

MEMORANDUM

September 21, 2018

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request approval of the First Amendment to the Exclusive Negotiation Agreement with TZK Broadway, LLC, for a proposed development of a 180-200 room hotel, a dinner-theater, a 14,000-square-foot public open space, and ancillary uses at Seawall Lots 323/324 and portions of unimproved Vallejo and Davis Street right-of-ways on the west side of The Embarcadero at Vallejo Street

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

TZK Broadway, LLC, (the "Developer") and the Port entered into an Exclusive Negotiation Agreement dated September 10, 2015 (the "ENA") for the Developer to refine its design concept and negotiate lease terms for Seawall Lots 323/324 and portions of unimproved Vallejo and Davis Street right-of-ways on the west side of The Embarcadero at Vallejo Street, (the "Site") shown on **Exhibit "A," Site Map**. The ENA includes a one-year initial term with four six-month extension options the Developer can exercise only if (a) the Port Executive Director finds the Developer is making progress to attain the ENA performance benchmarks, (b) the Developer provides written notice and pays the required extension fee, and (c) there is no event of default under the ENA. Port staff confirms that the Developer has attained many of the performance benchmarks set forth in the ENA and is making progress on the remaining benchmarks.

The ENA's initial term commenced on November 5, 2015, the date the Port Executive Director executed the ENA, and was to end on November 4, 2016 if not extended as

allowed under the extension options provided in the ENA. The Developer has exercised its four, six-month extension options, and the ENA will expire on November 4, 2018 unless the Port Commission authorizes additional extensions.

From November 2015 to the present, the Developer attained many of the ENA key benchmarks, amongst which are the Developer's receipt of endorsement of the Term Sheet from the Port Commission and the Board of Supervisors, its submission of the project description to commence environmental review, its submission of project applications to multiple City departments, its procurement of various technical studies for City land use review processes, its completion of implementation strategies for offsite parking, traffic, open space public benefit improvements, and the operation phase management plan. The Developer is requesting further extension of the ENA term to allow it to attain the remaining benchmarks, the key amongst which are completion of; environmental review, negotiations of required transaction documents, and procurement of transaction document approvals from the Port Commission and the Board of Supervisors.

Port staff recommends amendment of the ENA to provide for: (1) two additional six-month extension options; (2) the fee for each such ENA term extension; and (3) revision of the ENA Performance Benchmarks and related performance timing to reflect the time extension granted. The preconditions to the exercise of these options would remain the same as the current ENA, as summarized above.

Background

On September 8, 2015, the Port Commission adopted Resolution No. 15-31¹ authorizing Port staff to enter into the ENA for a one-year term with four six-month extension options, among other terms, for the Developer to complete certain tasks and negotiate terms and conditions for leasing the Site. One of the key tasks is for the Developer to receive an endorsement of the required term sheet ("Term Sheet") that summarizes the conceptual terms and conditions proposed for the lease disposition and development agreement (the "LDDA") and a lease (the "Lease") for implementing the development. On April 26, 2016, the Port Commission adopted Resolution No. 16-18², and endorsed the required Term Sheet. On July 12, 2016, the Board of Supervisors adopted Resolution No. 277-16³ and endorsed the Term Sheet as well.

The Developer has made progress in completing some of the key tasks it is required to complete under the ENA.

¹ <https://sfport.com/sites/default/files/FileCenter/Documents/10429-Item%2014B-Teatro%20ZinZanni%20ENA%20FINAL%209-2.pdf>

² <https://sfport.com/sites/default/files/Commission/Documents/Commission%20Meeting%20Staff%20Reports/2016%20Commission%20Meeting%20Items/APR26/Item%2012A%20SWL%20324%20Action%20Memo%20for%20042616%20PC%20Meeting.pdf>

³ <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions16/r0277-16.pdf>

Developer Key Tasks under the ENA

Key Tasks completed by the Developer to date:

- Updated its proposed development concept
- Conducted community outreach (which will remain ongoing through the term of the ENA)
- Submitted its Public Trust Consistency Determination plan
- Obtained Board of Supervisors endorsement of the required Term Sheet
- Submitted project description to the City Planning Department to facilitate the project's California Environmental Quality Act ("CEQA") evaluation

Tasks needing more time to be completed

- Complete CEQA review process
- Address site control and regulatory approvals
- Perform due diligence investigations (utilities, building systems, title related issues, and reviews required by technical advisors)
- Obtain Public Trust Consistency Determination
- Confirm Developer business formation and authority documentation
- Identify equity and debt financing sources sufficient to construct the project
- Complete negotiation of the LDDA, Lease and other transaction documents
- Obtain approval of the transaction documents from the Port Commission and the Board of Supervisors

