

MEMORANDUM

February 18, 2016

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

FROM: Elaine Forbes
Interim Executive Director

SUBJECT: Request authorization to enter into an Exclusive Negotiation Agreement with DeSilva Gates Construction Company and ProVen Management to negotiate a lease for the construction and operation of a recycled content asphalt batch plant at Seawall Lot 352 (located south of the Islais Creek Channel and east of Amador Street)

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

Port staff requests authorization to enter into an Exclusive Negotiation Agreement (“ENA”) with DeSilva Gates Construction Company, a California Limited Partnership (“DeSilva Gates”), and Proven Management, a California Corporation (“ProVen;” together with DeSilva Gates, “Developers”), to negotiate a lease for the construction and operation of a recycled content asphalt batch plant at Seawall Lot 352.

This request is in follow up to direction by the Port Commission through Resolution No. 15-32, which selected DeSilva Gates and ProVen, along with their co-respondent, Central Concrete Supply (“Central”), as most responsive to the San Francisco Public Works (“Public Works”) Request for Proposal (“RFP”) for this opportunity. Through Resolution 15-32, the Commission directed Port staff to commence negotiation of an ENA with DeSilva Gates and ProVen.

During the ENA period, Port staff will work with DeSilva Gates and ProVen, in consultation with Public Works, to refine the proposed development concept and negotiate a lease. The initial ENA term will be for a one-year period, with one optional six-month extension, to develop project plans, negotiate terms of a lease, and secure

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needed approvals, including, but not limited to, Board of Supervisors approval of a long-term supply contract for asphalt and concrete among Public Works, Central, DeSilva Gates, and ProVen. The ENA requires DeSilva Gates and ProVen to pay the Port a negotiation fee of \$20,000, and to fund all City Attorney, Planning, consultant and other third party costs to the Port during this period. Additionally, the ENA requires DeSilva Gates and ProVen to form a joint venture, NewCo, (DeSilva Gates and ProVen collectively, or their joint venture NewCo, as the “Developers”) with which the Port will enter the project lease.

BACKGROUND

Site Description and Permitted Uses

Seawall Lot (“SWL”) 352 is the site (the “Site”) for this project — a 4.7 acre, roughly rectangular lot, curving as it fronts Amador Street. The Site is south of the Islais Creek Channel and north of Pier 94 (see Exhibit A). Hanson Aggregates is to the north of the Site. It includes an easement along the abutting property line, allowing for the possibility of a conveyance system to move goods from the wharf at Pier 94 to SWL 352, should production materials come by water.

Moving forward with this opportunity furthers the Port’s Strategic Plan, presented to the Port Commission on February 9, 2016. Specifically, this project is consistent with the following Strategic Plan goals:

- Renewal – Create a Maritime Eco-Industrial Strategy for southern waterfront lands from Pier 80 to Pier 96 to maintain a core area for maritime cargo and industrial uses that are designed and managed compatibly with the Blue Greenway open space network.
- Livability – Sustain construction material industry operations at the Port, including bulk aggregate cargo shipping, concrete and asphalt batch plants, using state-of-the-art technologies to reduce air emissions, promote reuse and recycling of materials.
- Sustainability – Sustain construction material industry operations at the Port, including bulk aggregate cargo shipping, concrete and asphalt batch plants, using state-of-the-art technologies to reduce air emissions, promote reuse and recycling of materials.

The Site has a foundation but is currently unpaved. It is leased periodically on a short term basis as laydown space for construction industry tenants.

Operation of an asphalt batch plant falls within the acceptable uses for SWL 352 listed in the Port’s Waterfront Land Use Plan. This lot is subject to the common law public trust, as well as to the terms and conditions of the Burton Act, through which the State of California transferred the Port to the City (collectively, the “public trust”).

Formation of NewCo and Developers’ Financial Capacity

As a part of their successful response to the RFP, Developers asserted that they would form a single entity, temporarily identified as “NewCo”, for the purposes of leasing with the Port and entering into a long-term asphalt supply contract with Public Works. The

Port Commission's approval action of September 22, 2015 anticipated (but did not require) that DeSilva Gates and ProVen would have formed NewCo and that Port staff would have fully vetted that entity by the time Port staff would seek approval to enter into an ENA.

