



MEMORANDUM

October 6, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes 
Executive Director

SUBJECT: Informational presentation and possible action to approve an Exclusive Negotiation Agreement with Fisherman's Wharf Revitalized, LLC for the lease and phased development of portions of SWL 300/301 and Pier 45 Sheds A and C in Fisherman's Wharf (the "Project"), generally located bayward of Jefferson Street between Taylor and Powell Streets.

DIRECTOR'S RECOMMENDATION: Approve the attached Resolution No. 23-47

EXECUTIVE SUMMARY

On February 15, 2023, Port staff received an unsolicited proposal (the "Proposal") from Fisherman's Wharf Revitalized, LLC ("Developer") to lease and develop portions of SWL 300/301 (commonly known as the Triangle Parking Lot) and Pier 45 Sheds A and C (the "Site", see Exhibit 1).

Consistent with the Waterfront Plan policies related to the community engagement process for review and consideration of unsolicited proposals, the Proposal was brought to the Port Commission at the February 28, 2023 meeting and subsequently reviewed through a series of community and Port Advisory Group meetings.

On May 20, 2023, the Port issued a Request for Information ("RFI") to supplement the outreach noted above and to seek feedback on whether there was other, comparable development interest in the Site. The Port received two responses to the RFI that were

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presented to the Port Commission on July 11.

Given the urgency of providing support to Fisherman's Wharf and the limited response to the RFI, the Port Commission authorized staff (Resolution 23-37), in consultation with the City Attorney, to seek a waiver of the City's competitive solicitation process and commence negotiations of an Exclusive Negotiation Agreement ("ENA") with Developer.

Subsequently, on September 12, 2023, the Board of Supervisors adopted Resolution No. 425-23, waiving the competitive solicitation procedures and urging the Port to take all actions necessary to negotiate and enter into an ENA with Developer.

With the recent authorizations by the Port Commission and Board of Supervisors, Port and Developer have negotiated the terms of the ENA. The ENA will set forth the process, terms, and conditions upon which the Port and Developer will negotiate for the disposition of the Site and the development and operation of the proposed Project. Upon the successful completion of a multi-year process to complete negotiations, environmental review, and other Project approvals, the ENA will be replaced by a lease disposition and development agreement, a long-term ground lease and other related agreements and documents required for the proposed Project.

This staff report includes the following sections:

- Alignment with the Port's Strategic Plan.
- Background information on the Project and process.
- Exclusive Negotiations Process and ENA Key Terms.
- Project Timeline.
- Next Steps.

STRATEGIC PLAN ALIGNMENT

Entering an ENA with Developer and ultimately redeveloping the Site will provide a number of benefits, including highlighting and supporting the fishing and seafood industry and increasing public access to and enjoyment of the bay.

The proposed Project's success will be defined by its redevelopment of assets, implementation of resilience and adaptation strategies, curation of a mix of uses that enliven Fisherman's Wharf, and advancement of the Port's goals and objectives of its Strategic Plan and Waterfront Plan.

If approved and implemented, the proposed Project will achieve at least six goals of the Port's Strategic Plan objectives:

Evolution: Evolve the waterfront to respond to changing public and Port needs.

Resilience: Reduce seismic and climate change risks to protect the waterfront.

Engagement: Engage constituents and the public on Port functions and activities.

Equity: The Project will be accessible, attractive, and beneficial to a diverse group of people who live, work and/or use the recreational assets along the Waterfront.

Productivity

Attract and retain tenants to build an economically successful and vibrant waterfront.

Economic Recovery

Contribute to the Port's financial strength by (a) using investor capital to address the Port's deferred maintenance backlog and/or (b) generating revenues for the Port to sustain ongoing operations and address deferred maintenance at other Port facilities.

BACKGROUND

On February 15, 2023, the Port received an unsolicited Proposal for the lease and development of the Site with a mixed-use development celebrating, highlighting, and supporting the fishing and seafood industry of Fisherman's Wharf and increasing public access to and enjoyment of the Bay. The Proposal was submitted by Fisherman's Wharf Revitalized LLC, consisting of Lou Giraudo, Seth Hamalian, and Chris McGarry.