On-Going Efforts to make the Development a Reality

During the August 24, 2018 Port Commission meeting, TZK reported that it had admitted PresidioCo Holdings, LLC ("Presidio") into its membership to strengthen and improve its hotel development and capital raising capacity. TZK has also improved the financeability of the development by improving its physical and financial profiles. The development has been refined but remains a single, four-story building with a 180-200 room hotel, restaurant/bar, an approximately 280-seat theater featuring Teatro's historic "Spiegeltent", and an approximately 14,000-square foot privately financed public park. TZK has also increased the development's efficiency with interior design changes that have resulted in cost savings and an increase in potential revenues. The hotel room count has increased from 180 to 192 rooms, as detailed in the staff report for August 14 2018⁴ Informational Presentation to the Port Commission regarding the ENA.

In processing the required entitlements for the proposed development, the Developer has spent more time than it had anticipated pursuing the Performance Benchmarks. Therefore, it requested that the ENA term be extended by exercising all of the four six-month extension options provided in the ENA. As such, the Port's Executive Director granted the Developer's requests in the manner provided in the ENA which cumulatively extended the ENA term to November 4, 2018.

⁴<https://sfport.com/sites/default/files/Commission/Documents/Item%2012A%20SWL%20324%20TZK%20Info%20Memo.pdf>

The Developer has informed Port staff that it needs additional time beyond November 4, 2018 to attain the remaining performance benchmarks noted earlier in this staff report. Port staff recommends an amendment to the ENA to provide the additional time requested.

Proposed First Amendment to the ENA

Material terms and conditions of proposed amendment:

- Addition of two six-month extension options to the four extension options that have been exercised to date.
- Set the fee for such ENA term extensions at \$50,000 for each extension, which is equal to the fee amount for each of the prior four, six-month extensions.
- Revise the ENA Performance Schedule to reflect the currently anticipated project timeline.

Under the proposed amendment and if the two proposed extensions are granted, the Developer will have up to 12 months to attain all of the remaining milestones. The ENA will expire on November 4, 2019 subject to eligible force majeure events. Attained performance benchmarks, those remaining to be attained, and the time by which the Developer must attain them, are shown on the attached Exhibit “B,” Revised Performance Benchmarks. All other terms and conditions of the ENA remain unchanged.

Recommendation

Port staff recommends that the Port Commission approve the attached resolution approving the First Amendment to the ENA providing Developer with an additional two six-month extension options, as described in this staff report.

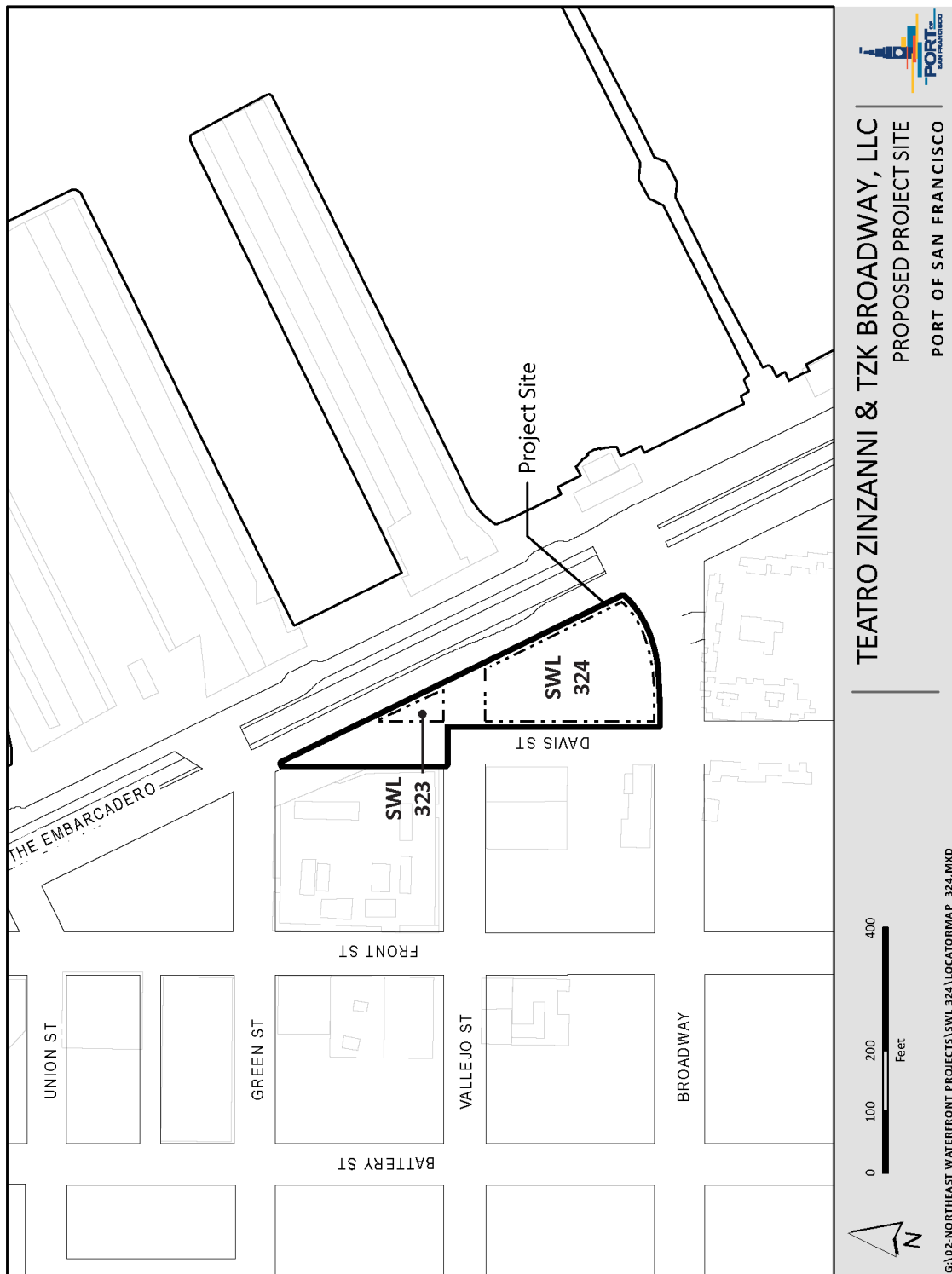
Prepared by: Ricky Tijani
Development Project Manager

