

MEMORANDUM

May 20, 2010

TO: MEMBERS, PORT COMMISSION
Hon. Rodney Fong, President
Hon. Stephanie Shakofsky, Vice President
Hon. Kimberly Brandon
Hon. Michael Hardeman
Hon. Ann Lazarus

FROM: Monique Moyer
Executive Director

SUBJECT: Request Authorization to Enter into an Exclusive Negotiation Agreement with Seawall Lot 337 Associates, LLC for the Lease and Development of Seawall Lot 337 and Pier 48 bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay

DIRECTOR'S RECOMMENDATION: Approve Exclusive Negotiation Agreement with Seawall Lot 337 Associates, LLC

EXECUTIVE SUMMARY

This staff report requests authorization to enter into an Exclusive Negotiation Agreement (“ENA”) for the mixed use development of Seawall Lot (SWL) 337 and the adjacent Pier 48 (Site as shown in Exhibit A) with Seawall Lot 337 Associates LLC (“SWL 337 LLC” or “Developer”).

During the exclusive negotiating period, Staff intends to work with the Developer to further define the proposed development concept and develop a feasible economic structure in order to ultimately deliver a successful project, i.e. one which will provide sufficient returns to justify private investment; responds to the economic needs of the Port; and meets the public objectives of the City and its residents. The project differs from previous Port projects because of the scale of the opportunity site and the master planning efforts that must occur prior to development. Additionally, the Developer is proceeding in an economic climate that poses extraordinary uncertainties regarding development markets and financing. Based on these factors, Port staff has structured ENA business terms that provide flexibility and reduce front end investment for the Developer, allowing it to proceed with site due diligence and provide flexible benchmarks to address the needs of a master planned project.

BACKGROUND

In October 2007, the San Francisco Port Commission initiated a two-phase developer solicitation process for SWL 337, a 16 acre Port waterfront site located along the south side of China Basin Channel, generally bounded by Third and Mission Rock Streets, and Terry Francois Boulevard; and Pier 48, a 212,500 square foot warehouse complex adjacent to SWL 337. Currently SWL 337 is used as a surface parking lot under lease to a San Francisco Giants affiliate. Pier 48 uses include, among other things, ballpark overflow parking in the northern shed and storage for the Department of Elections in the southern shed. All of these current uses are on short term leases in anticipation of development.

On May 12, 2009, the Port Commission awarded the SWL 337 development opportunity to SWL 337 LLC and authorized exclusive negotiations for a mixed used development project at SWL 337 and Pier 48 with SWL 337 LLC subject to the Financial and Negotiating Principles attached to Resolution No. 09-26.¹

On December 7, 2009, the Developer informed the Port of changes to its development entity resulting from unforeseen impacts of the economic recession. The revised entity is comprised of the following partners:

San Francisco Giants
The Cordish Company
Farallon Capital Management, LLC
Wilson Meany Sullivan

EXCLUSIVE NEGOTIATIONS PROCESS

The Port Commission, by approving the ENA is not approving the project, nor committing either party to the project.

Since the Port Commission's award of the development opportunity in 2009, Port staff and Developer have negotiated the terms of an ENA which, as called for in the RFP, contains time and performance benchmarks, including provisions for termination for non-performance, and provides for Developer to fund Port's costs associated with project planning and review, subject to an agreed budget. The ENA anticipates a two phase process: phase 1 being the period for the Developer to craft a Revised Proposal based on extensive due diligence and community input and phase 2 being the entitlement period to undertake environmental review and gain concurrence of all appropriate regulatory partners.

¹ The solicitation process and its results were discussed in detail in the Staff Memoranda to the San Francisco Port Commission dated February 26, 2008, April 22, 2008, February 10, 2009 and May 12, 2009, which are incorporated by reference. These memoranda are available on the Port's website at http://www.sfport.com/site/port_meeting.asp?id=24923

During the ENA period, the following events are anticipated to occur:

- Developer will commence its due diligence review of the site.
- Parties will review and refine the proposed development project.
- Parties will negotiate a term sheet for Port Commission and Board of Supervisors endorsement.
- Port will determine whether the master plan justifies a long term lease for Pier 48.
- Developer will complete the project approval processes and any required environmental review.
- Developer will complete due diligence review of the site, finalize financial projections and complete preliminary site plans, including elevations and renderings for the site.
- Developer will secure financial commitments for the proposed project from lenders and/or equity sources and preliminary sublease commitments from potential vertical developers and proposed anchor tenants.
- Developer will negotiate a lease disposition and development agreement (LDDA), leases for Pier 48 and SWL 337 and related documents for the lease and development of the site incorporating specific terms, including the Port's and Developer's respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule. These leases are subject to Port Commission and Board of Supervisors approval following environmental review.