The Port's Waterfront Plan outlines a public engagement process for unsolicited proposals that is to occur prior to the consideration of a waiver of the City's competitive bidding procedures by the Board of Supervisors. At the February 28, 2023 Port Commission meeting, Port staff described the Proposal and the Port Commission directed staff to pursue stakeholder engagement as called for under the Waterfront Plan¹.

At the April 25th Port Commission meeting, Port staff reported out on the stakeholder engagement process and the Project's alignment with the Waterfront Plan.² In response to the dialogue at the meeting, the Port issued an RFI on May 20, 2023 to supplement the outreach noted above and to seek feedback on whether there is other, comparable development interest in the locations identified in the Proposal.

The Port received two responses to the RFI that were presented to the Port Commission on July 11, 2023: (1) a letter first from Dan Giraudo, Chairman and CEO of Boudin Bakery and (2) a follow-up submittal from Developer. Given the Port received no other letters or responses to the RFI, indicating limited interest in potential bids if the Port were to issue a competitive solution, the urgency of providing support to the recovery of Fisherman's Wharf, and the potential for the Project described by the Proposal to attract visitors and significant investment to the wharf, including needed seismic and flood protection improvements, the Port Commission authorized staff (Resolution 23-37), in consultation with the City Attorney, to seek a waiver of the City's competitive solicitation requirements

¹ The February 28th staff report can be found here: https://sfport.com/files/2023-02/022323_item_12b_fw_development_proposal_final.pdf.

² See April 25th staff report for a summary of the community feedback received on the Proposal: found here: https://sfport.com/files/2023-04/042523-10a_fishermans_wharf_development_proposal_-_stakeholder_engagement_process_and_next_steps.pdf.

and commence negotiations of an ENA with Developer³. On September 10, 2023, the Board of Supervisors adopted Resolution No. 425-23, waiving the competitive solicitation procedures so the Port can negotiate and enter into the ENA⁴.

Initial Project Concept

The proposed Project is comprised of three areas of redevelopment – Pier 45 Sheds A and C, Triangle East/Seawall Lot 300/301 Phase I, and Triangle West/Seawall Lot 300/301 Phase II. The Project does not include any of the restaurants or other improvements on the western side of Taylor Street.

The following sections outline the contemplated uses for each of the three areas. However, the Project sponsor recognizes the need for further discussions with the Port, regulatory partners and community stakeholders to refine the concepts while still achieving the goals and objectives established in the Port’s plans and programs. It is essential to recognize that the Proposal is an initial concept that will evolve through community dialogue, additional site due diligence, policy direction, and lease negotiations. Ultimately, a successful Project will have an appropriate balance of uses and improvements that meet the Port’s plans and programs’ goals and objectives.

Pier 45 Sheds A and C

The vision for Pier 45 is a two-pronged approach to reinvigorating Fisherman’s Wharf as a must-visit location for the region, for visitors and residents alike: 1) enhanced support to existing fishing operations on the Pier and an experiential museum dedicated to the fishing and seafood industry that will return Fisherman’s Wharf to its legacy and former prominence as the go-to location in the region for all things related to the industry, and 2) a flexible events center and open-air space configured to allow for a variety of indoor and outdoor concerts, local performance art, school events, rentals and other experiences. This would be implemented with care to support and protect the heart of Fisherman’s Wharf, the existing commercial fishing operations at Pier 45 (primarily in Sheds B and D).

Triangle East/Seawall Lot 300/301 Phase I

The vision for the first phase of development of the Triangle Lot, from the western edge of the Boudin Bakery to the eastern edge of the Triangle Lot/Seawall Lot 300/301, includes 1) a central public square and the conversion of the adjoining portion of the “little” Embarcadero to a non-vehicular promenade; 2) a new building housing a winery, brewery and distillery on the ground floor, and short-term rental units above; and 3) a visitor’s center at the eastern point.