Through: Rebecca Benassini, Assistant Deputy Director
Waterfront Development

For: Michael Martin, Deputy Director
Real Estate & Development

Exhibits: “A,” Site Map
“B,” Revised Performance Benchmarks

Exhibit "A" Site Map




TEATRO ZINZANNI & TZK BROADWAY, LLC
PROPOSED PROJECT SITE
PORT OF SAN FRANCISCO

0 100 200 400 Feet

G:\D2-NORTHEAST WATERFRONT PROJECTS\SWL 324\LOCATORMAP_324.MXD

Revised EXHIBIT B

PERFORMANCE BENCHMARKS

Performance Benchmarks	Time for Performance
1. <u>Updated Proposed Development Concept</u> : TZK must submit its updated development concept showing its preliminary massing and land use concept.	October 2015. Completed.
<i>Concept revisions through 2017-2018. Final Project concept included as "project" in Initial Study as September 2018.</i>	
2. <u>Community Outreach Plan</u> : TZK must submit its proposed Community Outreach Plan	October 2015. Completed.
3. <u>Public Trust Consistency Proposal</u> : TZK must submit its proposed Public Trust Consistency Plan for the Site.	December 2015. Completed.
4. <u>Deal Term Sheet</u> : TZK must submit its proposed Term Sheet of the Revised Development Proposal. What to cover in Term Sheet: <ol style="list-style-type: none">1. Lease terms and conditions (including all the terms set forth in the ENA)2. Terms/conditions of related transaction documents	January 2016. Completed.
5. <u>Site Control for non-Port Parcels</u> : TZK must submit its plan for Site Control of DPW Street stubs	January 2016. Completed.
6. <u>Regulatory Approval Strategy</u> : TZK must submit its proposed Regulatory Approval Strategy.	January 2016. Completed.
7. <u>Design Review Submission</u> : TZK must submit its design concept for review by the applicable regulatory bodies.	February 2016. Completed.
8. <u>Port Commission Endorsement</u> : TZK to obtain the Port Commission's endorsement of the Term Sheet.	April 2016. Completed.
9. <u>Board Endorsement and Fiscal Feasibility Determination</u> : TZK to obtain the Board of Supervisors' endorsement of the Term Sheet and if required, Fiscal Feasibility Determination.	July 2016. Completed.
10. <u>CEQA Environmental Evaluation</u> : TZK to submit the environmental evaluation application for the Development with a timeline for the publication of certification of environmental review	September 2015 – September 2018. Completed.