In the interim, DeSilva Gates and ProVen requested that the formation and vetting of NewCo be allowed to take place subsequent to entry into the ENA, but prior to execution of the lease with the Port. Port staff have accommodated this request, and made the formation and validation of NewCo a milestone in the ENA, and a necessary precursor to entry into a lease with the Port.

EXCLUSIVE NEGOTIATIONS

Staff has negotiated an ENA setting forth time and performance benchmarks governing the proposed exclusive negotiations, including provisions for time extensions to perform under certain specified circumstances and termination for non-performance. The ENA also establishes the timeframes and milestones for required Port Commission and Planning Commission action, and specifies negotiation fees payable to Port and recovery of Port's costs associated with the proposed Development.

During the ENA period:

- Developers will commence and complete its due diligence review of the Site.
- Developers will conduct community outreach to stakeholders.
- Developers will complete formation of the joint venture with which the Port will enter into a lease, and have the capitalization and financial backing of the newly formed entity reviewed and approved by Port staff.
- Developers will complete any required environmental review and required regulatory approvals.
- Public Works, in consultation with the Port, will negotiate long-term supply contracts with both Developers and Central. These contracts are subject to Board approval.
- The Port and Developers will negotiate a lease and related documents including the Port's and Developer's respective responsibilities, economic parameters, development standards and requirements, and a performance schedule.

The lease is subject to the Port Commission's approval following the completion of environmental review. Under the terms of the ENA, final lease approval will be contingent upon Board approval of long term supply contracts between Public Works and both Developers and Central.

The Port Commission, in approving the ENA, is not approving a lease, nor committing any party to a project. Rather, the ENA establishes the parameters to negotiate a possible lease with associated development at the Site.

SUMMARY OF ENA TERMS

Fee, Term, and Extensions

For the right to commit Port to negotiate exclusively with Developers, the Port imposes a negotiating fee of \$20,000 for the initial term of one-year. Developers can extend the term by six-months subject to a \$20,000 fee. Developers will pay \$5,000 of the initial term fee upon Commission approval of the ENA.

Transaction Costs

The ENA provides for Developers to fund Port's costs (excluding line staff time) associated with project planning, review and negotiation of transaction documents, including City Attorney, Planning, consultant, and other third party costs. Upon execution of the ENA, Developers will provide an advance of \$45,000 to cover Port's anticipated transaction costs.

Performance Benchmarks

Exhibit B attached to this Staff Report shows the performance benchmarks and schedules included in the ENA. The ENA authorizes the Executive Director or his or her designee, to waive or extend the times established for attaining the specified performance benchmarks, including the right to condition such waiver or extension on additional terms and conditions or approval from the Port Commission in its sole discretion.

Regulatory Approvals

Developers are responsible for obtaining all regulatory approvals in collaboration with the Port, at Developers' sole cost.

Project Materials

Developers will assign to Port all studies, applications, reports, permits, plans, drawings and similar non-proprietary work and materials relating to the proposed development prepared by its consultants, if the ENA is terminated.

RECOMMENDATION

Port staff recommends approval of the ENA for the proposed development at the Site with DeSilva Gates Construction Company and ProVen Management.

Prepared by: Daley Dunham
Special Projects Manager
For: Brad Benson
Director of Special Projects