Triangle West/Seawall Lot 300/301 Phase II

³ The July 11th staff report can be found here: https://sfport.com/files/2023-07/071123_11b_final_fishermans_wharf_unsolicited_proposal_bos_competitive_bidding_waivers.pdf.

⁴ Board of Supervisor’s Resolution No. ____ and supporting documentation can be found here: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=6296193&GUID=69847AC1-1B04-46BE-BFD5-702F4775FE53&Options=ID|Text|&Search=230842>.

The western portion of the Triangle Lot would be reserved for a second phase of development. Phase II would house additions to one or more of the food and beverage, event space and short-term rental unit uses, with the exact mix to be informed by the performance of the first phase and evolving needs of Taylor Street and the surrounding neighborhood.

EXCLUSIVE NEGOTIATIONS PROCESS AND ENA KEY TERMS

The ENA will commit the Port to negotiate exclusively with Developer for the duration of its term. During the ENA period, the parties will finalize transaction documents that will govern the disposition and development of the Project. The ENA establishes time and performance benchmarks, provisions for time extensions to those performance benchmarks, and termination for non-performance. It also specifies negotiation fees payable to the Port and recovery of the Port's costs associated with the Project.

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

- Port and Developer will work with regulatory partners to seek regulatory alignment and strategies to advance the Project.
- Developer will work with Port to develop goals for inclusion of small, local, and diverse contractors, consultants, and other service providers for predevelopment work and will use its best efforts to maximize diversity, equity, and inclusion.
- Developer will conduct community outreach to stakeholders.
- Developer and Port will negotiate a term sheet for the Port Commission and Board endorsement.
- Developer will complete preliminary architectural and engineering designs, finalize financial projections addressing lease payments to the Port, and the equity and debt required to completely finance the development's entitlement, construction, and operation.
- Developer will complete, if required, an environmental impact report in compliance with the California Environmental Quality Act.
- Port and Developer will negotiate as applicable a lease disposition and development agreement, a form ground lease, and related documents governing the development and operation of the Site.

Key Terms Differing from Standard Port ENA

Each development project and development partner has unique attributes that require some ENA negotiations. The following summarizes five key terms that differ from standard Port ENA terms:

1. *Diversity, Equity, and Inclusion* – During the ENA period, the Developer's expenditures associated with the Project are not subject to the Local Business Enterprise policies. However, the ENA includes a Diversity, Equity and Inclusion goal for the predevelopment process, which requires Developer to work with Port to include small, local, and diverse contractors, consultants, and other service providers for predevelopment work during the ENA period.

2. *Term* – The ENA term is 24 months, with six 6-month extension options. The extended term is consistent with the scale and complexity of the Project, which will require comprehensive and extensive stakeholder and regulatory partner outreach and collaboration. The performance benchmark schedule negotiated between the parties is attached as Exhibit 2 to this staff report.
3. *Transfer* – The Port is entering into this ENA based on the Developer's special skills, capabilities, and experience, especially given the waiver of the competitive solicitation requirements for this Proposal. The Port's standard ENA typically allows a developer to bring in institutional or other investors without the Port's consent, so long as they meet minimum financial requirements. However, in this case, the ENA requires Port Commission approval of any transfers of 50% or more of the ownership interest in Developer.
4. *Required Payments* – During the ENA period, Developer will reimburse the Port for its transaction costs related to the Project (which transaction costs will be paid in advance with a \$100,00 deposit, which can be reduced to \$50,000 at the Port Executive Director's discretion). Developer will also pay the Port an extension fee in the amount of \$25,000 (which amount can be waived at the Port Executive Director's discretion) as a condition to each extension to the term of the ENA. However, the Port will not require a negotiation fee for the initial term of the ENA because the Port is able to continue its existing leases and aims to support the economic recovery of an iconic San Francisco landmark in Fisherman's Wharf.
5. *Short-Term Leasing* – Typically during the ENA period, Port is unable to enter into new agreements that expand the current uses or extend beyond the target closing date set forth in the transaction documents. In this case, Port has reserved the right to enter into (i) a new agreement for a Ferris wheel to be located on the eastern portion of SWL 300/301, the term of which shall expire on or before December 31, 2025 unless the initial term of the ENA is extended and (ii) a lease extension with the San Francisco Maritime National Association (which includes the USS Pampanito), the term of which shall expire on or before December 31, 2028.

