



MEMORANDUM

August 21, 2020

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request Approval of Rent Forgiveness Program for Eligible Port Tenants in Three Sectors as follows: (A) Percentage Rent Tenants; (B) Maritime Tenants; and (C) Local Business Enterprise Tenants

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 20-41

EXECUTIVE SUMMARY

At the Port Commission's August 11, 2020 meeting, Port staff provided an informational presentation on a proposed rent forgiveness strategy for Port tenants along with information on the Opt-In Rent Deferral Program. The Port Commission asked that staff return with an action item for rent forgiveness. This Staff Report proposes a rent forgiveness program for targeted sectors under which the Port Commission would delegate to the Executive Director the authority to enter into a standardized amendment in the forms attached with eligible tenants (if approved, the "Rent Forgiveness Program").

In addition to the proposed rent forgiveness action sought by the Port Commission, this memorandum summarizes background information including anticipated fiscal impacts to the Port; for convenience, new or edited terms of the rent forgiveness program are underlined and new sections are indicated with an asterisk ("*").

The rent forgiveness program aims to mitigate the crippling financial effects of the COVID-19 pandemic for existing Port tenants, in a fiscally sustainable and implementable manner for the Port. Tenants in the below sectors may be eligible for forgiveness so long as they meet certain criteria, such as settling unresolved disputes (pre-dating COVID-19) as determined by the Executive Director. Port staff seeks Port Commissioners' approval of the following:

THIS PRINT COVERS CALENDAR ITEM NO. 6A

(1) **RESTAURANT, RETAIL AND EXCURSION SECTOR.** For eligible tenants with leases which have a base or minimum rent and a percentage rent component, forgive base rent from March 1, 2020 through the earlier of: (a) April 30, 2021 or (b) when a tenant's sales are sufficient to trigger base rent. Applies to eligible direct restaurant, retail, excursion, and parking leases with the Port which have a base and percentage rent component. If approved, these tenants and licensees could apply for rent forgiveness as follows:

- a. The amendment will be in the form attached to this staff report and with the following key tenant requirements:
- Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent.
 - Report sales monthly or as required by the existing lease
 - Pay monthly rent in the percentage of sales amount required by the existing lease
 - Satisfy all responsibilities under the existing lease
 - State and maintain agreed upon hours of operation, with not fewer than 10 operating days per month

In exchange for the following tenant benefits:

- Base rents forgiven from March 1, 2020 through the earlier of (a) April 30, 2021 or (b) when a tenant's percentage rents equal or exceed the base rent otherwise payable under the lease for 3 consecutive months¹
- Rent credits for retail and restaurant tenants for eligible furniture and equipment costs to safely reopen during the shelter in place restrictions; such rent credits can be applied to rent payable immediately upon execution of the relevant lease amendment
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period

- b. Amendments to leases that were approved by the Board of Supervisors are subject to approval by the Board of Supervisors.

(2) **MARITIME SECTOR.** Forgive all rent from March 1, 2020 to August 31, 2020 for targeted eligible maritime tenants including commercial fishing, crabbing, fish processing and other maritime support. If approved, these tenants could apply for rent forgiveness as follows:

- a. The amendment will be in the form attached to this staff report and with the following key tenant requirements:

¹ Leases in this sector generally have the following base and percentage rent construction: Tenant pays Port the greater of: (a) base rent) or (b) gross sales multiplied by a percent negotiated in the lease. When sales are high enough for (b) to be the larger number, then sales have exceeded the "break point", meaning the point at which sales reach a level such that the percentage rent calculations governs the rent due.

- Satisfy all responsibilities under the existing lease
- Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent.

In exchange for the following tenant benefits:

- Base rents forgiven from March 1, 2020 through August 31, 2020
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022.
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period

(3) LBE SECTOR. Forgive all rent from March 1, 2020 to May 31, 2020 for Port tenants who are also registered Local Business Enterprises (LBEs). If approved, these tenants could apply for rent forgiveness as follows:

- a. Tenant must demonstrate LBE status during the rent forgiveness period.
- b. The amendment will be in the form attached to this staff report and with the following tenant requirements:
 - Satisfy all responsibilities under the existing lease
 - Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent and from the Port's Hardship Emergency Loan and Grant Program (Item 7A on the August 11 Port Commission agenda)

In exchange for the following tenant benefits:

- Base rents forgiven from March 1, 2020 through May 31, 2020.
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022.
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period
- Any rent that is forgiven shall not be an allowable expense in the LBE Hardship Emergency Loan and Grant Program.

Port staff estimate the maximum rent forgiven amount to be approximately \$13.45 million with this amount partially offset by percentage rent paid based upon gross sales generated by the retail/excursion sector tenants.

BACKGROUND

Port's Existing Tenant Relief and Other Tenant Relief

The Port has taken a number of actions to provide relief to tenants including: delaying CPI increases, opening the Port Shared Spaces program for restaurant and retail businesses, providing a Broad Based Rent Deferral between March 1 and July 31, and offering tenants the opportunity to continue rent deferral through December 31 through the Opt-In Rent

Deferral program.

Federal, State, and City legislation has provided support through the Paycheck Protection Program (\$10M limit), Economic Injury Disaster Loan (\$2M limit), African American Small Business Loan Revolving fund (\$50,000 limit), and deferral of several types of tax payments including sales, property, and income taxes. Three other programs (SF Help, Mini Grants, and Resiliency Fund) have all been exhausted and require replenishment to reopen. In addition, based on authority granted under the State's emergency declaration, the Mayor put a commercial tenant eviction moratorium in place, which at this time expires on September 14, 2020, but may be extended.

Need for Rent Forgiveness

Despite the different types of support provided through the programs listed above, the Port understands that many Port tenants are having and will continue to have difficulty paying rent. Like many commercial landlords throughout the country, the Port recognizes that keeping tenants in place rather than pursuing broad evictions makes financial sense during this downturn. This allows the Port to maintain business ties with known partners rather than to attempt to bring in new tenants in such constrained economic conditions and allows tenants to avoid the disruption and cost of a relocation in the midst of the pandemic. Port staff have concluded that rent forgiveness is needed for some tenant sectors to keep those tenants and leases in place.

