

MEMORANDUM

April 6, 2017

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

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of: (1) a 66-year Lease for portions of the South Basin and (2) a coterminous non-exclusive License for pile supported areas adjacent to and west of the South Basin, both with the San Francisco Bay Area Water Emergency Transportation Authority, in connection with the Downtown San Francisco Ferry Terminal Expansion Project, all located generally between the Ferry Building and Pier 14.

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution

EXECUTIVE SUMMARY

Port staff requests Port Commission approval of two long-term agreements with the San Francisco Bay Area Water Emergency Transportation Authority ("WETA") (collectively, "Transaction Documents") for the proposed expansion of ferry terminal operations at the Downtown San Francisco Ferry Terminal ("Downtown Ferry Terminal"). The documents will be executed following WETA's completion of the Downtown San Francisco Ferry Terminal Expansion Project ("Project") and will govern the operation, maintenance, and capital responsibilities for the water-side and land-side improvements of the completed Project. The Project is set to break ground later this month.

The first agreement is a 66-year lease ("Lease") for use of the water area depicted on Exhibit A and located between the southern edge of the pier behind the Ferry Building and extending southward to the Pier 14 breakwater. The second agreement is a non-exclusive license ("License") for use of new pile supported structures that will run concurrently with the Lease for the area generally between the drive aisle to the south of the Ferry Building and an area to the east of the Agriculture Building, as depicted in Exhibit B ("License Area"). The License Area will provide WETA with non-exclusive use

THIS ITEM COVERS CALENDAR ITEM NO. 11A

for the purposes of queuing passengers embarking from the Ferry Terminal gates, access to and from the gates across the new plaza and promenade areas, and space for staging and coordination of evacuees during regional emergencies.

STRATEGIC PLAN CONFORMITY

The expansion of the Downtown Ferry Terminal will assist with achieving three goals and objectives of the Port's Strategic Plan:

- Livability: *Work with transportation agency partners to ensure an integrated transportation plan that includes programs to ease traffic congestion along the waterfront and expand public transit – including water taxis and ferries – as well as pedestrian and bicycle access.*
- Resiliency: *Assess all pending and new projects for the effects of rising sea level and ensure appropriate adaptation measures can be implemented.*
- Economic Vitality: *Expand the system of active water berths for visiting commercial, transportation, and recreational vessels.*

BACKGROUND

The Port and WETA have been working together for the past 8 years on a coordinated effort to prepare for the expansion of the Downtown Ferry Terminal, which today consists of Gate B located on the north side of the Ferry Building and Gate E to the South of the Ferry Building, in addition to two gates leased and operated by Golden Gate Ferry located directly behind the Ferry Building.

Currently, the Port owns and maintains the existing Gates B and E, and collects landing fees from the ferry operators for berthing of ferry vessels at the gates. Both gates are used by WETA today to support its Vallejo and Alameda ferry services.

The Project builds on previous planning efforts and projects that the Port constructed in the 1990s. These included a comprehensive land use planning process for the Ferry Building area that resulted in renovation of the Ferry Building and construction of the mid-Embarcadero Roadway and construction of the first phase of the Downtown Ferry Terminal project in 2003, which included Gates B and E and the Pier 14 breakwater.

Over the 8-year planning and approvals effort, the Project has been considered by a wide variety of stakeholders, including nearby businesses, management and tenants of the Ferry Building, regulatory agencies, transit agencies, vessel crews and operators, and advocacy groups representing pedestrian, transit, bicycle, maritime, and historic preservation interests. Input obtained from each of the stakeholder groups was documented and considered in the development of the Project design.

The purpose of the Project is to support and expand ferry service on San Francisco Bay in accordance with City and regional policies to encourage transit use and in furtherance of WETA's Strategic Plan. An informational presentation on WETA's Strategic Plan was provided to the Port Commission on September 27, 2016.

The Downtown Ferry Terminal now accommodates six ferry routes through the existing Gate B and E, serving more than 10,000 passengers with approximately 130 ferry arrivals and departures daily. The Project will add two new ferry gates and rehabilitate Gate E, improve pedestrian circulation and ferry passenger boarding, enhance emergency response capabilities, and accommodate anticipated increases in ferry ridership as new ferry services from downtown San Francisco to Richmond, Treasure Island, and other locations under study are introduced through 2030. According to WETA's Strategic Plan, the number of peak hour landings at the Downtown Ferry Terminal is expected to grow over fourfold over the next 20 years from 5 today to 23 in 2035, and the number of daily ferry riders is expected to increase fivefold over that same period, from approximately 10,000 today to 50,000 by 2035.