The Port Commission, by approving the ENA is not approving a project, nor committing either party to a project. Rather, the ENA establishes the parameters for consideration of a possible project or development.

PROJECT TIMELINE

If the Port Commission approves the ENA, *Exhibit 2 - Performance Benchmarks* provides a schedule of various Project milestones the project sponsor must meet. The schedule includes a "target date" that both the Port and Developer will strive to reach, and a "performance date", which is the outside date for Developer to achieve such a milestone. The early goals are to conduct community and regulatory outreach to help shape a project that has Port, Developer, community, and regulatory partner alignment and to begin term sheet negotiations.

NEXT STEPS

Port staff will work with Developer, stakeholders, and regulatory partners to advance the Project. Staff will return to the Port Commission with regular updates on the Project progress or as required to seek input during negotiations on key deal points.

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For: Michael Martin,
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Exhibit 1 – Site
Exhibit 2 – Performance Benchmarks

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

RESOLUTION NO. 23-47

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port area of the City and County of San Francisco; and
- WHEREAS, At its meeting on April 11, 2023, after a public planning process that maximized public participation in public discussions about existing waterfront activities, regulations, challenges, public desires, and needs to incorporate diverse viewpoints and perspectives to develop policy recommendations, the Port Commission adopted an updated Waterfront Plan (the “Waterfront Plan”); and
- WHEREAS, The Waterfront Plan included a stakeholder engagement process for unsolicited development proposals, in advance of the submission of such proposals to the Board of Supervisors for consideration of a waiver of the City’s competitive solicitation policy; and
- WHEREAS, On February 15, 2023, the Port received an unsolicited proposal (the “Proposal”) to lease and develop portions of Seawall Lot 300/301 and Pier 45 Sheds A and C (the “Site”) from Fisherman’s Wharf Revitalized, LLC (“Developer”), whose members include Lou Giraud, Seth Hamalian, and Chris McGarry; and
- WHEREAS, The Proposal contemplates a mixed-use development project celebrating, highlighting, and supporting the fishing and seafood industry of Fisherman’s Wharf and increasing public access to and enjoyment of the Bay. The proposed project includes: (1) Pier 45 Sheds A and C: enhanced support of the existing fishing and seafood industry and an experiential museum/events center; (2) Triangle East/Seawall Lot 300/301 Phase I: a central public square, new construction including a ground-floor winery/brewery and short-term rentals above, and a visitor’s center; and (3) Triangle West/Seawall Lot 300/301 Phase II: future development, to be informed by the first phase and evolving needs of the area; and
- WHEREAS, At its meeting on February 28, 2023, the Port Commission directed staff to pursue a stakeholder process to elicit public feedback on the Proposal prior to its submittal to the Board of Supervisors; and
- WHEREAS, Port staff offered opportunities for stakeholder feedback at two hybrid (in-person and virtual) meetings in Fisherman’s Wharf and one virtual meeting of the Port’s Northern Advisory Committee; and
- WHEREAS, Port staff reported out on the stakeholder engagement feedback at the April 25, 2023 Port Commission meeting; and