Port staff note the Port Commission's concern about the impacts of any such program on the Port's budget and the Port's own financial obligations to lenders and bond holders. The proposed Rent Forgiveness Program aims to balance the need for relief for some tenant sectors with the Port's need for a balanced budget and financial interests.

March – July Revenue Performance

Below is a summary of rent receipts through July 15, 2020. Key takeaways from this period are:

- Of the \$30.5 million invoiced, \$16.7 million was received representing a 56% collections rate
- During the month of March, the collections rate was approximately 97%, this is due largely to our invoice and payment cycle, many tenants had made payments prior to the Covid-19 economic effects.
- During the months of April – June, revenue shortfalls were spread throughout all portfolios, Fisherman's Wharf portfolio experienced the largest average percentage uncollected at 81%
- For the same period of time, China Basin portfolio experienced the largest average amount uncollected at \$1.3 million

Figure 1. Monthly Revenue Paid vs Unpaid

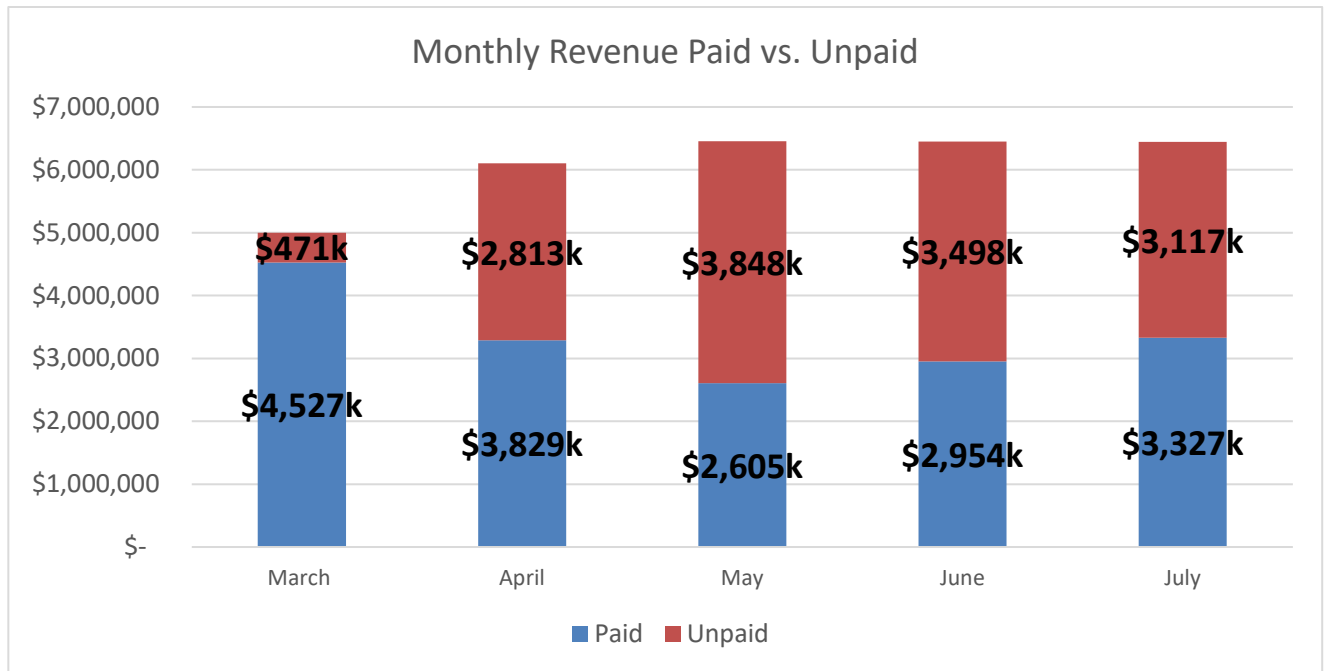
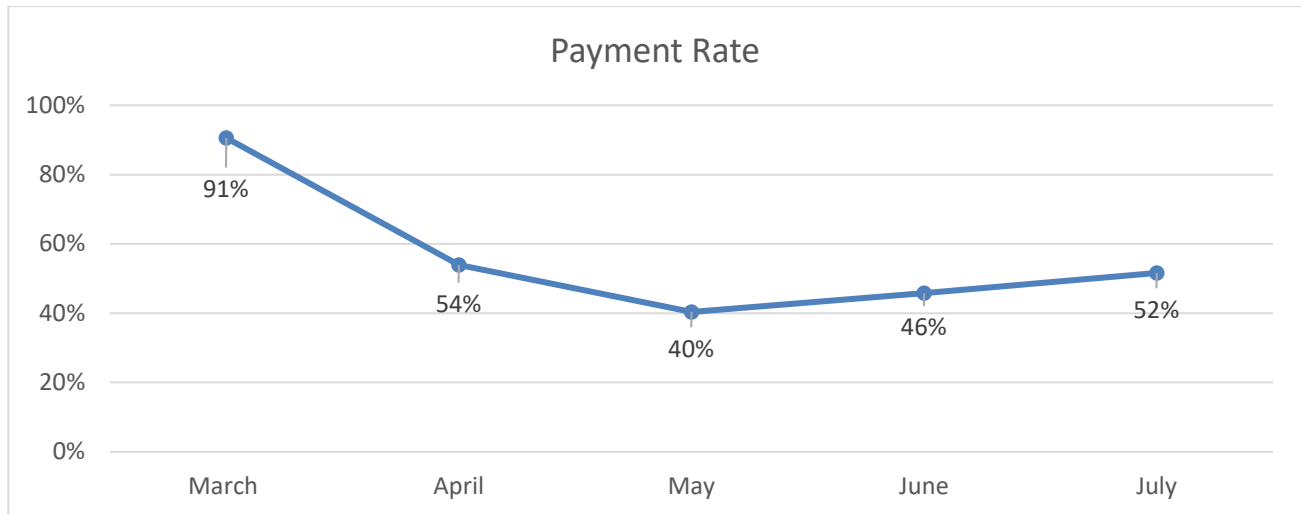


Figure 2. Payment Rates



RENT FORGIVENSS PROGRAM FOR ACTION TODAY

Overview of Program

The proposed rent forgiveness program is guided by the following principles:

- Protect Port’s revenue streams and assets by reducing rent burdens that tenants temporarily cannot pay due to the drastic change in operating conditions.
- Support Port’s maritime mission.
- Provide relief for small local businesses who are least able to weather this downturn.