The Project includes the following major project components:

- Demolition and removal of Pier 2 (currently red-tagged due to its deteriorated condition);
- Dredging of approximately 20,500 cubic yards for the new Gates F and G;
- Construction of new Gates F and G, and reconfiguration and rehabilitation of existing Gate E, control of which will be transferred from the Port to WETA (Gate B will continue to be operated and maintained by the Port);
- Construction of a pile supported promenade to access the ferry gates;
- Construction of a new, raised plaza for passenger queuing, staging for emergency response, and for public access; and
- Installation of boarding area amenities including weather protection canopies, ticket machines and fare collection equipment, lighting, and ferry information signs.

PREVIOUS PORT COMMISSION AND WETA BOARD APPROVALS

WETA and the Federal Transit Administration ("FTA") completed Final Environmental Impact Statement/Environmental Impact Report ("EIS/EIR", State Clearing House No. 2011032066, October 2014) that meets requirements of both National Environmental Policy Act ("NEPA") and CEQA. The Port Commission reviewed and considered, and approved CEQA findings as part of its approval of the LDDA and form of Construction lease documents in October 2016. The proposed lease and license agreements are consistent with the project that was evaluated in the Final EIS/EIR. Since the EIS/EIR was finalized, there have been no substantial Project changes and no substantial changes in Project circumstances that would require major revisions to the EIS/EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the EIS/EIR.

In October 2016, the Port Commission and the WETA Board both approved two interim transaction documents, a Lease Disposition and Development Agreement (LDDA) and form of Construction Lease. These documents govern WETA's rights and responsibilities during construction of the Project. Over the past six (6) months, WETA conducted a procurement process which led to the selection of Power Engineering to perform the construction services for the Project, while Port and WETA staff also

worked to finalize the details of long term agreements for ferry operations once the Project is completed.

The WETA Board approved the form of the long-term operating Lease and License agreement at its April 6, 2017 Board meeting. WETA staff are preparing for construction of the Project, with an official groundbreaking ceremony scheduled for May 11, 2017. Upon completion of construction, two key documents will govern WETA's and Port's rights and obligations post-construction: the Lease and the License.

LEASE AGREEMENT

The 66-year Lease provides that WETA will operate and maintain the expanded ferry terminal operations at Gates E, F, and G in the Downtown Ferry Terminal. The leased premises include the waterside portion of the project area, including about 297,000 square feet of submerged water and 21,000 square feet of berthing facilities (floats and gangways). The Lease contains the following key provisions:

- During the lease term, WETA will own, operate, maintain and repair all waterside berthing facilities within the leased premises at its sole expense, which generally includes all waterside berthing facilities (floats, gangways, guide piles). WETA will also maintain the landside portal/access gates and certain landside facilities built as a part of the Project (such as the passenger shelters, photovoltaic panels, and wayfinding signage).
- In exchange for WETA constructing and funding the Project (other than Port's portion for the Gate E rehabilitation as set forth below) and maintaining, repairing, and dredging the leased premises and its facilities at its sole expense throughout the lease term, WETA will not be charged rent or landing fees associated with its use of the leased premises.
- WETA will be responsible for all future dredging and permitting necessary for ferry operations at the leased premises.
- The Port may, at its sole discretion, assess a fee on any non-WETA Vessels (as defined in the Lease) that land at the facilities. These fees are in addition to any operation fees charged by WETA for use of such facilities.
- WETA will have direct control over the new facilities, including primary responsibility for scheduling landings and for providing authorization for excursion vessels and event use of berthing facilities.
- The Port will provide 20% of the funding required to rehabilitate that facility as approved by the Port Commission at the October 11, 2016 Port Commission hearing. The total cost to rehabilitate Gate E is approximately \$1.5 million today, with the Port's 20% share estimated at \$300,000.

The net (positive) fiscal impact of the lease on Port finances is estimated to be approximately \$125,000 annually, due to the elimination of negative net revenues currently associated with the operation of Gate E. Gate B will continue to be operated

and maintained by the Port but may be similarly transferred to WETA control in the future depending on both Port and WETA needs and funding availability.