- WHEREAS, At the May 9, 2023 Port Commission meeting Executive Director Elaine Forbes announced that, as an additional measure of due diligence, the Port would issue a Request for Information seeking feedback regarding interest in developing the areas identified in the Proposal (the “RFI”); and
- WHEREAS, The Port issued the RFI on May 20, 2023 and received two letters, which were summarized by Port staff at the July 11, 2023 Port Commission meeting; and
- WHEREAS, The Port received no other letters or responses to the RFI, indicating limited interest in potential bids if the areas identified in the Proposal were made the subject of a competitive solicitation for a development partner; and
- WHEREAS, The Port recognizes the urgency of providing support to the recovery of Fisherman’s Wharf, which has been beset by headwinds of the pandemic and associated economic downturn, resulting in the closure of many longstanding Port tenants; and
- WHEREAS, If approved after appropriate environmental and regulatory review and lease negotiations, the project described under the Proposal provides the opportunity to build economic momentum from the Port’s current investments in the recovery of the Fisherman’s Wharf portfolio, to elevate the fishing industry and history of the Wharf, and to provide a significant private capital investment into a more resilient shoreline; and
- WHEREAS, In accordance with Chapter 23 of the Administrative Code, the Board of Supervisors can waive competitive solicitation requirements upon finding that the competitive process is impractical, impossible, or not in the public interest; and
- WHEREAS, The lack of development interest in response to the RFI indicates that the time and expense in pursuing a competitive process would be impractical and not in either the Port’s or public interest; and
- WHEREAS, In consideration of the results of the stakeholder outreach summarized above, the Port Commission adopted Resolution 23-37, authorizing Port staff, in consultation with the City Attorney’s Office, to seek Board of Supervisors approval to waive any applicable requirements of the City’s policy regarding competitive solicitation for development opportunities with respect to the Proposal and commence negotiations of an Exclusive Negotiation Agreement (“ENA”) with Developer; and
- WHEREAS, On September 12, 2023, the Board of Supervisors adopted Resolution No. 425-23, waiving the competitive solicitation procedures and urging the Port to take all actions necessary to negotiate and enter into an ENA with Developer; and

- WHEREAS, Developer and Port have negotiated the terms of an ENA, as further described in the Memorandum accompanying this resolution; now therefore be it
- RESOLVED, That the Port Commission authorizes the Executive Director of the Port (“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 Memorandum accompanying this resolution and in a form approved by the City Attorney; and, be it further
- RESOLVED, That the Port Commission reserves the right, if negotiations with Developer are unsuccessful and do not lead to approval of a lease disposition and development agreement, lease and related documents, or if the ENA is terminated before expiration of its term, to undertake other efforts, which may include selecting a developer/tenant by any other means, or issuing a developer solicitation, all in the Port Commission’s sole discretion; 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 exclusive negotiations 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 October 10, 2023.