- Formulate relief such that Port's & Tenant's interests are aligned and promote a shared prosperity partnership.
- Recognize this is a step based on best but limited and evolving information; new information may result in course corrections or additional steps.

At the Port Commission's April 28, July 14, and August 11 meetings, Port staff introduced and discussed the concept of a sector-based rent forgiveness strategy. The program described here and in the attached resolution provides rent forgiveness for three categories of tenants:

- Percentage rent tenants with base or minimum rent obligations (i.e. restaurants, retail, off-street parking maritime, excursions, and maritime attractions);
- Certain categories of maritime tenants; and
- Local Business Enterprise tenants.

With the intent of providing urgent assistance while balancing the financial impacts to the Port's Budget, Port staff propose that these categories are the most impacted by the Covid-19 crisis and are aligned with the Port's mission of managing the waterfront as a thriving, working waterfront and destination. Staff considered the Port's financial sustainability and commitment to maritime, recreational and economic opportunities to serve the public, while applying an equity lens that is critical in achieving the Port's vision of delivering vibrant and diverse waterfront experiences that enrich the City, Region, and State.

The section below provides an overview of this strategy (see **Table 1**) a proposed set of implementation criteria, current estimates of the potential fiscal impact of this program to the Port, and key questions to be answered to continue to develop the strategy.

Table 1. Strategy Overview

Sector	Proposal	Relief Period		Months	Est. # Tenants Affect-ed	Est. Rent Forgiven or Deferred
A. Percentage Rent Tenants	Port will forgive all base rents, and require payment of percentage rent as defined in the current lease agreement	March 1, 2020	April 30, 2021 or when tenant triggers percentage rent for 3 consecutive months	Maximum of 14	48	\$11.8 M (offset by percentage rent paid throughout period)
B. Select Maritime Tenants	Port will forgive all base rents	March 1, 2020	August 31, 2020	6	121	\$1.5 M
C. LBE Tenants	Port will forgive all base rents	March 1, 2020	May 31, 2020	3	27	\$0.15 M

Sector A – Forgiveness for “Percentage Rent” Tenants

Proposed Rent Forgiveness

Staff proposes that for most leases which require the payment of percentage rent subject to a minimum or base rent, the Port will forgive all base rents from March 1, 2020 through the earlier of April 30, 2021 or when tenant’s percentage rents equal or exceed the base rent otherwise payable under the lease for 3 consecutive months. Despite variations in the terms of each lease, the percentage rent provisions are fairly uniform within categories. For example, dine in restaurants typically have a 6%-7% percentage share, where take out restaurant have a 10%-11% percentage share, and parking is typically 66%. By removing base rent, and relying on percentage share rates in lease agreements, the Port and the tenant reaffirm the partnership to weather impacts of COVID-19, and move toward a shared prosperity model.

Key Tenant Requirements

- Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent
- Report sales monthly or as required by the existing lease
- Pay monthly rent in the percentage of sales amount required by the existing lease
- Satisfy all responsibilities under the existing lease
- State and maintain agreed upon hours of operation, with not fewer than 10 operating days per month

Key Tenant Benefits

The Rent Forgiveness Program would provide the following *tenant benefits* (not exhaustive):

- Base rents forgiven from March 1, 2020 through the earlier of (a) April 30, 2021 or (b) when a tenant’s percentage rents equal or exceed the base rent otherwise payable under the lease for 3 consecutive months
- Rent credits for restaurant and retail tenants for eligible furniture and equipment costs to safely reopen during the shelter in place restrictions; tenants would be able to apply such rent credits immediately upon execution of the relevant lease amendment
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period

Some percentage rent tenants paid base rent between March and June, even though they had the option to defer. For those tenants, Port staff propose allowing rent credits in order to achieve a retroactive fairness as compared to tenants that opted to defer such payments. As a further reduction of barriers to restaurants’ ability to operate profitably in the current environment, staff also propose a rent credit for startup costs of fixtures and equipment required for operating a dining or retail establishment under health orders as further described below.

Eligible tenants for this forgiveness include restaurants, retail, parking operators, tenants with maritime excursion operations, and other maritime attractions (e.g. Jeremiah O'Brien). The Port has approximately 48 tenants who fall under this category.

Master tenants (e.g., Pier 39, Ferry Building, Exploratorium, Oracle Ballpark, Pier 1, Piers 11/2 -5, Waterfront Plaza, Pier 70 Historic Core) where rent is calculated based on the unique mix of retail and non-retail uses cannot be addressed with a one-size approach. Accordingly, master tenant agreements will not be covered in this rent forgiveness program. To the extent relief is required, it may be negotiated on as-needed basis with the tenants. Port staff will analyze what relief was provided to subtenants, as part of the negotiations. Amendments to these leases will be subject to Port Commission and potentially Board of Supervisor approval.

Rationale for Rent Forgiveness Action for Restaurant, Retail, and Excursion Sector

Tenants in this category attract the most visitors and are heavily dependent on in-person transactions, and undoubtedly are the most impacted by COVID-19. These businesses are core to the Port's mission in bringing people to the waterfront and generating revenues to manage the waterfront; they are critical partners in ensuring the Port remains a vibrant waterfront for the public. These tenants were directly impacted by health crisis because they were ordered to stop their business. More broadly, the Mayor has recognized the need for public policy strategies to help these types of businesses get back on their feet to reduce the economic dislocation of the pandemic.

This proposal promotes a "shared prosperity" model, which in current economic conditions is in the Port's business interest. Tenants in this sector have made a compelling case that they cannot pay base rent until their revenues stabilize significantly above the 0% to 25% rate they are currently achieving. Without the forgiveness of base rent and implementing percentage rent payments, restaurant tenants have made it clear they cannot keep restaurants open and would have to either shutdown operations for a prolonged period of time or terminate leases. In both cases, the lack of operations would increase demands on Port security and maintenance, which are already strained.

