

MEMORANDUM

October 4, 2012

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

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of the First Amendment to the Exclusive Negotiation Agreement between the Port of San Francisco and 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 and adjacent to AT&T Park

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

On September 15, 2010 the Port of San Francisco ("Port") entered into an Exclusive Negotiation Agreement ("ENA") for the mixed use development of Seawall Lot (SWL) 337 and the adjacent Pier 48, both located across from AT&T Park as shown on the attached Appendix A. The ENA is between the Port and Seawall Lot 337 Associates, LLC ("Developer") which is comprised of Giants Development Services, LLC (associated with the San Francisco Giants) and TCC Lot 337 Investors, LLC (associated with The Cordish Company) as members. On March 15, 2012, Developer submitted a Revised Proposal for the site representing an important step towards earnest land use and financing discussions. On May 8, 2012, Developer provided an update to the Port Commission on efforts made towards viable land use and financing programs that will lead to a project term sheet later this year.

Over the past several months, Port, the City's Office of Economic and Workforce Development ("OEWD") and Developer have been working intensely with the community and other City Agencies to advance creative land use and financing tools. The complex nature of these discussions, their related extensive level of due diligence

THIS PRINT COVERS CALENDAR ITEM NO. 9B

and lengthy dialogue and coordination with staff from other City agencies has required a significant amount of time not foreseen when the ENA Performance Benchmarks were first structured. As a result, today the Port Commission is being asked to consider a six month ENA extension to the Phase 1 Performance Benchmarks as shown in track-changes on Appendix B.

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 termination to allow for development.

On May 12, 2009, the Port Commission awarded the SWL 337 development opportunity to Developer and authorized exclusive negotiations for a mixed used development project at SWL 337 and Pier 48. Port and the Developer negotiated an Exclusive Negotiation Agreement (“ENA”) which outlines a 2 phase approach. Phase 1 allocates 24-30 months for the parties to reach agreement on a project plan and financial terms culminating in recommendation for a term sheet approval by the Port Commission and endorsement by the Board of Supervisors. Phase 2 allocates 3 years to complete the entitlement and permitting process for the project.

REVISED PROPOSAL

Pursuant to the ENA, on March 15, 2012, Developer submitted a Revised Proposal describing a mixed-use program that balances residential, office, retail, exhibition and parking uses distributed over a network of fine-grained city blocks. The combination of uses will evolve as this project moves forward to meet market demands and reflect community and regulatory concerns.

Residential:	650 to 1000 apartments and townhouse-style units
Office:	1,300,000 to 1,700,000 gross square feet, traditional and/or biotech
Retail:	125,000 square feet
Exhibits/Events:	Up to 180,000 square feet at Pier 48
Open Space:	7 acres of public open space
Parking:	2,690 off-street spaces

The land use program described in the Revised Proposal requires approximately \$66 million in Developer equity to finance needed entitlement and infrastructure costs. Port and OEWD staff have determined that market rates of return for this level of private equity are a significant impact on the project’s ability to generate maximum value from

the Port's asset. Reducing the amount of Developer equity has a direct correlation to the project's ability to generate value for the Port and City and staff is exploring numerous alternative financing methods that reduce Developer equity, each with advantages and disadvantages to the project. Whether used individually, jointly or in some combination, these tools could lead to reductions in Developer equity and a corresponding increase to Port's land value. Staff will continue ongoing due diligence needed to hone these tools and gauge their specific financial impact before including them in the formal Term Sheet.

ENA EXTENSION

On September 15, 2012 Developer exercised its right to extend Phase 1 of the ENA an additional six months and submitted the required \$50,000 extension fee. However, noting that the detailed review of complex financing tools has subsumed large amounts of the Phase 1 ENA schedule in unanticipated ways, Developer has requested an ENA amendment extending Phase 1 from September 15, 2012 to March 15, 2013. This extension would provide needed additional time to reach agreement on the efficient use of the promising finance tools now being investigated, incorporate these tools into the project term sheet, and obtain both Port Commission approval and Board of Supervisor endorsement of said term sheet. By extending Phase 1, the ENA amendment would not affect Developer's existing right to request a six month extension to complete the Phase 1 benchmarks, the \$50,000 having been paid in advance as mentioned above.