11. Implementation Strategies: Traffic and parking impact mitigation (completed), financing (on-going), franchising/branding (on-going), building operations (completed), operation management (completed), leasing (on-going), and public benefit improvements (completed). September 2015 -- October 2018.
12. Due Diligence Investigation: TZK must complete its due diligence investigation of the Site, including surveys (completed), title (on-going), environmental site assessment (completed), field measurements (completed), samples (completed), borings (completed), soil and geotechnical analysis (completed), utility availability (on-going), and any other investigations as required by its technical advisors. April 2016 – November 2018.
13. TZK to work with Port on Public Trust Consistency determination. December 2018.
14. Developer Formation Documents: TZK to provide updates to Port if there are any material changes to the documents. December 2018.
15. Transaction Documents: TZK and Port staff must reach final agreement on the form of LDDA, Lease and all related transaction documents. February 2019.
16. Port Commission adoption of CEQA Findings and Public Trust Consistency findings, and approval of final Transaction Documents. April 2019.
17. Board of Supervisors' Adoption of CEQA Finding and Approval of Lease. May 2019.

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

RESOLUTION NO. 18- 53

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, Seawall Lot 323 (“SWL 323”) and Seawall Lot 324 (“SWL 324”) are two nearly triangular land parcels with a combined surface area of approximately 42,719 square feet with frontages on The Embarcadero, Broadway, Davis and Vallejo Streets (collectively, the “SWLs”) which are to be developed with the two abutting right-of-way parcels that form the terminus of Vallejo Street and Davis Street as they intersect The Embarcadero, totaling a combined land area of 57,170 square feet and constituting the site for the proposed Development described in this Resolution (the “Site”); and

WHEREAS, On September 8, 2015, the Port Commission adopted Resolution No. 15-31 authorizing the Port to enter into an Exclusive Negotiation Agreement (the “ENA”) with TZK Broadway, LLC, a California limited liability company (the “Developer”) for the development of a 180-200 room hotel, a dinner-theater, a 7,500-square-foot public open space, and ancillary uses (the “Development” or “Project”) at the Site; and

WHEREAS, The ENA sets forth the process, terms, and conditions upon which Port and Developer will negotiate terms for the lease disposition and development agreement (“LDDA”), long-term lease (the “Lease”) and other related agreements and documents (collectively, the “Transaction Documents”) for the development and operation of the proposed Project on the Site and provides for a one-year term with four six-month extension options, among other terms, for the Developer to complete certain tasks and negotiate terms and conditions of the Transaction Documents; and

WHEREAS, The ENA’s initial term commenced on November 5, 2015, and the Developer has exercised its four six-month extension options as provided in the ENA, and the ENA term, as extended, is set to expire on November 4, 2018; and

WHEREAS, The Developer has completed a number of key ENA performance benchmarks as follows: (1) refined its proposed development concept, (2) conducted a number of community outreach dialogues, (3) submitted its Public Trust Consistency Determination plan, (4) obtained Board of Supervisors’ endorsement of the term sheet described in the staff report attached to this resolution (“Term Sheet”), (5) submitted its environmental

evaluation application, and (6) addressed certain site control and regulatory approval issues; and

WHEREAS, In addition to the completed tasks above, the Developer is making progress in identifying financing sources for the Development and negotiating final terms for the Transaction Documents; and

WHEREAS, The Developer has provided the Port with additional information demonstrating its efforts to achieve the remaining ENA performance benchmarks, including strengthening and improving its hotel development and capital raising capacity to improve financeability of the Project; and

WHEREAS, The Developer has requested an amendment to the ENA to extend its term by up to twelve (12) months to allow it to attain all remaining ENA performance benchmarks, including completion of (1) the Project's CEQA evaluation; (2) the Developer's due diligence investigations of the Site, (3) the Port Commission's Public Trust Consistency Determination, (4) the Developer's identification of equity and debt financing sources, and (5) finalizing the Transaction Documents, and (6) required approvals of the Transaction Documents from the Port Commission and Board of Supervisors; and

WHEREAS, The Port and Developer wish to amend the ENA to provide the Developer additional time to complete the remaining ENA performance benchmarks noted in the staff report accompanying this resolution; and now, therefore, be it

RESOLVED, That the Port Commission authorizes amending the ENA as described in the staff report accompanying this resolution and authorizes and directs the Executive Director of the Port, or her designee, to execute the ENA amendment with the understanding that the final terms and conditions of any development agreement, lease or related documents negotiated between the Port and Developer during the exclusive negotiation period will be subject to the approval of the Port Commission; 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 the Transaction Documents, to undertake other efforts such as, but not limited to, issuing a request for proposals, or undertake no other action, all at the Port Commission's sole discretion; and be it further

RESOLVED, That the Port Commission's approval of the ENA amendment does not commit the Port Commission or the City to approval of the 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 to the Project, unless and until the Port Commission and the Planning Commission have reviewed and considered environmental documentation prepared in compliance with CEQA for the Project.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of September 25, 2018.

Secretary