With respect to retail vacancies in particular, any effort to fill vacancies would be subject to the City's competitive bidding policies and the Port's Retail Leasing Policy which generally require retail opportunities be competitively bid. Without indoor dining and with the winter season soon approaching, leasing of empty restaurant spaces will undoubtedly be challenging. Lengthy bidding processes paired with constrained staffing bandwidth would likely create extended periods of vacancies.

Therefore, staff recommends deployment of this strategy for the lesser of: 14 months or the point at which sales trigger payment above minimum base rent three months in a row which aims to encourage closed businesses to reopen and to keep all such businesses operating to the greatest extent possible.

Sector B – Select Maritime Tenant Rent Forgiveness

Proposed Rent Forgiveness

Within the maritime portfolio, rent from commercial fishing and crabbing and fish processing tenants is proposed for forgiveness, for a six-month period from March 1, 2020 through August 31, 2020. These tenants are the heart of the Port's commercial maritime businesses which have been particularly hard hit in the pandemic as their commercial restaurant customers were shut down. Conditions of participation include satisfying all responsibilities under the applicable lease.

Key Tenant Requirements

- Satisfy all responsibilities under the existing lease
- Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent.

Key Tenant Benefits

- Base rents forgiven from March 1, 2020 through August 31, 2020
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution.
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022

Some maritime tenants did pay base rent during this period even though they had the option to defer. Similar to the Sector A proposal, those tenants would be allowed to take a rent credit for rent paid between March and August, should the Port adopt the forgiveness strategy.

Eligible tenants for this forgiveness include fishing, crabbing, fish processing, and maritime support tenants at Fisherman's Wharf. Tenants with force majeure clauses in their leases may benefit from the rent forgiveness program, but only to the extent that base rent is otherwise payable during the applicable timeframe.²

Tenants such as the Terminal Operators (e.g. Pasha, Metro,) will require more individualized analysis. Accordingly, these agreements will not be covered in this rent forgiveness program. To the extent relief is required, it may be negotiated on as-needed basis with the tenants and amendments to these leases will be subject to Port Commission.

The Port has approximately 121 Maritime Tenants that could obtain relief under this program, and amendment of these agreements are not generally subject to Board of Supervisor Approval.

Rationale for Rent Forgiveness Action for Maritime Sector

Maritime tenants are the heart of the Port's commercial maritime businesses and have been indirectly affected by SiP orders, as their restaurant customers were shut down. Forgiveness during the three-month SIP is coupled with rent deferral through December for those tenants in the Opt-In program. This forgiveness program will likely affect 121 Port tenants.

² In other words, there will be no extension of the base rent forgiveness timeframe and no additional base rent forgiveness for any tenant attempting to use force majeure as the basis of that tenant having been excused from payment of base rent for some portion of the period between March 1, 2020 and April 30, 2021.

Sector C - Local Business Enterprise Forgiveness

All currently registered LBE tenants would be offered rent forgiveness for the three-month period most impacted by the shelter-in-place orders. The Port will forgive all base rents from March 1, 2020 through May 31, 2020. The Port Commission has emphasized the need to support LBEs through many of the Port's contracting practices. These LBEs range from sole proprietor trucking companies who lease drayage stalls to small construction companies who lease office and laydown space. It is critical to sustain the Port's vibrant and diverse population of micro professional service and construction LBEs.

Key Tenant Requirements

- Satisfy all responsibilities under the existing lease
- Report rent amounts that will not be forgiven because, for example, the Tenant received government-funded financial aid to be used for rent and from the Port's Hardship Emergency Loan and Grant Program (Item 7A on the August 11 Port Commission agenda)

Key Tenant Benefits

- Base rents forgiven from March 1, 2020 through May 31, 2020.
- Rent credits for rent paid during forgiveness period that could have been deferred prior to lease amendment execution; tenants would be able to apply such rent credits to rent payable during Fiscal Year 2021-2022.
- Rent credits will first be applied to any amounts owed prior to beginning of forgiveness period
- Any rent that is forgiven shall not be an allowable expense in the LBE Hardship Emergency Loan and Grant Program.

Some LBE tenants did pay base rent during this period even though they had the option to defer. For those tenants, Port staff proposes allowing rent credits to be applied for rent, should the forgiveness program be adopted. The Port has approximately 27 LBE tenants that would be covered under this program, and amendments to these agreements would not be subject to Board of Supervisor approval.

Rationale for Rent Forgiveness Action for LBE Sector

Tenants in these categories are generally in industries either indirectly affected by SIP or generally affected by the health crisis. The Port's mission and values drive Staff's proposal to provide an appropriate level of forgiveness to support these businesses while keeping tenants' and Port's interests as aligned as possible. Supporting LBEs are clearly articulated goals of the Port Commission and providing tenants rent forgiveness will provide financial relief to these sectors.

While staff do not have specific data on how Port's LBE tenants have been affected by the pandemic, some are suppliers to heavily impacted sectors and others are in less impacted lines of business. Along with rent deferral to December 31 under the Opt-In Program, Port staff propose supporting these LBEs through rent forgiveness during the core SIP period. This forgiveness program will likely affect about 2 Port tenants. Any rent that is forgiven

shall not be an allowable expense in the LBE Hardship Emergency Loan and Grant Program (Item 7A on the August 11 Port Commission agenda).

***PROGRAM ADMINISTRATION**

Tenants wishing to participate in the Rent Forgiveness Program will be required to submit the following information:

- Describes impact from COVID-19 and need for relief.
- Describes business plan to operate safely while COVID-19 is still circulating in the community.
- Provides revenue projections through in light of current economic conditions.
- Using the revenue estimates above, projects anticipated cash flow that indicates whether the tenants can resume current rent payments at the end of the forgiveness program or the end of the rent deferral period, as applicable
- Documentation to be submitted of any and all submittals to federal, state and local relief programs and summary of application or forgiveness status.
- If no such applications were filed, tenant would be asked to explain reasons (ineligibility, etc.).

