

MARCH 8, 2011

**EXHIBIT B
PORT OF SAN FRANCISCO
RETAIL LEASING POLICY**

Background

The Port of San Francisco ("Port") is a public enterprise committed to promoting a balance of maritime, recreational, industrial, transportation, public access and commercial activities on a self-supporting basis through appropriate management and development of the waterfront for the benefit of the public.

General Policy

The Port's Retail Leasing Policy provides entrepreneurs that wish to develop and operate a business along the San Francisco waterfront an opportunity to bid on retail lease opportunities, as described in this policy. This policy also permits the Port and its successful, existing retail operators to enter into new leases under specified conditions. Retail opportunities will be available only at locations deemed appropriate for retail activity in accordance with the Port's Waterfront Land Use Plan, as it may be amended from time to time.

Businesses on Port property include uses such as restaurants, galleries, ship chandleries, souvenir shops, food and beverage sales, clothing and apparel shops, on-going special event venues and visitor-serving excursion operators. The Port enjoys a diverse mix of retail uses that serve the public and are consistent with the Burton Act and the public trust for navigation, commerce and fisheries.

Lease revenues are essential for funding the Port's operating and capital budget, which support the Port's public trust maritime mission. The Port's retail tenancies also provide business opportunities for local merchants and employment opportunities for San Francisco residents.

Scope of Retail Leasing Policy

This policy applies to both maritime and non-maritime retail tenancies. This policy does not apply to retail tenancies in mixed-use developments on Port properties that have been master- or ground-leased by the Port Commission.

Competitive Solicitation

Port leases that are subject to approval by the San Francisco Board of Supervisors are subject to the competitive bidding policy provided in San Francisco Administrative Code Section 2.6-1:

SEC. 2.6-1. - POLICY RELATIVE TO APPROVAL OF LEASE AND CONCESSION AGREEMENTS. Whenever in accordance with the provisions of the Charter, any officer, board or commission of the City and County submits a proposed lease or agreement for concession privileges to be operated in or upon any property or facility of the City and County to the Board of Supervisors for its approval or disapproval, except where the Board of Supervisors finds that the bidding procedures or insurance requirements are impractical or impossible, it shall be the policy of said board (1) to approve only such proposals as have been awarded to the highest responsible bidder in accordance with competitive bidding procedures, and (2) to approve only

such leases as require the lessee to provide appropriate insurance naming the City as an additional insured in a form and amount approved by the Office of Risk Management.

When conducting a competitive solicitation, Port staff will:

1. Describe a range of desired uses and establish criteria for qualified responses to the competitive solicitation;
2. Provide public notice of the competitive solicitation through the Port's website, the City's designated local newspaper for notices, and community-based media;
3. Invite local business enterprises to participate, in coordination with the Human Rights Commission and Office of Contract Management;
4. Hold a pre-submittal conference;
5. Evaluate responses and award retail leasing opportunities based on criteria specified in the solicitation package; and
6. Present each lease with a successful respondent to the Port Commission and the Board of Supervisors (if required) for approval.

Non-Retail Tenants on Port Property Seeking to Become Retail Tenants

Occasionally, existing Port non-retail tenants express an interest in opening retail businesses within or adjacent to their premises. The Port usually enters into non-retail leases without competitive bidding, based on the Port Commission's approved parameter rental rate policy and a finding, upon public hearing of the Port Commission, that bidding office, warehouse, open land or other (non-retail) leases is impractical.

While the Port understands that many of its tenants may have the business acumen and financial wherewithal to open retail businesses, commencing such a tenancy without bidding potentially conflicts with City and Port policy. Port staff will entertain such proposals only when the proposed use is consistent with the Port's Waterfront Land Use Plan and the Port Commission first approves a resolution authorizing Port staff to enter into a sole source negotiation for a retail use.

Existing Retail Tenants – Renewal Prerequisites

Existing retail tenants often request a lease renewal when a lease is expiring or the tenant desires to make capital improvements and amortize its investment over a period longer than the existing lease term. Port staff will evaluate renewals and extension requests on a case-by-case basis based on proposed improvements, capital costs, the Port's future plans for the site, and tenant history. Tenants must be in compliance with the Port's **Tenant in Good Standing Policy** to be eligible for consideration for a new or extended lease.

Changes in or intensification of use must be consistent with the Port's Waterfront Land Use Plan, San Francisco Bay Conservation and Development Commission (BCDC) requirements and other regulatory limitations applicable to the site, including compliance with the California Environmental Quality Act. The Port, in its sole discretion, may determine that proposed changes in or alterations of use would trigger the need for a competitive solicitation.

