MEMORANDUM

April 19, 2012

TO: MEMBERS, PORT COMMISSION
   Hon. Doreen Woo Ho, President
   Hon. Kimberly Brandon, Vice President
   Hon. Francis X. Crowley
   Hon. Leslie Katz
   Hon. Ann Lazarus

FROM: Monique Moyer
      Executive Director

SUBJECT: Request authorization to enter into an Exclusive Negotiation Agreement with Orton Development, Inc. for the lease and development of the 20th Street Historic Buildings on or near 20th and Illinois Streets at Pier 70 and authorization to enter into a no-rent lease for a site office.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

Port Staff requests authorization to enter into an Exclusive Negotiation Agreement ("ENA") for six historic buildings included in the Pier 70 Master Plan area with Orton, Inc. ("ODI"). These buildings, called the “20th Street Historic Buildings”, are shown on Exhibit A. The Port has identified a historic rehabilitation of approximately 250,000 square feet in existing buildings with some opportunity for additional floor area.

During the exclusive negotiating period, Staff will work with ODI to refine the historic rehabilitation concept and agree to lease terms to meet the Port’s goals for the 20th Street Historic Buildings as stated in the Request for Proposals (“RFP”) issued on October 4, 2011. The ENA provides for a nine month period to develop plans for the Project, negotiate the required agreements, and secure needed approvals. The ENA includes a negotiation fee of $75,000 and reimbursement of the Port’s costs associated with the Project. Staff also requests approval of lease terms for an ODI site office at the Noonan Building.

THIS PRINT COVERS CALENDAR ITEM NO. 9B
BACKGROUND

The Pier 70 Master Plan area\(^1\) includes 69 acres of land roughly bounded by Mariposa, Illinois, and 22\(^{nd}\) Streets and the San Francisco Bay. The 20th Street Historic Buildings are six buildings on or near 20th Street at Pier 70. These historic resources, some dating to the 1880s, are in need of substantial investment to return to active use. The Waterfront Site is the southeast 25 acres of Pier 70 with capacity for up to 2.5 million square feet of new development and over 250,000 square feet of historic buildings.

In collaboration with Forest City (the Waterfront Site developer), ODI, and all other stakeholders, the Port is moving forward to implement the vision defined in the Master Plan. The Port is taking the lead on Pier 70-wide initiatives including:

- Working with Forest City, defining an entitlement strategy, infrastructure network and a means to finance infrastructure, and a refined Pier 70 wide Master Plan.
- Nominating Pier 70 to the National Register of Historic Places.
- Working with the State Lands Commission to address public trust issues.
- Development and obtaining approval by the California Regional Water Quality Control Board of a risk management plan, a remedial action plan, or other regulatory documents specific to the conditions at Pier 70 containing standards sufficient to protect human health and the environment from hazardous substances in Pier 70.
- Designing and building Crane Cove Park with a first phase completed in 2014.
- Seeking legislative changes for the overall Pier 70 revitalization.

20\(^{TH}\) STREET HISTORIC BUILDINGS REQUEST FOR PROPOSALS

Following an extensive outreach process to attract interest, on October 4, 2011, the Port invited ten parties to submit proposals for this development opportunity. On December 2, 2011 four parties submitted timely submittals to the Port\(^2\); subsequently two of the respondents voluntarily withdrew their proposals. On February 28, 2012, the Port Commission awarded ODI the opportunity to negotiate for development of the 20\(^{th}\) Street Historic Buildings, by Resolution 12-183.