Port staff will notify tenants about the Rent Forgiveness Program through various outlets including email, the website, and phone alerts. Staff from the Real Estate & Development, Maritime, and Finance Divisions will be available to provide support to tenants through the process.

Delegation to the Executive Director and Form Amendments

In order to implement this program fairly and efficiently, Port staff propose to use the attached standardized form amendments per sector which include standardized language, terms, and provisions attached as **Exhibit A**. A list of tenants fitting into each of the above three categories is attached as **Exhibit B**. Should these tenants elect to apply, they will be required, without exception and without negotiation, to enter into the appropriate form amendment.³

Port staff requests Port Commission delegation to: determine final eligibility and execute form amendments with tenants who elect to participate in the forgiveness program. The Executive Director may determine, in her sole discretion, that a tenant in any unsettled dispute with the Port regarding its existing lease or with the Port or City regarding any other existing agreement with the Port or City which dispute pre-dated the COVID-19 pandemic will not be eligible for rent forgiveness under the program until such dispute is resolved. As part of the rent forgiveness program, the Port will include terms such as: (i) a tenant's failure to comply with terms of the amendment means termination of rent forgiveness in addition to other lease remedies and (ii) mutually release from liability for matters related to the amendment. Port staff also recommends allowance of Rent Credits for Rent Paid and for

³ Some real property agreements in the proposed sectors, such as agreements with pedicab operators, are licenses rather than leases. The program applies the same way to licensees as to tenants.

Start Up Costs as detailed below and in the form lease amendment.

Rent Credits

Start Up Rent Credit for Restaurants and Retail Tenants

Restaurant and retail tenants in Sector A are eligible for a rent credit for verified expenditures for improvements and equipment necessary to maximize operations safely under COVID-19-related restrictions such as furniture, tents, bollards, canopies, diverters, stanchions, signage and other articles of personal property such as removable barriers to enforce social distancing ("**Start Up Rent Credit**"). Ongoing operational costs, such as the cost of personal protective equipment, hand sanitizer and other cleaning products, and plastic utensils are not eligible for a rent credit.

With respect to the allowance of Start Up Rent Credit, Port staff proposes the following:

- Tenant must provide to Port and Port must review and approve proof of payment including as applicable: copies of receipts, cancelled checks, invoices marked "Paid," unconditional lien waivers from all contractors, subcontractors, suppliers and materialmen who provided any labor, materials or services related to any Alterations or Improvements, and other items reasonably acceptable to Port evidencing proof of such expenditures.
- Tenant shall be authorized to take Start Up Rent Credit immediately. The Start Up Rent Credit shall be applied first to any balance outstanding prior to March 1, 2020 and then applied against percentage rents next due and each successive month until June 30, 2021 at which time any unapplied Start Up Rent Credit will expire and the Rent Paid Rent Credit, as described below, will apply.
- Termination or earlier surrender of the lease will extinguish any unapplied rent credits.

Rent Paid Rent Credit for All Sectors

Tenants are eligible for a rent credit for rent paid during the Forgiveness Period, even though the tenant could have instead deferred such payments under the Port's COVID-19 tenant relief policies in Port Commission Resolutions 20-18; 20-27 and 20-30. Therefore, Port Staff recommend a "Rent Paid Rent Credit" as follows:

- Port and tenant will calculate the total amount of the excess rent paid to the Port above what would have been due under the rent provisions in the existing agreement ("Excess Rent Amount")
- The Excess Rent Amount shall be applied first to any balance outstanding prior to March 1, 2020
- Tenant shall be then authorized to take 1/12 of the remaining amount (with no escalation) as a Rent Paid Rent Credit" in July 2021 and in each of the next 11 months (through June 2022). The Rent Paid Rent Credit can be taken against rent, but not against any other fee or charge under the lease. The credit is only usable to the extent rent is payable to the Port and will be extinguished if the lease is terminated.

- Port staff may extend leases that would otherwise expire so as to allow for such rent credit recapture, but the rent per square foot may not change and the expiration date may not exceed such timeframe without further Port Commission approval.
- Termination or earlier surrender of the lease will extinguish any unapplied rent credits.

Further Board of Supervisors Approvals

Port staff notes two additional dynamics of entering lease amendments that may reduce the efficiency and effectiveness of the proposed relief programs and proposes to pursue additional legislative measures to address them.

First, for some tenants, a lease amendment will also require Board of Supervisors approval where the existing lease required Board of Supervisors approval under Charter Section 9.118 because it met the revenue or duration thresholds in the Charter. Staff estimate approximately 32 leases in Sector A are subject to Charter Section 9.118.

In addition, for all lease amendments, City ordinances require certain provisions to be included in lease amendments entered into by City agencies, including the Port. These ordinances are generally applied on a prospective basis to new leases or amendments executed after the effective date of the ordinance. Therefore, a longtime Port tenant is often not required to comply with contracting ordinances adopted more recently than its lease. In that situation, if such an ordinance requires operational changes or other added startup costs, it may discourage that tenant from entering a lease amendment to avail itself of the Port's rent forgiveness program.

In order to provide relief in as efficient a manner as possible, and to avoid these potential costs on our tenants, Port staff intends to seek Port-specific legislation from the Board of Supervisors that would (a) approve all of the rent relief amendments approved by the Port Commission under the proposed Rent Forgiveness Program either by delegating approval authority to the Port or through a single consolidated approval action for the approximately 32 Port leases that are subject to Charter Section 9.118 and (b) waiving City requirements in cases where a Port tenant is not already subject to those provisions under its existing lease (whether or not that lease amendment is subject to Charter Section 9.118). If the Board of Supervisors determines not to approve such legislation, Port staff would proceed to administer the program under the current rules regarding Charter Section 9.118 and the applicable City contracting ordinances.

