

## MEMORANDUM

March 5, 2020

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. Gail Gilman  
Hon. Victor Makras  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** 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

**DIRECTOR’S RECOMMENDATION:** Approve the Attached Resolution

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### **Executive Summary**

The Dolphin Swimming and Boating Club (the “Club”), a California nonprofit corporation, is a social and athletic club that operates a building at 520 Jefferson Street and an associated launching dock facility in Aquatic Park lagoon. The majority of the facility is

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leased to the Club by the Recreation and Park Department (“RPD”). The remaining portion of the launching dock facility (the “Port Pier”) is located on Port property. The Club has never entered into a lease with the Port for the Port lands because according to the Club, their facility predates the establishment of the Port jurisdiction line under the Burton Act. Port staff has measured the Port Pier area at approximately 675 square feet.

In late 2019 the Club requested a construction permit to perform upgrades on the entire pier, including the Port Pier, only to be informed by the Department of Building Inspection that any permit to improve the Port Pier must be issued by the Port. When the Club reached out to seek that permit, Port staff responded that a contractual real estate right to use the Port Pier was required before the Port could issue the permit. Port and the Club representatives have engaged in discussions to address this matter and now Port staff wishes to propose a path forward to:

1. address the lack of a lease authorizing the Club’s use of the Port lands;
2. allow for the pier improvements to move forward at the earliest practicable date in the interest of public safety;
3. protect the Port from liability for past and future use of the Port lands; and
4. set the stage for an anticipated Port-RPD-Club transaction that would allow RPD to be the overall landlord entity for the Club on a long term basis while still protecting the Port’s proprietary interests, conditioned on the Club’s continued operation as a water recreation asset providing public access to the water on days when the facility is open to the public under the primary RPD-Club lease.

### **Strategic Objective**

The proposed settlement supports the Strategic Plan goals of Evolution by ensuring the improvement, operation and public accessibility of a publicly desired water recreation amenity.

### **Background**

On January 8, 2019 the Port Commission approved settlement of a delinquent rent dispute with the South End Rowing Club (“SERC”), a tenant of RPD at Aquatic Park. Like the Club, SERC operates a facility located primarily on RPD property but with some portions lying within Port jurisdiction; unlike the Club, SERC’s premises on Port property also included beach area in addition to pier area. SERC entered a lease with the Port in 1994 and so the SERC settlement was focused on addressing the remaining obligations of the parties under that lease. The settlement required SERC to pay a portion of the delinquent rent owed to the Port and the parties agreed to enter a new arrangement where (a) the Port would lease the portions of the property under Port jurisdiction to RPD under an MOU that assigned all maintenance, liability, and insurance obligations to RPD and required no rent to be paid in light of the ongoing commitment to public recreational access and (b) RPD would issue a single combined new lease of all of the SERC premises to SERC.

During the SERC dialogue with the Port Commission, staff noted that the Club was in a roughly analogous situation next door to SERC, except that the Club had not previously

engaged with the Port in response to Port staff's periodic requests to address the matter. The Club's 2019 request for a construction permit provided an opportunity to pursue those discussions. After a representative of the Club attended the January 14, 2020 Port Commission hearing to provide testimony in general public comment Port staff engaged representatives of the Club in a dialogue about how to achieve the Club's objective of expedited permit approval while also achieving the Port's goal to enter agreements achieving the four objectives enumerated in the Executive Summary above.

In furtherance of these discussions, on January 23, 2020 staff from the Port's Real Estate and Engineering divisions performed a walk-through of the site to verify the square footage of the Port Pier and to perform a visual assessment of its condition. Engineering staff's observations noted that the pier condition was consistent with the Port's Green – Unrestricted Use rating, meaning that there is no need to restrict the Club's current use of the pier. The current use of the pier appears to be light pedestrian access and launching of small row boats. Despite the Green rating, the timber structure has several preventative maintenance needs that DC stated that they are monitoring and are planning to address if and when the Port approves their building permit. It was also clear that DC has performed preventative maintenance to this structure in the past, such as encasement of timber piles with epoxy grouted fiberglass jackets.