ENA TRANSFER BETWEEN AFFILIATES

In the ENA, the Developer, Seawall Lot 337 Associates, LLC, is represented equally by TCC Lot 337 Investors, LLC and Giants Development Services, LLC. The formation document between these entities acknowledges that TCC Lot 337 Investors, LLC shall withdraw from Seawall Lot 337 Associates, LLC and assign its membership rights to Giants Development Services, LLC, if a term sheet has not been agreed upon by September 15, 2012, or such later date that these parties mutually agree upon. Port and OEWD staff have been informed by Giants Development Services, LLC that they are in discussion with TCC Lot Investors, LLC concerning their future role in the development project. Should TCC Lot Investors, LLC ultimately withdraw, Giants Development Services, LLC would become the sole remaining member of Seawall Lot 337 Associates, LLC. In this instance, Port staff believes Developer's team of seasoned development professionals is capable of successfully shepherding the project through Phase 1 of the ENA and gaining approval of the project term sheet. However, prior to initiating the vastly more costly and complex work associated with entitling the project and building early infrastructure, staff suggests an additional Performance Benchmark requiring Developer confirm its financial capacity for these tasks and/or requiring Developer bring forward additional new member(s) to the LLC that together show financial capacity to entitle the project and build early infrastructure.

RECOMMENDATION

Staff recommends the Port Commission grant a six month extension to the ENA and the ENA Phase 1 Performance Benchmarks. Further, should the current members of Seawall Lot 337 Associates, LLC change as contemplated above, staff recommends adding a Performance Benchmark to confirm Developer's financial capacity to entitle the project and build the early infrastructure needed to support project feasibility.

NEXT STEPS

The Port, OEWD and Developer have made real, measurable progress towards a term sheet and have been working intensely with the community and other City Agencies to advance creative land use and financing tools. A community workshop on Saturday, October 27, 2012 from 9:30 AM to 12:00 PM at AT&T Park will further the community discussion regarding land use. Numerous meetings scheduled over the next several weeks with the Developer and other City agencies will produce viable methods of project financing. Together, focused input on project land use and financing will result in a term sheet for Port Commission consideration later this year.

Prepared by: Phil Williamson, Project Manager
Jonathan Stern, Assistant Deputy Director
Waterfront Development

For: Byron Rhett, Deputy Director
Planning & Development

Appendix A - The Site
Appendix B - ENA Performance Benchmarks

**APPENDIX A
THE SITE**

APPENDIX B

Term	<u>Phase 1: 24 30 months w/ one 6 month extension</u> <u>Phase 2: 36 months w/ two 6 month extensions</u>
Performance Benchmarks	<p><u>Phase 1 Benchmarks:</u></p> <ol style="list-style-type: none"> 1. Agree on Phase 1 Transaction Costs Budget (Completed 6/7/10) 2. Submit Public Relations Program (Completed 12/14/10) 3. Submit Developer Formation Documents (Completed 2/21/11) 4. Submit Revised Proposal Concept (Completed 3/15/11) 5. Submit Revised Proposal (Completed 3/15/12) 6. Submit Community Outreach Program (Completed 4/13/12) 7. Submit Public Trust Consistency Proposal (Due 6/15/12) 8. Submit Regulatory Approval Plan (Due 6/15/12) 9. Submit Term Sheet (Due 6/15/12) 10. <u>At Port's request, confirm Financial Capacity of LLC</u> 11. Obtain Port Commission Endorsement of Revised Proposal and Term Sheet (Due 9/15/12 <u>March 15, 2013</u>) 12. Submit Draft Report to Obtain Fiscal Feasibility Endorsement from Board (Due 9/15/12 <u>March 15, 2013</u>) 13. Obtain Board Endorsement of Term Sheet, Finding of Fiscal Feasibility (Due 9/15/12 <u>March 15, 2013</u>) <p><u>Phase 2 Benchmarks:</u></p> <ol style="list-style-type: none"> 14. Agree on Phase 2 Transaction Costs Budget 15. Submit EIR Initial Study Application 16. Publication of EIR Initial Study 17. Publication of Draft EIR 18. Planning Commission Certification of Final EIR 19. Planning Commission Approval of Required Rezoning 20. Reach Agreement on Transaction Documents 21. Obtain Public Trust Consistency Determination 22. Obtain Port Commission Approvals 23. Obtain Board Approval of Lease 24. Obtain Regulatory Approvals 25. Complete Due Diligence Investigation
Incurable Defaults	<p>The following events will cause termination of the ENA without an opportunity to cure:</p> <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