FISCAL IMPACT ANALYSIS OF RENT RELIEF MEASURES

For the forgiveness of base rent, Port staff compared total base rents receivable by sector to the percentage rent performance of that sector, at various performance rates (25%, 35%, and 50%, see **Table 2** below) for the same period in 2019 in order to provide illustrations of what this forgiveness could cost by category. Key findings of this analysis are:

- Total Base Rent forgiven is estimated to be approximately \$13.45 million.
- Total estimated percentage rent projected to be collected over the same period – which is only available to the Port, should the Port forgive base rent in order to keep

tenants in place is – between \$6.6 million and \$13.3 million.

A major goal of the Rent Forgiveness Program is to assist heavily impacted tenants that are most aligned with Port’s operating mission and values to save their business. A tenant who benefits from rent forgiveness may provide more revenues to the Port over the course of this recession than one who was not forgiven, if the latter firm goes out of business and thus does not provide rent in future months. If a tenant does not survive then the Port must terminate the lease and re-let the premises before revenues can again begin flowing, creating a significant time lag that will only be exacerbated in a long downturn. Percentage rent tenants represent approximately 1.5 million square feet.

Table 2. Percentage Rent: Performance Illustrations

Assume Percentage Rent Tenants Achieve 25-50% of 2019 Sales Performance During Rent Forgiveness Period

	2019 Performance	50%	35%	25%
Restaurants	\$6,612,000	\$3,306,000	\$2,314,000	\$1,653,000
Other Food & Bev	\$4,259,000	\$2,129,000	\$1,491,000	\$1,065,000
Excursion	\$6,636,000	\$3,318,000	\$2,323,000	\$1,659,000
Retail	\$751,000	\$375,000	\$263,000	\$188,000
Attraction	\$1,198,000	\$599,000	\$419,000	\$299,000
Parking	\$7,058,000	\$3,529,000	\$2,470,000	\$1,764,000
Total Potential Percentage Rent to Port	\$26,513,000	\$13,257,000	\$9,280,000	\$6,628,000

FURTHER TENANT RELIEF STRATEGIES & RELATED MATTERS

Port staff continues to research and intends to return to the Port Commission in the coming months to discuss further relief measures. These relief measures may include but are not limited to:

- A funds-limited, Criteria-Based Rent Forgiveness or loan program for tenants not covered by this Rent Forgiveness Program for tenants that are Trust-consistent or similarly public-serving in nature and who demonstrate a significant economic impact from the pandemic
- Marketing assistance by Port
- Streamlined permitting for Shared Spaces, outdoor activation and similar programs
- Delegation of authority to Port Staff to enter into mutual early terminations within certain parameters such as total monthly rent, term remaining on lease, condition of space allows for releasing, etc.

RECOMMENDATION

Port staff requests action on the Rent Forgiveness Program through Port Commission approval of the attached Resolution. Port staff will then implement the program as described in this Staff Report, pursue Board approval for required Program elements, and periodically report back to the Port Commission on implementation of the Program.

Prepared by: Crezia Tano-Lee
Manager, Business Strategy Real Estate
and Development

For: Rebecca Benassini
Acting Deputy Director
Real Estate and Development

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

RESOLUTION NO. 20-41

- 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, On February 26, 2020, Mayor London Breed issued the Proclamation by the Mayor Declaring the Existence of a Local Emergency (the "Mayor's Emergency Declaration") under Sections 8550 et seq. of the Government Code, Section 3.100(13) of the San Francisco Charter, and Chapter 7 of the San Francisco Administrative Code, establishing the existence of an emergency within the City and County of San Francisco (the "City") due to the ongoing spread of COVID-19; and
- WHEREAS, On March 16, 2020, the City Health Officer issued an Order (the "March 16 Order") directing all residents to remain at their place of residence, except to conduct Essential Activities, Essential Businesses, and Essential Government Functions (as defined in the March 16 Order); and
- WHEREAS, Since that time, the Mayor and the Health Officer have regularly updated these orders in order to protect public health and re-open the economy; and
- WHEREAS, In response to these emergency measures and the severe impacts on Port's tenants, the Port has provided several relief measures including a Broad-Based Rent Deferral Program (Resolution 20-18), an Opt-In Extended Deferral Program (Resolution 20-30), and the Port Shared Spaces Program.
- WHEREAS, On June 9 2020, the Port Commission approved an Opt-In Rent Deferral Program, which includes many of the key terms and exclusions of the Extended Rent Deferral Policy and allows tenants that opted in to continue to defer rent through December 31, 2020, such that payment of March through December 2020 rent is deferred without financial or other penalty; provided that normal and timely payment of rent recommences on January 1, 2021; and
- WHEREAS, Despite the Port's various relief programs, including those described above, the Port understands that further relief, including the proposed rent forgiveness program is needed for some tenant sectors to keep those tenants and leases in place; and
- WHEREAS, The Port desires to forgive certain past due and future rent payments in order to address the devastating financial impacts of the COVID-19 pandemic on Port tenants and licensees (collectively, "tenants") in the

following targeted sectors: retail and similar tenants paying percentage rent; maritime tenants, and local business enterprise (“LBE”) tenants through a standardized lease or license amendment (an “amendment”); and

WHEREAS, Providing the proposed rent forgiveness is intended to improve the financial feasibility of the lease or license (collectively, a “lease”) and preserve a tenant’s ability to continue operations at the Port which is of considerable value to both parties, while at the same time meeting the Port’s own goals, including protecting its revenue streams and assets; supporting the Port’s maritime mission and it’s small local business tenants and aligning Port’s and tenant’s interest in promoting a shared prosperity partnership and is in the best interests of the Port’s long-term financial health; and

WHEREAS, The sector-by-sector list of tenants that may apply for rent forgiveness under the proposed program is attached to this memorandum, as may only be amended due to clerical error; and

WHEREAS, As determined in the sole discretion of the Executive Director, a tenant in any unsettled dispute with the Port regarding its existing lease or with the Port or City regarding any other existing agreement with the Port or City which dispute pre-dated the COVID-19 pandemic will not be eligible for rent forgiveness under the program until such dispute is resolved; and

WHEREAS, In order to implement this program fairly and efficiently, each amendment will be on the sector-appropriate standardized form amendment attached to the Memo without exception and without negotiation; and

WHEREAS, The amendments are narrowly-tailored to focus solely on rent obligations and forgiveness and the amendment forms are attached and the key terms of the form amendment are detailed in the memorandum; and

