,140	234,297
G20	Site Improvements	117,530	9,096	614,929	741,555
Plant estimate		4,714,558	574,737	707,114	5,996,408
Substructure Repairs		880,000	--	--	880,000
Guest Dock		--	--	240,000	240,000
Power Engineering Estimate		880,000	--	240,000	1,120,000
Building Permit Fees at		2.15%			152,712
Owner's contingency		10.00%			726,912
Total Initial Improvements Hard Cost Budget					7,996,033

Note All glass "storefront" inserts for rollup doors included in Parcels A&B budget, Plant
1: estimate includes a 5% contingency, a 5% design contingency, and escalation of 6%