Exhibits: A. Site Map
B. Performance Benchmarks

Exhibit A
Site Plan

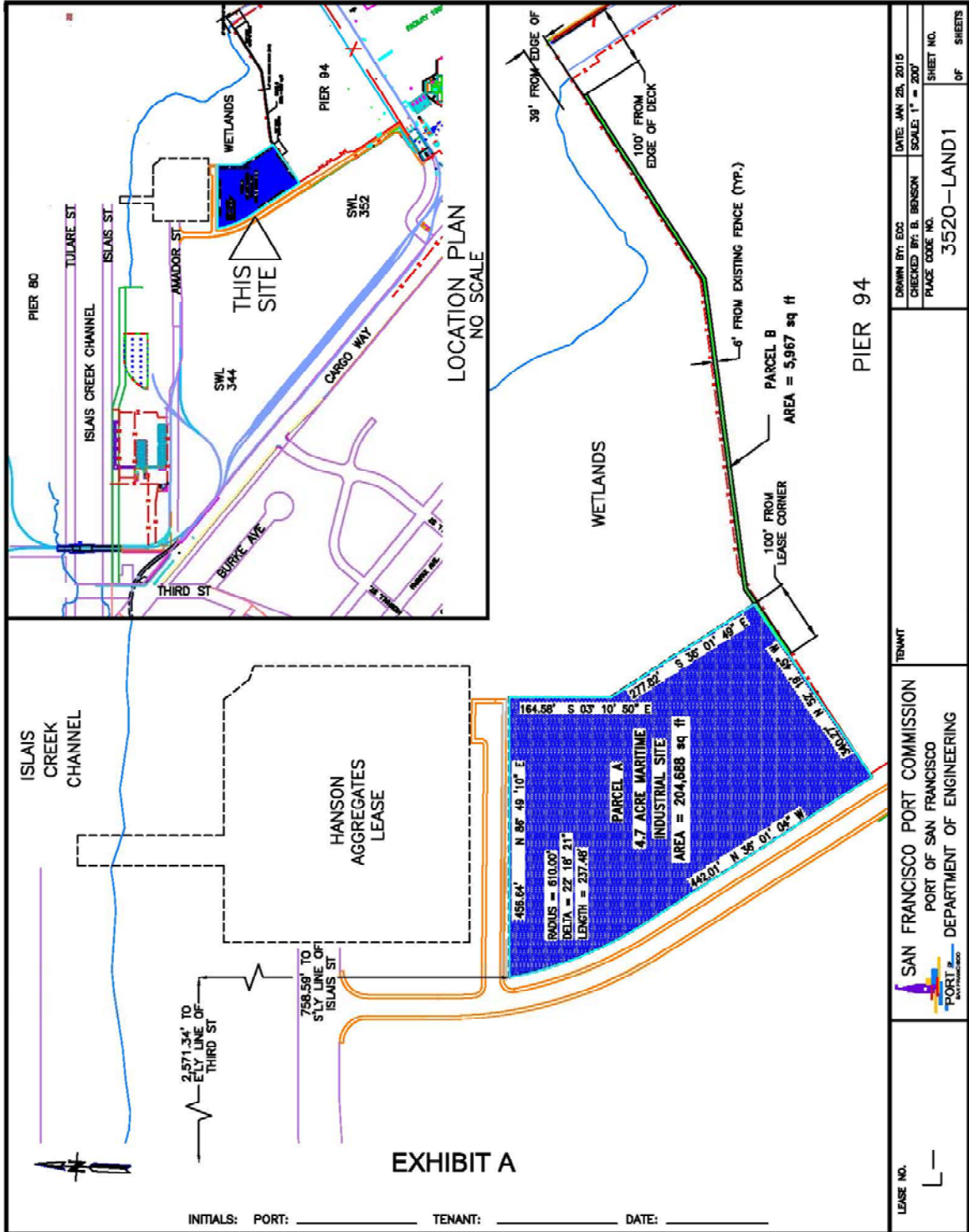


EXHIBIT B
ENA Performance Benchmarks

Performance Benchmarks	Time for Performance (following Commission approval)
1. <u>Due Diligence Investigation:</u> DeSilva Gates and ProVen (“Developers”) must complete its due diligence investigation of the Site, including, but not limited to, surveys, title, environmental site assessment, field measurements, samples, borings, soil and geotechnical analysis, and utility availability	60 Days
2. <u>CEQA Environmental Evaluation:</u> Developers to submit the environmental evaluation application for the proposed development with a timeline for completion of environmental review	60 Days
3. <u>Community Outreach and Southern Waterfront Beautification:</u> Developers complete Community Outreach and Southern Waterfront Beautification Plans	60 Days
4. <u>Environmental Sustainability:</u> Developers complete Environmental Sustainability Plan in coordination with the Port	120 Days
5. <u>Economic Terms:</u> Parties reach agreement on lease terms with the Port and on long term supply contracts with San Francisco Public Works	6 Months
6. <u>Final Form:</u> Parties agree on final form of lease and long term supply contracts	9 Months
7. <u>Developer Formation Documents:</u> DeSilva Gates and ProVen to form joint venture NewCo and provide Port with all formation and financial documents for Port certification.	9 Months
8. Port Commission adoption of CEQA Findings and approval of final Transaction Documents (contingent upon Board approval of supply contracts)	10 Months
9. Board of Supervisors’ approval of long term supply contracts with San Francisco Public Works	1 Year