LICENSE AGREEMENT

WETA will be allowed to use the License Area on a non-exclusive basis for (i) queuing of passengers embarking from Gates E, F, and G in accordance with a queuing plan agreed to between the parties; (ii) passenger access to and from the ferry gates across new pile supported plaza and promenade areas to vessels embarking or disembarking from the Downtown Ferry Terminal; and (iii) staging and coordination area for evacuees during regional emergencies. The License Area includes the landside portion of the Project area, comprised of approximately 38,000 square feet of new promenade and plaza area.

The License will run concurrently and be co-terminus with the Lease. The License includes the following key specific provisions:

- The Port will own and manage and maintain the pile-supported deck beyond the shore side portal gates, which include the passenger access ways and plaza area.
- The Port shall be responsible for all costs associated with operating and maintaining the landside facilities except those identified in the License as WETA's personal property (such as the passenger shelters, photovoltaic panels, and wayfinding signage).
- In addition to serving the Downtown Ferry Terminal, the entire License Area is dedicated to public access pursuant to BCDC Permit 2016.001.00. Upon satisfaction of certain conditions, the newly created, raised plaza between the Ferry Building and the Agriculture Building within the License Area may be used for farmers' market activities on a trial basis.
- The Port may also hold, in its sole discretion, non-Farmers Market events on a portion of the License Area in compliance with the BCDC Permit; provided, however, Port will coordinate with WETA prior to scheduling any non-Farmers Market events that overlap with WETA's permitted activity in the License Area during peak p.m. commute hours (which generally start around 4:00 p.m.).
- The Port anticipates proceeding with adjacent projects such as making improvements to the Seawall and the rehabilitation of the Agriculture Building. Accordingly, if Port reasonably believes at any time during the Term, that in order to accommodate construction of any of the adjacent projects, the License Area boundaries need to be adjusted, Port will have the right to adjust the License Area so long as ferry passengers are able to access the Ferry Terminal Gates and WETA's primary mission of providing commuter ferry service and emergency response capabilities at the Downtown Ferry Terminal is not adversely impacted.

Sea Level Rise

The best sea-level-rise science from the National Research Council for the Coasts of California estimates that for the 50-year life span of the Downtown Ferry Terminal

through year 2070, the high end of the mean projected sea-level rise will be approximately 38 inches. The Project will build all new facilities at an elevation to meet this anticipated rise. To meet the projected 50-year sea-level rise, the new gates, the rebuilt Gate E, and pedestrian areas will be reconstructed at 14.5 feet above mean lower low water (MLLW), an increase of approximately 3 feet over the current elevation. The ferry gates will also be adaptable to address projected sea-level rise beyond year 2070.

Funding

WETA is funding the project through a combination of Local, State and Federal sources. The current construction budget is approximately \$65 million and the total project budget including soft costs is approximately \$75 million. The Port’s contribution towards the rehabilitation of Gate E, estimated at \$300,000 as noted above, is fully funded within the Port’s Capital Budget.

CONCLUSION AND NEXT STEPS

After several years of planning and design, environmental review, public review, and permit entitlement, construction of an expanded Downtown San Francisco Ferry Terminal is set to begin later this month. Approval of the Transaction Documents will allow WETA to operate these new facilities, once completed, as they grow their operations into the future, with the expanded Downtown Ferry Terminal serving as the regional hub for ferry service on San Francisco Bay.

RECOMMENDATION

Port staff respectfully requests approval of the Transaction Documents for the Downtown San Francisco Ferry Terminal Expansion Project through authorization of the attached Resolution.

