

## MEMORANDUM

April 24, 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 the Second Amendment to the Exclusive Negotiation Agreement (“ENA”) between the Port and Forest City Development California, Inc. (“Forest City”) for the Pier 70 Waterfront Site, bordered generally by 20th Street, Michigan Street, 22nd Street, and the San Francisco Bay

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution

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### **Executive Summary**

Forest City is the Port’s development partner for the Pier 70 Waterfront Site mixed use development project. On March 13, 2014, in response to a request by Forest City and pursuant to the terms of the ENA between Forest City and the Port, Port Director Monique Moyer authorized an extension of the prior Performance Date for First Performance Benchmark 1 for Phase 2 of the project related to filing an Environmental Evaluation Application for project review under the California Environmental Quality Act (“EEA”) by nine (9) months from March 10, 2014 to December 10, 2014.

On November 17, 2014, Forest City submitted its EEA application to the Planning Department, fulfilling its First Performance Benchmark for Phase 2 of the project.

This Port Commission item requests approval of a Second Amendment to the ENA, (1) authorizing changes to the Phase 2 milestones of the project consistent with the Port’s prior administrative approval and (2) authorizing the parties to negotiate a different treatment of Port project-related transaction costs, subject to future Port Commission authorization, than previously contemplated in the First Amendment to the ENA.

**THIS PRINT COVERS CALENDAR ITEM NO. 12A**

## **Background**

On May 28, 2013, the Port Commission adopted Resolution 13-20 endorsing the nonbinding term sheet (“Term Sheet”) between the Port and Forest City Development California, Inc. (“Forest City”) for the mixed use development of the Pier 70 Waterfront Site (the “Project”) on 28 acres at Pier 70 (the “Site,” shown on Attachment 1, Exhibit A). The Term Sheet was negotiated pursuant to the Exclusive Negotiating Agreement (“ENA”) between the parties approved by the Port Commission on July 12, 2011 by Resolution 11-49.

On June 11, 2013, the Board of Supervisors approved Resolution 201-13 endorsing the Term Sheet by an 11-0 vote. The Board’s endorsement of the Term Sheet concluded the Phase 1 milestones of the ENA. As described in the October 22, 2013 Port Commission staff report, the parties have used the intervening period to assemble their project teams, examine and pursue interim leasing opportunities for the site, and develop a proposed schedule for Phase 2 milestones (shown in Attachment 1, Exhibit B) required under the ENA.

On January 14, 2014, the Port Commission adopted Resolution 14-03 approving the First Amendment to the ENA (“First Amendment”) describing 1) interim leasing of the Site, 2) treatment of negotiating fees and reimbursement of Port and City transaction costs, 3) a revised schedule of performance for Phase 2 of the project, and 4) limitations on representing the Port’s position in political campaigns.

On June 3, 2014, San Francisco voters approved Proposition B, “Voter Approval for Waterfront Development” (59-41%), requiring voter approval for any increase in heights for property under the jurisdiction of the San Francisco Port Commission. In response to Proposition B, Forest City sought and obtained voter approval for Proposition F on the November 4, 2014 ballot (73-27%).

## **Proposed Second Amendment To Exclusive Negotiating Agreement**

### **Performance Benchmarks**

As described in the March 10, 2015 Port Commission staff report, Forest City has:

- worked with City staff to 1) refine the Waterfront Site land use and urban design plan consistent with the terms of Proposition F; 2) conduct coordinated planning with Port and City staff for adjacent parcels along Illinois Street between 20<sup>th</sup> Street and 22<sup>nd</sup> Street (“Illinois Parcels”); and 3) defined a proposed Pier 70 Special Use District (“Pier 70 SUD”) that will encompass the Waterfront Site and “Illinois Parcels”; and
- conducted stakeholder outreach regarding the revised land use plan, including a presentation at the Central Waterfront Advisory Group on February 18, 2014.