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

RESOLUTION NO. 16-09

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, On February 10, 2015, through Resolution 15-07, the Port Commission authorized San Francisco Public Works (“SFPW”), in consultation with Port staff, to offer the opportunity for lease and operation of an asphalt and concrete batching plant (the “Opportunity”) at Seawall Lot 352 (“SWL 352”) and long-term supply contracts for asphalt and concrete for City-sponsored projects through a competitive solicitation process; and

WHEREAS, SWL 352 (the “Site”) is a 4.7 acre, roughly rectangular lot, curving as it fronts Amador Street north of Pier 94 and south of the Islais Creek Channel, and including an easement along the abutting property line, allowing for the possibility of a conveyance system to move goods from the wharf at Pier 94 to SWL 352, should production materials come by water; and

WHEREAS, On April 11, 2015, SFPW issued a Request for Qualifications / Proposal (“RFQ/P”) for the Opportunity, and on June 16, 2015, SFPW received four proposals; and

WHEREAS, On September 22, 2015, the Port Commission, through Resolution No. 15-32, selected DeSilva Gates and ProVen, along with their co-respondent, Central Concrete Supply (“Central”), as the most responsive respondents to the RFQ/P, and directed Port staff to commence negotiations of the terms of an Exclusive Negotiation Agreement (“ENA”) with DeSilva Gates and ProVen; and

WHEREAS, Port staff and DeSilva Gates and ProVen have agreed on terms of an ENA that will allow parties to commence negotiations over a lease at the Site; and

WHEREAS, Key terms and conditions of the ENA include, in summary: (i) a \$20,000 negotiation fee for the one-year initial term, (ii) one six-month extension option subject to a \$20,000 extension fee, (iii) DeSilva Gates and ProVen being responsible for all of Port’s third-party transaction costs related to the development of the Site, including environmental review, City Attorney costs, consultants or other costs that are not attributable to Port line staff, (iv) DeSilva Gates and ProVen being responsible for obtaining all regulatory approvals, (v) assignment to Port of all project studies, applications, reports, permits, plans, drawings, and similar non-proprietary work and materials prepared by its consultants upon termination of the

ENA, and (vi) the effectiveness of the lease being conditioned on Board of Supervisors approval of a long-term supply contracts of asphalt and concrete among SFPW, Central, DeSilva Gates and ProVen; and

WHEREAS, The Port Commission has reviewed Port staff recommendations set forth in the staff report accompanying this resolution, and has determined that the Port should enter into the ENA with DeSilva Gates and ProVen; now, therefore, be it

RESOLVED, That the Port Commission authorizes the Executive Director of the Port (“Executive Director”) or his 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 this resolution and the Staff Report accompanying this resolution and in a form approved by the City Attorney; and, be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director or his or her designee, to waive or extend the times established in the ENA for attaining the specified performance benchmarks attached to the Staff Memorandum accompanying this resolution as Exhibit B, including the right to condition such waiver or extension on additional terms and conditions or approval from the Port Commission in its sole discretion; and be it further

RESOLVED, That the Port Commission reserves the right, if negotiations with DeSilva Gates and ProVen are unsuccessful and do not lead to approval of a lease and related documents, or if the ENA is terminated before expiration of its term, to undertake other efforts, which may include, but is not limited to, selecting a developer/tenant by any other means, or issuing another solicitation, all in the Port Commission’s sole discretion; and, be it further

RESOLVED, That entering into the ENA with DeSilva Gates and ProVen begins a process of refining the scope of the proposed development for the Site, and that DeSilva Gates and ProVen’s proposal will evolve through the public review process, all leading to a final development proposal to be submitted to the Port Commission for review and approval; and, be it further

RESOLVED, That the ENA does not commit the Port Commission to approval of any specific development concept or project proposal, nor does the ENA foreclose the possibility of alternative development concepts, mitigation measures, or deciding not to grant entitlements or approve the lease and development of the proposed concept; and, be it further

RESOLVED, That entering into the ENA does not commit the Port Commission to approval of a final lease or related documents and that the Port Commission shall not take any discretionary actions committing it to the proposed development until it has reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 23, 2016.

Secretary