Prepared by: James Hurley, Project Manager
Dan Hodapp, Senior Waterfront Planner

For: Byron Rhett, Deputy Director
Planning and Development

- Exhibit A:** Lease Area
- Exhibit B:** License Area

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

RESOLUTION NO. 17-19

- 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 Downtown San Francisco Ferry Terminal, which is generally located behind and adjacent to the Ferry Building, is within the Port's jurisdiction; and
- WHEREAS, The San Francisco Bay Area Water Emergency Transportation Authority ("WETA") was created by the State of California to develop and operate a regional ferry transit system on San Francisco Bay and to coordinate ferry transit response to regional emergencies; and
- WHEREAS, The Port and WETA have jointly developed plans for the Downtown San Francisco Ferry Terminal Expansion Project ("Project") to improve facilities at the existing Downtown San Francisco Ferry Terminal; and
- WHEREAS, The Project includes construction of two (2) new ferry gates and vessel berthing facilities (new Gates F and G), rehabilitation or replacement of one (1) existing ferry gate and vessel berthing facilities (existing Gate E), pile supported pedestrian circulation areas, amenities such as weather protection canopies, a new pile supported plaza between the Ferry Building and the Agriculture Building for passenger queuing, staging for evacuees in the event of a major emergency, and other Port activities; and
- WHEREAS, WETA and the Federal Transit Administration ("FTA") have prepared a joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR", State Clearing House No. 2011032066) that meets requirements of both National Environmental Policy Act ("NEPA") and CEQA, and FTA's final NEPA approval, in the form of its Record of Decision, was published with the release of the Final EIS/EIR to the public on August 29, 2014, and WETA's Board of Directors certified the Final EIS/EIR for the Project on October 2, 2014; and
- WHEREAS, As part of Resolution No. 16-39 adopted by the Port Commission on October 11, 2016, the Port Commission adopted approval findings under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and certain mitigation measures and a Mitigation Monitoring and Reporting Program ("MMRP"), which Resolution, CEQA Findings, and MMRP are on file with the Port Commission Secretary and are incorporated herein by reference as though fully set forth; and as part of

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WHEREAS, The Port Commission has reviewed the EIS/EIR and hereby finds that since certification of the EIS/EIR, no changes have occurred in the proposed Project or in the circumstances under which the Project would be implemented that would cause new significant impacts or a substantial increase in the severity of impacts identified and analyzed in the EIS/EIR, and that no new information has emerged that would materially change the analysis or conclusions set forth in the EIS/EIR, and that the actions approved herein would not necessitate implementation of additional or considerably different mitigation measures than those identified in the EIS/EIR; and

WHEREAS, Pursuant to Resolution 16-39, the Port Commission Port approved the terms of the (1) Lease Disposition and Development Agreement (“LDDA”), (2) form of Construction Lease No. L-16200 (“Construction Lease”) at the Port Commission meeting of October 11, 2016, copies of which are on file with the Port Commission Secretary; and

WHEREAS, any motion to approve specify that the long-term Lease and License Agreements are those agreements referenced in the LDDA and are subject to all LDDA requirements; and

WHEREAS, The LDDA was executed by the parties in November and December of 2016 and the Construction Lease is expected to be executed by the parties this month, with construction on the Project commencing shortly after execution of the Construction Lease; and

WHEREAS, Port staff and WETA have negotiated the terms of a long-term lease (“Lease”) for generally the waterside portion of the Project and a long-term license (“License”) for generally the landside portion of the Project (the Lease and License are collectively referred to as “Transaction Documents”), as further described in the Memorandum for Agenda Item 11A for the Port Commission meeting of April 11, 2017, copies of which are on file with the Port Commission Secretary; and

WHEREAS, The Transaction Documents are the long-term lease and long-term license referenced in the LDDA and the Construction Lease; and

WHEREAS, The Lease and the License will allow WETA to perform ferry operations after construction of the Project; and

- WHEREAS, The Transaction Documents will be executed by the parties upon completion of the Project and satisfaction or waiver of the conditions set forth in the LDDA and the Construction License; now therefore be it
- RESOLVED, That the Port Commission approves the form and the substance of the Transaction Documents, including all attachments and exhibits thereto, and the transactions and other agreements which such Transaction Documents contemplate, incorporating the material business terms set forth in the Memorandum for Agenda Item 11A for the Port Commission meeting on April 11, 2017; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into the Transaction Documents after completion of the Project and satisfaction or waiver of the conditions to executing the Transaction Documents that are set forth in the LDDA and Construction Lease; and be it further
- RESOLVED, That the Port Commission authorizes the Executive Director to enter into other agreements, encroachment permits, easement agreements, and other related covenants and property documents necessary to implement the transactions contemplated by the Transaction Documents, and to enter into any additions, amendments or other modifications to the Transaction Documents 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 Transaction Documents contemplate 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 other agreements, easement agreements and other related covenants and property documents, and/or additions, amendments or other modifications to the Transaction Documents; 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, escrow instructions, closing documents 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 Transaction Documents, 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 any 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 Transaction Documents, the LDDA, and the Construction Lease.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 11, 2017.

Secretary