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

RESOLUTION NO. 12-77

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 (Developer) 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; and

WHEREAS, By Resolution No. 10-32, the Port Commission authorized 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

WHEREAS, Port staff, the City's Office of Economic and Workforce Development (OEWD) and Developer have been working intensely with the community and other City Agencies to advance land use and financing tools; and

WHEREAS, The complex nature of the financing tools has required extensive due diligence and lengthy dialogue and coordination with staff from other City agencies and has required a significant amount of time not foreseen when the ENA Performance Benchmarks were first structured; and

WHEREAS, Developer has requested an ENA amendment extending Phase 1 from September 15, 2012 to March 15, 2013 to provide additional time to reach

agreement on the proper, efficient use of the promising finance tools and incorporate these tools into the project term sheet; and

WHEREAS, By extending Phase 1, the amendment would not affect Developer's right under the ENA to request a six month extension to complete the Phase 1 benchmarks; and

WHEREAS, Developer is represented in the ENA by TCC Lot 337 Investors, LLC and Giants Development Services, LLC and the formation document between these entities acknowledges that TCC Lot 337 Investors, LLC shall withdraw from Seawall Lot 337 Associates, LLC and assign its membership rights to Giants Development Services, LLC, if a term sheet has not been agreed upon by September 15, 2012, or such later date that these parties mutually agree upon; and

WHEREAS, TCC Lot 337 Investors, LLC and Giants Development Services, LLC are in discussions regarding the future constituency of Seawall Lot 337 Associates, LLC; and

WHEREAS, Should TCC Lot 337 Investors, LLC withdraw from Seawall Lot 337 Associates, LLC, Giants Development Services, LLC would become the sole remaining member of Seawall Lot 337 Associates, LLC, Port staff believes Developer's remaining team of seasoned development professionals is capable of successfully shepherding the project through Phase 1 of the ENA and gaining approval of the project term sheet; and

WHEREAS, Prior to initiating the vastly more costly and complex work associated with entitling the project and building early infrastructure, the ENA, at Port's sole discretion, shall include an additional Performance Benchmark requiring Developer to confirm its financial capacity to entitle the project and build early infrastructure; now, therefore be it

RESOLVED, That the Port Commission authorizes amending the ENA to extend Phase 1 from September 15, 2012 to March 15, 2013 to provide additional time to reach agreement and incorporate financing tools into the project term sheet; and be it further