Port staff may negotiate with an existing retail tenant in good standing under the following circumstances:

1. For a short term lease extension, not to exceed 3-5 years, during any period when the National Bureau of Economic Research has determined that the U.S. economy is in a recession or other data support a finding by the Port Commission that the San Francisco Bay Area is experiencing a commercial real estate downturn. Under these conditions, the renewals and extensions will adjust base and percentage rents to then-current market-rates as adopted by the Port Commission.
2. Where the tenant proposes to make capital improvements, a lease extension or renewal may have a term of the greater of 10 years or the time required to amortize planned improvements (using the term of the tenant's financing or, if not financed, straight line depreciation for qualified leasehold improvement property (currently 15 years) if the tenant meets the Port's criteria for a direct negotiation exception (described below). In exercising this extension option, the Port Commission will make a finding at a public hearing that the proposed capital improvements to Port property serve a public purpose.
3. If a tenant fails to meet the Port's criteria for a direct negotiation exception, a lease extension or renewal may have a term of up to 5 years without any additional extension option, if the Port has conducted a Request for Interest and received no expressions of interest from qualified parties.

In exercising each of these renewal or extension options, the Port Commission will make a finding that it is impractical to bid the subject lease, consistent with the provisions of S.F. Administrative Code Section 2.6-1.

Direct Negotiation Exception

Before entertaining a direct negotiation request for a lease renewal or extension, Port staff will:

1. Determine if the tenant is in compliance with the **Tenant In Good Standing Policy**;
2. Evaluate whether the tenant is the most suitable economic tenant based on reasonably projected sales and revenues to the Port, using comparable retail rents on a square foot basis; and
3. Request a written business plan and evaluate the plan to determine cost and value of capital improvements to Port property, viability of revenue projections including historical audited financial statements and/or the last 3 years' tax returns and use of property.

The Port will not enter into direct negotiations with an existing tenant that has paid average rent per square foot to the Port (base rent and percentage rent) in the three (3) year period immediately preceding the request that is less than the average of rents per square foot for like retail tenants at similar locations on Port property (e.g., with a tenant that generates below-average rents).

Capital Improvement Requirements for Direct Negotiations

The Tenant must make a substantial capital investment approved by the Port, according to the following conditions:

- Improvements may include substructure improvements, improvements to the core and shell of the lease premises, Americans with Disabilities Act access to the facilities, upgrades to utilities serving the premises or improvements to surrounding Port property;
- The Tenant will quantify the cost of the proposed capital improvement as a percentage of leasehold value, with actual expenditures subject to verification pursuant to lease terms;
- The proposed capital improvement must be sufficient to allow Port staff to make a finding that the improvement serves a public purpose; and
- The Tenant must demonstrate the financial capacity to pay for the proposed capital improvement and demonstrate that such improvement can be depreciated within the proposed lease term.

The Tenant will not qualify for rent credits for proposed capital improvements that serve as a basis for direct negotiations.

Port staff will evaluate facility conditions and may propose additional facility investments that would justify a new lease with the existing tenant.

Lease Requirements

1. The Tenant will pay base and percentage rent that is market rent for comparable uses and locations on gross retail income, retail sales and concession revenues, including subtenant rents and sales.
2. The Port reserves the right to approve all sub-tenancies, and all sublease revenues will be separately reported to the Port in a customary and pre-approved manner.
3. Base rent will be based on available industry comparables, site history, best site use and percentage rent history. Base rent will be adjusted annually (either as a fixed percentage increase or as a CPI percentage increase) with no provision for rent reduction or rebate.
4. The Tenant will disclose all gross revenues and related expenses and grant the Port the right to conduct periodic audits and obtain related financial reports.
5. Depending on the type of proposed capital improvements, the new term of the lease may include a construction period, with a deadline to complete required tenant improvements.
6. The Tenant will provide a tenant guarantee and a contractor's surety bond or other financial assurance approved by the Port in its sole discretion in an amount approved by the City's Risk Manager. If the Tenant fails to obtain the approval, permits or financing

of the proposed improvements in the agreed upon time frame, or fails to complete the project in any way, the Tenant may be subject to liquidated damages, lease default or other remedies as provided by the lease.

Sale of Business/Lease, Transfer or Assignment

Subject leases will include provisions that are part of the Port Commission's approved boilerplate lease, as it may be amended from time to time, including but not limited to:

1. The Port shall participate in a portion of the proceeds from the sale, transfer, assignment, restructuring, and refinancing of leaseholds.
2. The proposed transferee shall provide audited financial statements and the Port shall have the right to request a written business plan supported by market analysis.
3. The Port shall approve all ownership and capital changes at its reasonable discretion. The proposed transferee must demonstrate expertise in operating the business and maintaining the asset.
4. The proposed transferee or assignee shall jointly assume any structural, substructure repair/maintenance or seismic upgrade responsibilities that are the obligation of the seller, transferor or assignor. Upon request for the Port's consent to the transfer, sale or assignment of its lease, the Tenant shall provide a written report prepared by a Port-approved engineer detailing the current condition of the physical assets, including any deferred repairs or maintenance along with a remedial plan for repairs as a condition to the Port's consent.
5. All maintenance and/or construction work required in the original lease must be completed, with all permits closed out, prior to the request for the Port's consent, or the transfer agreement will address the obligations of the transferee to complete such work.