### **Settlement Summary**

To achieve the four goals set forth above, Port staff and the Club propose to proceed as outlined below:

1. Authorizing the Port Pier work to proceed, subject to provisions protecting Port. Port staff is working towards the issuance of a building permit which would allow the pier improvements to proceed prior to final execution of the required settlement and lease documentation. The Port would add to its usual building permit form provisions assigning operation, insurance and maintenance responsibility to the Club plus provisions requiring insurance and release/indemnity of the Port.
2. Settlement Terms. As set forth in the Settlement Agreement on file with the Commission Secretary, Port and the Club agree to waive all claims against one another relating to the operation of the premises in Port's jurisdiction without a lease, subject to the following conditions:
  - a. the Club agrees to pay the equivalent of what would have been payable as rent under the Port's submerged land parameter rental rate over the past four years had there been a lease in place (total amount \$5,913.00); and
  - b. the Club and Port agree to enter a new lease on the terms set forth below.
3. New Lease terms. As set forth in the form of lease on file with the Commission secretary, Port and the Club will execute a lease with the following principal terms:
  - a. The Club to continue to provide and promote aquatic activities to its members and non-members as required under the RPD lease;

- b. Rent: equal to current submerged land parameter rate (\$0.19/sf) escalating by 3% annually for the full term of lease. All of the Club's verified hard costs of pier repair are eligible for rent credits under the lease. (This will likely result in no rent being paid going forward.)
  - c. Term: concurrent with the RPD lease (could terminate early in conjunction with negotiation of new RPD-Club lease).
  - d. Operations and Maintenance: The Club is responsible for maintaining and operating the Port Pier.
  - e. Indemnity: The Club indemnifies Port for any claims due to past and future use.
  - f. Other standard terms and conditions of the Port's form lease, including as is provisions, hazardous materials insurance, and required City provisions. One noteworthy exception is that in light of the limited nature of this Lease and the parties intent to fold it under the overall RPD lease with the Club, Port staff has proposed to waive the security deposit requirement.
4. Assignment of Port's landlord responsibilities. In conjunction with the execution of the Port-Club lease, Port staff will work with RPD staff to assign the Port's landlord rights to RPD, so the Club can have a single direct landlord relationship during the term of this lease. As in the SERC transaction, the ultimate goal is the negotiation and execution of a new RPD-Club lease that would incorporate the full premises; in order to accomplish this, Port would enter into a lease MOU with RPD and RPD would sublease the Port lands to the Club so that RPD would be the Club's sole landlord under the new lease (with appropriate protections for the Port) (per the SERC settlement transaction model). The Club advises that it is now working with RPD on a new lease that could be effective during this calendar year.

### **Staff Analysis**

Port staff believes the proposed structure above meets each of the four goals in the Executive Summary.

By agreeing to enter a building permit immediately that would include the augmented provisions noted above, the Port will be better protected from potential liability while the final settlement agreement and new lease are approved and executed. Once those agreements are approved the Port will be further protected, and will also have a direct and cooperative relationship with RPD to manage this shared tenant.

In addition, engaging in a collective negotiation of a new lease arrangement with the Club and RPD aligns this settlement with the terms of the SERC settlement: first requiring a payment of back rent to partially address prior use of the property and then setting the stage for a new relationship going forward that partners with RPD for a more cohesive oversight of the facility, protects the Port from liability and requires no rent in acknowledgement of the public access to water recreation provided by the Club in alignment with the Port's trust mission.

**Port Staff Recommendation**

For the reasons set forth above, Port staff recommends approval of the attached resolution.

Prepared by: Michael Martin  
Deputy Director, Real Estate and  
Development

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

**RESOLUTION NO. 20-15**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and
- WHEREAS, The Dolphin Swimming and Boating Club (the “Club”), a California nonprofit corporation, is a social and athletic club that operates its club house in a building at 520 Jefferson Street and an associated launching dock facility in Aquatic Park lagoon; and
- WHEREAS, The building and a majority of the dock is leased to the Club by the Recreation and Park Department (“RPD”), with the remaining portion of the launching dock facility (the “Port Pier”) located on submerged lands within Port jurisdiction; and
- WHEREAS, Despite Port’s efforts, the Club has never entered into a lease with the Port for the Port lands; and
- WHEREAS, In response to a request by the Club for a building permit to perform upgrades on the Port Pier, the parties have negotiated an approach to remedying the lack of an agreement to use Port property and ensuring the upgrades can move forward in the interest of public safety; and
- WHEREAS, In particular, the parties reached agreement on a draft Settlement Agreement (the “Settlement Agreement”) which requires the parties to enter into a lease for the Port premises (L-16661 or the “Lease”); and
- WHEREAS, Under the proposed Settlement Agreement, (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 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 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 and as

described in more detail in the Memorandum to the Port Commission dated March 5, 2020; and

WHEREAS, The parties now wish to settle their dispute in a manner that allows the Club to continue offering free recreational access to the Port Pier to interested members of the public and with the intention of avoiding protracted disputes, uncertainties, and litigation with their attendant inconveniences and expenses; and now therefor be it

RESOLVED, that the Port Commission hereby approves the execution of the Settlement Agreement and the Lease, each in substantially the same form on file with the Port Commission Secretary; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the Settlement Agreement and Lease that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or the Port, and are necessary or advisable to complete the transactions which this Resolution contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of such documents.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 10, 2020.***

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Secretary