Under the First Amendment to the ENA, Forest City has a 36 month schedule of performance for Phase 2, with some slight variations to the milestones, starting from the

First Performance Benchmark for Phase 2 (the EEA), which at the time of the First Amendment was March 10, 2014. In order to reflect the previously authorized extension of the EEA, the Second Amendment grants Forest City the same 36 month performance schedule for Phase 2, including producing a draft Environmental Impact Report 15 months after the EEA, but starting from December 10, 2014. This change in schedule reflects the time it took Forest City to seek and obtain voter approval of the required height increase for the Waterfront Site.

Subject to eligible force majeure events and extensions that may be granted by the Port, the project is still expected to be entitled by mid- to late 2016.

### **Port Transaction Cost Recovery**

The First Amendment provides that the Port will be reimbursed for Non-Port Transaction Costs including City department staff costs (City Attorney, Office of Economic and Workforce Development, City Planning, San Francisco Public Utilities Commission, and Department of Public Works) and costs for outside economic and engineering consultants through payments made by Forest City as billed by the Port, up to an established cost cap of \$3.5 million. The First Amendment provides the Port will be reimbursed for Port Staff Costs up to a cap of \$1 million, with 3% annual interest – if the project is approved – from project sources after Forest City has been paid from project sources for all of its predevelopment costs and realized an 18% return on these costs.

The Second Amendment authorizes the parties to agree to a different treatment of these costs, subject to subsequent Port Commission approval. Pursuant to the Second Amendment, the parties will document Port Transaction Costs incurred and their agreed treatment. Port staff will negotiate a different treatment of these costs and return to the Port Commission for their review and approval, if appropriate.

### **Recommendation**

Port staff recommends that the Port Commission approve the attached resolution approving the Second Amendment to the ENA as described in this staff report and further detailed in the attachments.

Prepared by: Brad Benson, Director of Special Projects

For: Byron Rhett, Port Deputy Director  
Planning & Development

### **Exhibits**

- A: Waterfront Site
- B: Second Amendment to ENA

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

**RESOLUTION NO. 15-16**

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, The Port owns approximately 28 acres at Pier 70 Waterfront Site, bordered generally by 20th Street, Michigan Street, 22nd Street, and the San Francisco Bay (the "Site"), which is the subject of an Exclusive Negotiating Agreement between Forest City Development California, Inc. ("Developer") and Port approved by the Port Commission by Resolution 11-49 (the "Original ENA"); and
- WHEREAS, With the adoption of Board of Supervisors Resolution 201-13 endorsing the project term sheet ("Term Sheet"), Developer successfully completed Phase 1 of the Original ENA; and
- WHEREAS, The Port Commission approved Resolution 14-03 on January 10, 2014, establishing new milestones for the project, and on March 13, 2014, the Port Director authorized an extension of the filing date for the project environmental evaluation application, from which date all other milestones in Phase 2 are measured; now, therefore, be it
- RESOLVED, That the Port Commission authorizes amending the ENA as described in the staff report accompanying this resolution and shown in Attachment 1, including the following: (1) thirty six (36) months for Phase 2 milestones measured from December 10, 2014, rather than March 10, 2014; and (2) flexibility for the parties to negotiate a different treatment of negotiating fees and reimbursement of Port Costs and Non-Port Costs, subject to subsequent Port Commission approval; and be it further
- RESOLVED, That the Port Commission reserves the right, if exclusive negotiations with Developer are unsuccessful and do not lead to approval of Transaction Documents, to undertake other efforts such as issuing a new request for proposals, at the Port Commission's sole discretion; and be it further
- RESOLVED, That the Port Commission's approval of the ENA amendment, and direction to Port staff does not commit the Port Commission or the City to approval of final transaction documents or implementation of the Project or grant any entitlements to Developer; and be it further

RESOLVED, That the Port Commission will not take any discretionary actions committing the Port to implement the Project, and the provisions of the Term Sheet are not intended and will not become contractually binding on the Port unless and until the Port Commission and the Planning Commission have reviewed and considered environmental documentation prepared in compliance with CEQA for the Project and the Project has been approved.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 28, 2015.***

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Secretary