WHEREAS, Execution of an amendment approved under this program with many of the percentage/retail sector tenants will require Board of Supervisors’ approval under Charter Section 9.118; and all amendments must include certain City requirements that have been adopted by ordinance since execution of the existing lease; and

WHEREAS, In order to expeditiously provide the needed financial relief the amendments would provide without the inevitable delay and expenditure of limited staff and tenant resources in obtaining Board of Supervisor’s approval, Port staff, along with other City landlord departments, is seeking an ordinance which would delegate the Board’s approval authority to the Port so that amendments could be executed promptly to reduce uncertainty for tenants seeking to regain their financial footing; and in order to avoid

imposing additional operating requirements and costs beyond what is in a tenant's existing lease, the proposed ordinance would also waive the applicability of certain new City requirements that would otherwise be required in an amendment; and therefore be it

- RESOLVED, That the Commission supports the Board of Supervisors' delegation of approval authority to the Port Commission for amendments that would otherwise require Board of Supervisors' approval under Charter Section 9.118 (including those amendments that are approved by this Resolution) and urges adoption of implementing legislation either through adoption of an ordinance as described above or otherwise to expeditiously and efficiently review and approve amendments, including those approved under this Resolution; and be it further
- RESOLVED, That the Commission approves the form amendments attached to this memorandum; and be it further
- RESOLVED, That, subject to Board of Supervisor's approval for any amendment that is subject to such approval (unless the Board delegates such approval to the Commission or Executive Director), the Port Commission authorizes the Executive Director or her designee to execute the appropriate form amendment (without substantive revision except to complete the relevant facts) with each tenant meeting eligibility described in the memorandum as determined by the Executive Director; and be it further
- RESOLVED, That the Port Commission approves the Rent Forgiveness Program; and be it further
- RESOLVED, That the Port Commission directs staff to promptly advise affected tenants of the Rent Forgiveness Program, post notice on the Port website, and support tenants through the submittal process; and be it further
- RESOLVED, That the Commission authorizes the Executive Director to enter into any additions, amendments or other modifications to the standardized amendment forms that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be 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 amendments.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 25, 2020.

Secretary

Exhibit A Tenants Eligible for Forgiveness

Percentage Rent Tenants Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

Below list include tenants who may be eligible to apply for rent forgiveness, should the Port Commission direct staff to move forward with the rent forgiveness program described in this staff report, under “Sector A Percentage Rent Tenants”. Rent forgiveness would be documented through a form lease amendment to be executed by Port and tenant, which may require Board approval. Eligibility for program includes resolution of disputes, among other criteria summarized in the staff report.

#	Name on Agreement	Business Name	PORTFOLIO
1	340 Jefferson, LLC	Pompeii’s Grotto	FW
2	369-399 Embarcadero, LLC	Epic Steak and Water Bar Restaurants	FP/SB
3	Abraham Pedicabs, LLC	Cabrio Taxi Pedicabs	
4	Alcatraz Cruises, LLC	Alcatraz Cruises	NE
5	Alioto Fish Company, Ltd.	Alioto’s Restaurant	FW
6	Andre-Boudin Bakeries, Inc.	Chowder Hut Restaurant	FW
7	Bay Natives	Bay Natives Nursery	SO
8	Bike Hut Foundation	The Bike Hut	FP/SB
9	Blue & Gold Fleet, LP	Blue & Gold Fleet	FW
10	Boudin Properties, Inc.	Boudin’s Flagship Restaurant	FW
11	Bundox Restaurant, Inc.	The Waterfront Restaurant	NE
12	Castagnola's Restaurant	Castagnola’s Restaurant	FW
13	Choi, Ted	City Kayak	FP/SB
14	Chu, Frances Y. and Hwang, Jyi Jeng	The Crab Station	FW
15	D & G Company	Lou’s Blues Bar	FW
16	East Street Ventures, LLC	Atwater Tavern	CB
17	Ferryboat Santa Rosa Partners, Ltd.	Ferry Boat Santa Rosa	NE
18	Frank's Fisherman's Supply	Frank's Fisherman's Supply	FW
19	Frankie's Java House, LLC	Frankie’s Java House	FP/SB
20	Golden Bear Restaurant Co III, LLC	Mission Rock Resort	CB
21	Golden Gate National Parks Conservancy	Golden Gate National Parks Conservancy	NE
22	Golden Gate Scenic Steamship Corp.	Red and White Fleet	FW
23	Guardino's Souvenir & Gift Shop, Inc.	Guardino’s	FW
24	Henriquez, Reinaldo	Reinaldo Henriquez Pedicab	
25	Herringbone Tavern, Inc.	Grotto #9 & Tarantino’s	FW

#	Name on Agreement	Business Name	PORTFOLIO
26	Hoppe, Arthur N.	The Bay Company & The Wharf Store	FW
27	Hornblower Yachts, Inc.	Hornblower	NE
28	Imperial Parking (U.S.), Inc.	Impark	
29	JPPF 1300 Battery, L.P.	Fog City	NE
30	Mama Franceschi, L.P.	Capurro's	FW
31	National Liberty Ship	S/S Jeremiah O'Brien	FW
32	Pier 23 Cafe	Pier 23 Café	NE
33	Pisoni, Tiffany Marie	Red's Java House	FP/SB
34	Pollack Group, Ltd.	Nick's Lighthouse	FW
35	Portco, Inc	Cioppino's & Safe Harbor	FW
36	Queen's Louisiana Po-Boy Cafe, LLC	Queen's Po Boy Café	NE
37	Sabella & La Torre	Sabella & La Torre Restaurant	FW
38	Saggers, Keith R	SF Student Jobs Coalition Pedicab	
39	San Francisco Maritime National Park Assoc.	USS Pampanito	FW
40	San Francisco Museum and Historical Society	Musee Mechanique	FW
41	San Francisco Pedicab, LLC	Golden Gate Pedicab	
42	Scoma's Restaurant, Inc.	Scoma's	FW
43	SFS39, Inc.	The Franciscan	FW
44	Sitting By, Inc.	Hidive	FP/SB
45	South Beach Yacht Club	South Beach Yacht Club	FP/SB
46	SP Plus-Hyde Parking Joint Venture	SP+/Hyde	
47	St. Francis Marine Center, Inc.	The Ramp Restaurant	CB
48	Spinnaker	Spinnaker	FP/SB

Maritime Tenants Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

The below list includes tenants who may be eligible for rent forgiveness, should the Port Commission direct staff to move forward with the rent forgiveness program described in this staff report under Sector B – Maritime Tenants. Rent forgiveness would be documented through a form lease amendment to be executed by Port and tenant. Eligibility for program includes resolution of disputes, among other criteria summarized in the staff report.