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\(^1\) Planning for Pier 70 has been extensive over the last five years; please see the following documents and staff reports that provide the context for the 20th Street Historic Buildings project.
July 8, 2011 Exclusive Negotiations Agreement with Forest City Development Inc. for the Waterfront Site http://www.sfport.com/Modules/ShowDocument.aspx?documentid=1916


ODI specializes in large-scale commercial and industrial rehabilitation and redevelopment projects. ODI has redeveloped over 16 million square feet of buildings, spanning approximately 60 projects including office, industrial, R&D, loft, and warehouse space. In its response to the RFP, ODI described its conceptual program as:

Bethlehem Steel Office Building (Building 101): Office with shared reception for the complex of buildings

Powerhouse (Building 102): Restaurant main floor; ground floor: meeting rooms, classrooms, workout area

Union Iron Works Office Building (Building 104): Office/Showroom/Flex space; potential ground floor retail

Union Iron Works Machine Shop and Foundry (Buildings 113/114/115/116),

Heavy Warehouse (Building 14): New American Workplace: craftsmen and trades, artisans, designers, technology-driven startups, food production, media and software companies, research and design, apparel, and green energy. Design, prototyping, manufacturing, wholesaling, office, and sales/retail activities

EXCLUSIVE NEGOTIATIONS PROCESS

The ENA is the agreement between the parties governing how the required agreements will be negotiated. The ENA establishes time and performance benchmarks including provisions for extensions and termination for non-performance. It specifies time frames and milestones for Port Commission, Planning Commission and Board of Supervisors’ review and approval. It also specifies negotiations fees and recovery for Port costs.

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

- ODI will commence its due diligence review of the site.
- Parties will define the proposed historic rehabilitation project.
- Parties will negotiate a term sheet for Port Commission and Board of Supervisors’ endorsement.
- ODI will complete any required environmental review and any other regulatory approval required during the ENA term.
- ODI will complete due diligence review of the site, finalize financial projections and complete preliminary rehabilitation plans, including elevations and renderings for the site.
- Parties will negotiate as applicable a lease disposition and development agreement (“LDLA”), leases, and related documents for the 20th Street Historic Buildings incorporating specific terms, including the Port's and Developer’s respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule. Leases are subject to Port Commission and Board of Supervisors’ approval following environmental review.
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 rehabilitation project.

**SUMMARY OF ENA TERMS**

*Fee, Term, and Extensions:* For the right to exclusively commit Port to negotiate with ODI, the Port imposes a negotiating fee of $75,000 for the initial nine month term. With payment by ODI of an extension fee of $50,000 for each extension, the ENA term can be extended twice by ODI for six months for each extension.

*Performance Benchmarks:* Exhibit B shows the performance benchmarks and schedules included in the ENA. Review of Exhibit B indicates that the next major step will be consideration of a specific proposal, which will happen in Summer 2012. If ODI is diligently pursuing the benchmarks, it may request to extend the benchmark performance deadlines. The Executive Director may grant such extension, however, performance benchmark dates will not be extended beyond the ENA term, including any extensions, without Port Commission’s approval.

*Regulatory Approvals:* ODI is responsible for obtaining all regulatory approvals in collaboration with the Port. The approval process will be coordinated with the overall approvals for Pier 70.

*Project Material:* ODI will 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, if the ENA is terminated.

*Transaction Costs:* The ENA provides for the Developer to fund Port’s costs (including third party costs and staff time) associated with project Planning and review and negotiating transaction documents, and exclude costs associated with Pier 70 wide master planning. Costs associated with the Port’s on-going planning efforts for Pier 70 sitewide (e.g. the historic district nomination) would not be reimbursed by the Developer. Similar to the development of the Master Plan, the sitewide Port efforts will be funded by the Port operating funds and grants as available including federal environmental investigation funds.