Secretary

EXHIBIT 1

SITE

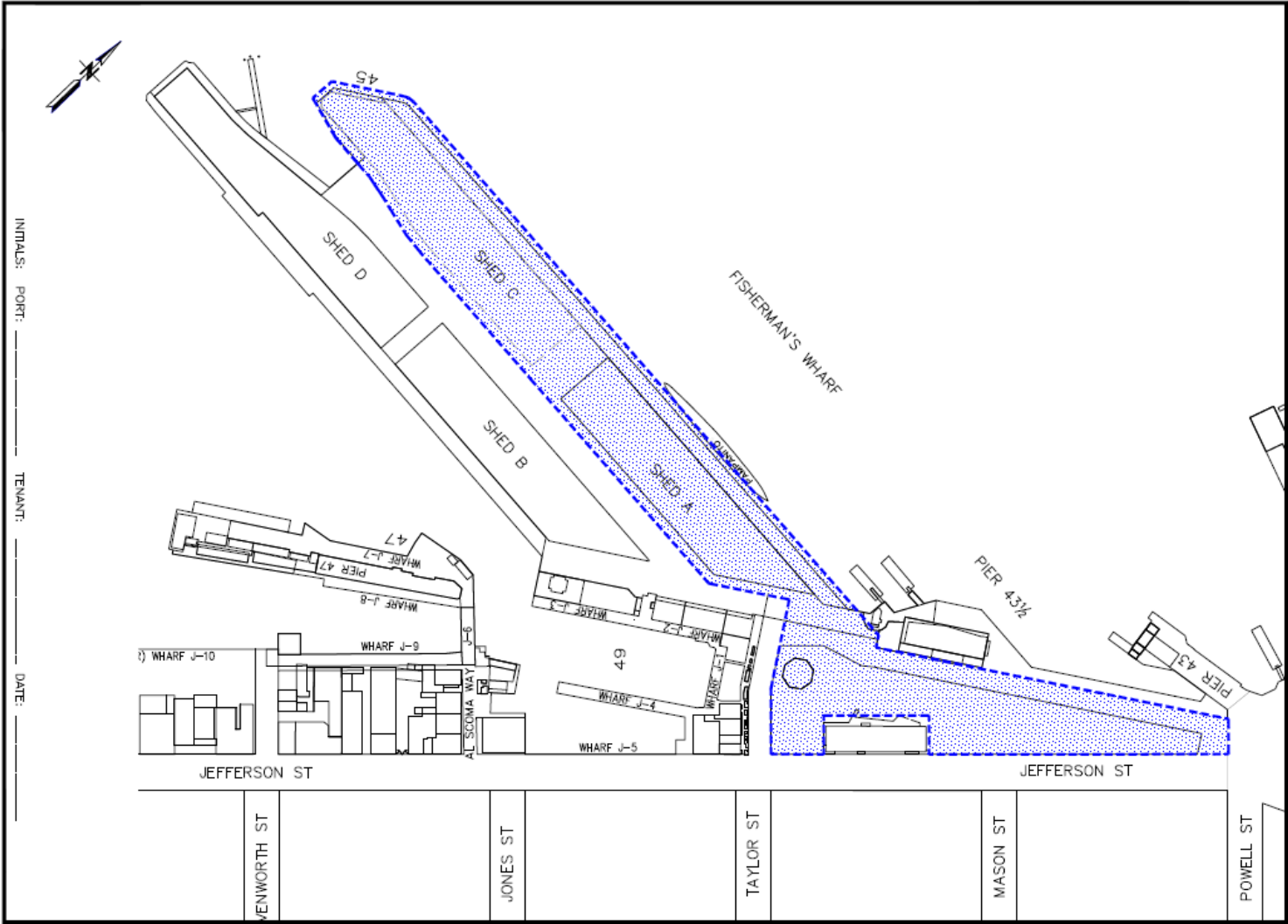


EXHIBIT 2

PERFORMANCE BENCHMARKS

Performance Benchmarks	Target Date	Performance Date
1. Developer Formation Documents: Developer must submit a copy of its Operating Agreement and a description of its affiliates (any person or entity controlling Developer, any entities controlled by Developer, or any entities under common control with Developer)	Before Oct. hearing	Before Oct. hearing
2. Submit Community Outreach Program	One month after Effective Date	One month after Effective Date
3. Submit Diversity, Equity & Inclusion Program	45 days after Effective Date	60 days after Effective Date
4. Submit Revised Development Concept for Term Sheet, based upon outreach and site due diligence.	Seven months after Effective Date	Seven months after Effective Date
5. Port Endorsement: Port Commission to adopt a resolution endorsing the Term Sheet	Eight months after Effective Date	Nine months after Effective Date
6. Board Endorsements: Board to take the following actions: (a) endorsing the Term Sheet; and (b) making a fiscal feasibility determination, if necessary	Eight months after Effective Date	Nine months after Effective Date
7. Final Transaction Documents: Developer and Port must reach final agreement on the form of LDDA, Lease and all related Transaction Documents	20.5 months after Effective Date	21.5 months after Effective Date
8. Final CEQA Determination: By Planning Department or Planning Commission, as required.	21.5 months after Effective Date	21.5 months after Effective Date
9. Port Commission Approval of Final Transaction Documents: Port Commission to make Public Trust Determination and approve final Transaction Documents and recommend Board approval.	22 months after Effective Date	23 months after Effective Date
10. Board of Supervisor Approvals: Board to approve the Lease and other Transaction Documents and City Regulatory Approvals that require Board approval.	23 months after Effective Date	24 months after Effective Date
11. Regulatory Approvals: Developer to obtain necessary Regulatory Approvals by outside agencies.		Within timeframe set forth in LDDA