#	Tenant Name
1	2 By C, LLC
2	A. La Rocca Seafood, Inc.
3	ABS Seafood Inc.
4	Alber Seafoods, Inc.
5	Alioto Fish Company, Ltd.
6	Alioto, Sal
7	Aloha Seafood, Inc.
8	Andreassen, Hans
9	Anfinson, Eric
10	Anna Marie Inc
11	Anselmo, Bennie
12	Atkinson, John Jr
13	Barnett, John
14	Bates, Sarah
15	Bertucci, Robert
16	Bishop, Gary
17	Bohannon, Robert A
18	Brooks, Elliott
19	Bugeja, Peter
20	Burchell, Robert
21	Caito Fisheries Inc.
22	California Shellfish Co.
23	Calvert, Tim
24	Calvi, Chris
25	Cannia, Anthony
26	Chen, Da Huan
27	Collier, Brian
28	Collins, Lawrence J.
29	Costarella Seafood, Inc.
30	Costello, Mike
31	Crab Boat Owners Association
32	Cresalia, Andrew

#	Tenant Name
33	Cross, Sean
34	Dalley, Sonia
35	Deaton, Mrs Tiffany
36	Dillard, James
37	Duba, Chris
38	East-West Seafood, Inc.
39	F. Alioto Fish Co.
40	Fitzpatrick, Richard
41	Fontes, Mike
42	Fox, Christopher
43	Franklin, Don
44	G.P. Resources
45	Gabriel Higi
46	Gritzfeld, Jym
47	Haja Services
48	Hanson, Craig
49	Hickey, Darryl
50	Hill, Steven
51	Hodges, Sean
52	Hunt, Dan & Linda
53	Icy Strait Seafoods, Inc.
54	Indie, David
55	Iversen, Chris
56	J&P Bait, LLC
57	Jennison, Ellsworth
58	Juanes, Matt
59	Kemp, David
60	Kesler, William
61	King, David
62	Krieger, Nicholas
63	Kurtz-Harvie, Michael
64	Kwasniza, Igor
65	Lafata, Phil
66	Lazzari, Daniel
67	Le, Johnny
68	Lee, Frank
69	Little, Brand
70	LoGrande, Beneditto
71	Louie, Chuck

#	Tenant Name
72	Lucas, Maxwell
73	Luyen, John
74	Ly, Tho A.
75	M.F.M. Seafood, Inc.
76	Magner, Mark
77	Maharry, Robert
78	McCarthy, Tracy
79	McManigal, Bret
80	McWilliams, Brian Thomas
81	Medinas, Zachary
82	Mellor, John
83	Michael Kurtz-Harvie
84	Mitchell, Michael
85	Monterey Fish Company, Inc.
86	Nautilus Excursions LLC.
87	Nguyen, Nhung
88	Osprey Seafood of California, Inc.
89	P & T Flannery Seafoods, Inc.
90	Papetti, Savior
91	Peery, Mike
92	Peninsula Seafood of San Bruno, Inc.
93	Pezzolo Seafood, Inc
94	Phillips, James
95	Phillips, Michael
96	Powell, Michael B.
97	Reloba, Nick
98	Rescino, Frank
99	Reynolds, Robert
100	Rose Marie Inc.
101	Sadati, Jesse
102	Salvato, Jason
103	San Francisco Community Fishing Association
104	Schwarz, Mark
105	Scoma's Restaurant, Inc.
106	Seafood Producers Cooperative
107	SF Boat Support, LLC
108	Sien, Vincent
109	Sin, A Kiu
110	Smith, James

#	Tenant Name
111	Sullens, Isaac
112	Talmadge, Steve
113	Tanji, Gregg
114	Tarantino, John
115	Tarantino, John Paul Jr.
116	Walsh, Tomas
117	Ward, William
118	Wehr, Shane
119	West Bay Seafood Company, Inc.
120	Yuen, Truong Chun
121	Zizzo, Tom

LBE Tenants Potentially Eligible for Rent Forgiveness Program, Subject to Port Commission Approval

The below list includes tenants who may be eligible to apply for rent forgiveness, should the Port Commission direct staff to move forward with the rent forgiveness program described in this staff report, under “Sector C: LBE Tenants”. Rent forgiveness would be documented through a form lease amendment to be executed by Port and tenant, which may require Board approval. Eligibility for program includes resolution of disputes, among other criteria summarized in the staff report.

#	Tenant Name
1	A. Ruiz Construction
2	Acme Trucking
3	ADRIENNE WONG ASSOCIATES INC
4	Albion Partners
5	ALEX BUILDER INC.
6	AMC Consulting Engineers, Inc
7	AYER MEDIA, INC. DBA WEBB DESIGN
8	Baird Trucking, Inc.
9	Bay Line Cutting & Coring Inc
10	CELTIC SCAFFOLDING INC.
11	Crystal & Robin Trucking
12	Dirt Shop
13	E Butler Trucking Inc.
14	Erlinole Trucking
15	Flynn Transport
16	Henry Trucking
17	Hoseley Corporation
18	Ibarra Trucking
19	Jomar Trucking
20	MCD TRUCKING LLC
21	MICHAEL O'SHAUGHNESSY CONSTRUCTION, INC.
22	Pacific Bay Builders
23	RELIANCE ENGINEERING INC
24	Robert W. Poyas, Inc.
25	Rogers Trucks, Inc.
26	UNION SERVICE CO
27	Woodford Studio