**CONSTRUCTION PERIOD SITE OFFICE**

ODI seeks to establish an on-site presence as soon as possible to expedite the project. Port Staff and ODI have identified a portion of Suite 108 in Building 11 as an appropriate space. The full suite is approximately 2,625 square feet, has been vacant for 5 years, and is in poor condition. ODI propose to utilize approximately 600 square feet of the space as a site office and will improve the remainder of the suite for use as meeting space. ODI estimates that $5,000 to $10,000 of improvements are needed to make the space suitable for its proposed use including painting, a new floor, and electrical upgrades and has agreed to undertake those improvements at its sole cost. The Port Commission approved rental rate for this space is $1.10 per square feet. When this suite is returned to the Port it will be in a better condition than it is at present.
ODI requested and Port staff agrees that the monthly rental fee and security deposit should be waived for a 12-month period based on the following criteria: (1) there are no other uses for the space during the term of the lease that would generate rent to the Port due to the condition of the space and the limited term the Port is able to offer; (2) no other uses would be displaced; (3) Orton will make the meeting space available at no charge to Port Staff and others seeking meeting space related to the overall Pier 70 project; and (4) Orton has agreed to construct no less than $5,000 worth of improvements to the space, which improvements will all be owned by Port upon installation. The Port will not be expending any resources or revenues to support this use, and there is direct benefit to the Port in that the use will assist in the marketing and development of the entire Pier 70 site. All other terms and conditions of the license comply with the Port Commission’s boilerplate terms, including insurance and indemnity provisions. If the term extends beyond 12 months, parameter rents will apply, beginning on the one year anniversary of the commencement date of the lease.

RECOMMENDATION

Port staff recommends approval of the ENA for the 20th Street Historic Buildings at Pier 70 with Orton Development, Inc. and approval of the terms for a site office at the Noonan Building.

Prepared by:  Kathleen Diohep, Pier 70 Project Manager
Jeff Bauer, Senior Leasing Manager

For:  Byron Rhett, Deputy Director
Planning & Development

Exhibit
A.  Location Map
B.  Performance Benchmarks
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 or near 20th Street, east of Illinois Street, the Port owns a cluster of historic buildings in need of substantial rehabilitation (the “20th Street Historic Buildings”), which, if adaptively reused, would create an extraordinary showcase for Pier 70’s heritage; and

WHEREAS, The Waterfront Land Use Plan designates three historic Union Iron Works buildings (Building ##101, 102, 104) that form a portion of the 20th Street Historic Buildings as a Mixed-Use Opportunity Area, recognizes that the preservation and adaptive reuse of the three historic Union Iron Works buildings pose a considerable challenge, and accordingly, one of the development standards for such Mixed Use Opportunity Area permits non-maritime land uses which result in the preservation and adaptive reuse of the three Union Iron Works buildings, consistent with the urban design and historic preservation guidelines called for in the Waterfront Plan, provided that such uses do not preclude nearby water-dependent activities or associated support services; and

WHEREAS, In July 2009, after six informational Port Commission hearings, four community workshops, Central Waterfront Advisory Group policy discussions, and additional community outreach, the Port published its draft Pier 70 Preferred Master Plan for review, and after an additional informational Port Commission hearing on March 9, 2010, the Port published its final Pier 70 Preferred Master Plan (“Master Plan”), which addresses policymaker and community comment; and

WHEREAS, The Port Commission, on May 11, 2010, by Resolution 10-27, authorized staff to solicit interest in the 20th Street Historic Buildings through a request for interest (“RFI”) process and, after consultation with the Port Commission, on October 4, 2011, the Port issued a Request for Proposals (“RFP”) for the 20th Street Historic Buildings and invited ten respondents to the RFI to respond to the RFP; and

WHEREAS, The Port Commission on February 28, 2012 in Resolution 12-18 awarded to Orton Development, Inc. (“ODI”) the Pier 70 20th Street Historic Buildings development opportunity and Staff has negotiated an exclusive negotiations agreement (“ENA”) with ODI setting forth the terms for negotiating agreements for the development and lease of the 20th Street Historic Buildings to achieve the objectives specified in the Pier 70 20th Street Historic Buildings Request for Proposals (“RFP”); and
WHEREAS, The Port and ODI have agreed to terms for a no rent lease for a 12-month term of approximately 2,625 square feet of studio space at Building 11 to provide an on-site office for ODI and common meeting space for ODI, Port staff and others seeking meeting space related to the overall Pier 70 project (“Site Office”) and ODI has agreed to construct no less than $5000 worth of certain improvements to the Site Office to make the space useable for office and meeting space uses; and