The ENA is the agreement between the parties governing how the required agreements will be negotiated. It specifies time frames and milestones for Port Commission, Planning Commission and Board of Supervisors review and approval. It also specifies negotiation fees specifically structured in accordance with the current economic climate and recovery for Port project costs as described in the following table:

Term	<u>Phase 1</u> : 24 months w/ one 6 month extension <u>Phase 2</u> : 36 months w/ two 6 month extensions
Negotiating Fee	<u>Phase 1</u> : \$100,000 annually deferred until lease is fully entitled <u>Phase 2</u> : \$150,000 annually deferred until lease is fully entitled Portions of the phase 2 fee due in cash if Developer does not meet initial performance dates for benchmarks: <ul style="list-style-type: none"> • \$50,000 in year 2 of phase 2 • \$100,000 in year 3 of phase 2 • \$150,000 in year 4 of phase 2 (extension period) Negotiating Fee for phase 2 extension payable in cash
Extension Fee	<u>Phase 1</u> : \$50,000 for 6 month extension payable in cash <u>Phase 2</u> : \$50,000 for each 6 month extension payable in cash

Cost Reimbursement	<p><u>Phase 1:</u> 3rd Party Costs: Parties shall agree on a budget. Developer to deposit \$50,000 upon execution of ENA that the Port will draw upon as needed; Developer to replenish deposit when needed Staff Costs: Minimum \$100,000 of Port costs reimbursed upon successful completion of Phase 1 to be paid to Port or deferred on reasonable terms at Developer's election <u>Phase 2:</u> To be negotiated in phase 1 Term Sheet negotiations</p>
Performance Benchmarks	<p><u>Phase 1 Benchmarks:</u></p> <ol style="list-style-type: none"> 1. Agree on Phase 1 Transaction Costs Budget 2. Submit Developer Formation Documents 3. Submit Public Relations Program 4. Submit Revised Proposal Concept 5. Submit Revised Proposal 6. Submit Community Outreach Program 7. Submit Public Trust Consistency Proposal 8. Submit Regulatory Approval Plan 9. Submit Term Sheet 10. Obtain Port Commission Endorsement of Revised Proposal and Term Sheet 11. Submit Draft Report to Obtain Fiscal Feasibility Endorsement from Board 12. Obtain Board Endorsement of Term Sheet <p><u>Phase 2 Benchmarks:</u></p> <ol style="list-style-type: none"> 13. Agree on Phase 2 Transaction Costs Budget 14. Submit EIR Initial Study Application 15. Publication of EIR Initial Study 16. Publication of Draft EIR 17. Planning Commission Certification of Final EIR 18. Planning Commission Approval of Required Rezoning 19. Reach Agreement on Transaction Documents 20. Obtain Public Trust Consistency Determination 21. Obtain Port Commission Approvals 22. Obtain Board Approval of Lease 23. Obtain Regulatory Approvals 24. Complete Due Diligence Investigation <p>Developer must be diligently pursuing the benchmarks in order to present Port with requests to extend the benchmark performance deadlines. However, Developer may not extend dates beyond the period defined under "Term" above, including noted extensions.</p>
Regulatory Approvals	<p>Developer is responsible for obtaining all regulatory approvals, at its cost.</p>

Project Materials	Developer to assign to Port all studies, applications, reports, permits, plans, drawings and similar non-proprietary work and materials relating to the project prepared by project consultants for the Developer.
Community Outreach Program	Developer must present to the Port for its approval a strategy for engagements with the public pertaining to the project and plans for conducting outreach to various community groups and stakeholders in the vicinity of the project, for educating the public about the project, and for informing the Board and other regulatory agencies about the project.
Incurable Defaults	The following events will cause termination of the ENA without an opportunity to cure: <ul style="list-style-type: none"> • Failure to agree on terms and conditions of the Term Sheet within the time allowed • Failure to obtain Port or Board endorsement resolution within the time allowed • Failure to execute the LDDA within the time allowed • Developer voluntarily withdraws or abandons the project • Developer assigns the ENA without Port consent • Developer initiates ballot measure or is in violation of the campaign contributions law

RECOMMENDATION

Port staff recommends approval of the ENA for a mixed-use development project at SWL 337 and Pier 48 with SWL 337 Associates, LLC subject to the Financial and Negotiating Principles.

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Jonathan Stern, Assistant Deputy Director, Waterfront Development

For: Byron Rhett, Deputy Director, Planning & Development

Exhibit
A. Location Map

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 10-32**

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 16 acres at Seawall Lot 337 (SWL 337) and Pier 48, bounded generally by China Basin, the San Francisco Bay, Mission Rock Street and Third Street, including China Basin Park and a portion of the existing Terry Francois, Jr. Blvd., which together provide short-term parking, special events and ingress and egress serving visitors to the waterfront; and

WHEREAS, The Port Commission and community have invested significant efforts to plan for the development of SWL 337, which included an RFQ/RFP process to select a qualified development partner. The Port Commission previously awarded to Seawall Lot 337 Associates, LLC the opportunity to negotiate for the development of SWL 337 and Pier 48 as a mixed-use development project, and authorized Port staff to proceed with exclusive negotiations with Developer for a complete master plan proposal for the site, and directed staff to negotiate an Exclusive Negotiation Agreement (ENA) that includes performance benchmarks consistent with the Financial and Negotiating Principles, subject to the further approval of the Port Commission all as set forth in Resolution Nos. 08-25, 08-26 and 09-26, which are incorporated by this reference; now therefore be it

RESOLVED, That the Port Commission authorizes the Executive Director or her designee to execute the ENA and any additions, amendments or other modifications thereto that are necessary and advisable to complete the ENA consistent with the terms and conditions set forth in the Staff Memorandum and in a form approved by the City Attorney; 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 a development agreement, leases and related 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 approval of the ENA does not commit the Port Commission to approval of final leases, a lease disposition and development agreement, or related documents, and that the Port Commission will not take any discretionary actions committing it to the project until it has reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act (CEQA).

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 25, 2010.

Secretary