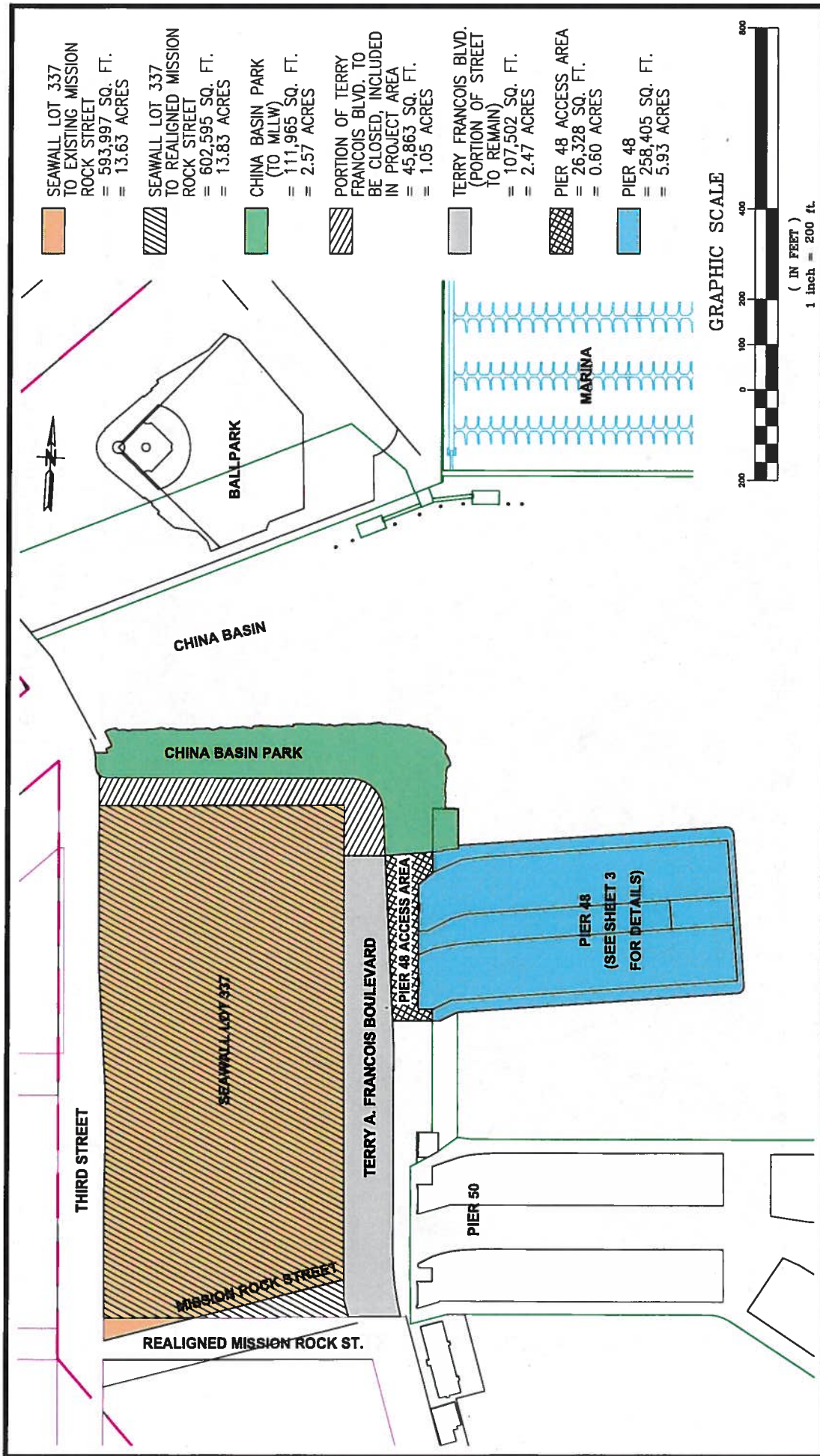
RESOLVED, That the ENA, at Port's sole discretion, shall include an additional Performance Benchmark requiring Developer to confirm its financial capacity to entitle the project and build early infrastructure as further described in the staff report attached to this resolution; and be it further


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 October 9, 2012.

Secretary



APPROVED BY SAN FRANCISCO PORT COMMISSION DATE _____ _____ CHIEF HARBOR ENGINEER	 SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	<h2 style="text-align: center;">APPENDIX A</h2> <h1 style="text-align: center;">SEAWALL LOT 337</h1> <h3 style="text-align: center;">DEVELOPMENT OPPORTUNITY SITE</h3>	PREPARED BY: AMIN DRAWN BY: AMIN CONTRACT NO. _____ DRAWING NO. _____ CHECKED BY: D. OSHIMA DATE: MAY 19, 2008 SCALE: 1" = 200' SHEET NO. 2 OF 2 SHEETS
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