WHEREAS, Port staff agrees that the Site Office lease should be at no fee because ODI has agreed to construct no less than $5,000 worth of certain improvements to the Site Office, the Site Office is currently untenantable without the construction of significant improvements by Port staff, there are no other uses for the space during the term of the lease that would generate rent to the Port, no other uses would be displaced, the meeting space within the Site Office will be made available at no charge to Port staff and others seeking meeting space related to the overall Pier 70 project, ODI will not use the space for either commercial or exclusive use the Port will not be expending any resources or revenues to support this use, and there is direct benefit to the Port in that the use will assist in the marketing and development of the entire Pier 70 site; and

WHEREAS, All other terms and conditions of the proposed lease for the Site Office will comply with the Port Commission’s boilerplate terms including insurance and indemnity provisions; and 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 hereby authorizes the Executive Director of the Port, or her designee, to waive or extend the times established in the ENA for performance of specific objectives under the ENA as specified in the ENA, including the right to condition such waiver or extension on additional performance objectives or other conditions required by the Port Commission in its sole discretion; and be it further

RESOLVED, The Port Commission authorizes the Executive Director to execute a no rent lease with ODI for Suite 108 of the Noonan Building (Building 11) at Pier 70 for a 12-month period on the terms discussed in the accompanying Staff Report and in a final form as approved by the City Attorney; and, be it further

RESOLVED, That the Port Commission reserves the right, if negotiations with ODI are unsuccessful and do not lead to approval of a development agreement, lease and related documents to undertake other efforts, which may
include determining no project will be pursued, selecting a tenant by any other means, negotiating with any other respondent to the RFP, and issuing a new development solicitation at the Port Commission’s sole discretion; and, be it further

RESOLVED, That entering into the ENA with ODI begins a process of defining the scope of development for the 20th Street Historic Buildings, and the development concepts envisioned in the Pier 70 Preferred Master Plan, the RFP, and the ODI proposal will evolve through the extensive public review process through changes to the uses, the mix of uses, the intensity of development, or other fundamental terms, 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 ENA foreclose the possibility of alternative development concepts, mitigation measures, or deciding not to grant entitlements or approve the lease and development of the 20th Street Historic Buildings; 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 project 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 April 24, 2012.

______________________________
Secretary
Exhibit A
Pier 70 20th Street Historic Buildings
<table>
<thead>
<tr>
<th>Building 113-114 UIW Machine Shop</th>
<th>Size: 100,000 sqft</th>
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<tbody>
<tr>
<td>Building 115-116</td>
<td>Size: 38,000 sqft</td>
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<tr>
<td>Building 101</td>
<td>Size: 56,000 sqft</td>
</tr>
<tr>
<td>Building 102</td>
<td>Size: 8,000 sqft</td>
</tr>
<tr>
<td>Building 104</td>
<td>Size: 38,000 sqft</td>
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<tr>
<td>Building 14 -- behind 113</td>
<td>Size: 16,000 sqft,</td>
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</tbody>
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## EXHIBIT B

### ENA Performance Benchmarks

<table>
<thead>
<tr>
<th>Performance Benchmarks</th>
<th>Time for Performance</th>
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<tbody>
<tr>
<td>1. Developer Formation Documents: Developer must submit a copy of its Operating Agreement</td>
<td>6/1/2012</td>
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<tr>
<td>2. Community Outreach Plan</td>
<td>6/15/2012</td>
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<tr>
<td>3. Project Description Submission</td>
<td>6/15/2012</td>
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<tr>
<td>4. Term Sheet Proposal Submission</td>
<td>7/1/2012</td>
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<tr>
<td>5. Design Review Submission</td>
<td>8/1/2012</td>
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<tr>
<td>6. CEQA Environmental Evaluation: Submit the environmental evaluation application for the Project</td>
<td>8/15/2012</td>
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<td>7. Implementation Strategies: utility connections, transportation demand management, historic resources preservation, building operations, parking and others as required</td>
<td>9/1/2012</td>
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<tr>
<td>8. Port Commission Endorsement: Port Commission to adopt a resolution endorsing the Term Sheet</td>
<td>9/15/2012</td>
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<td>9. Board Endorsements: Board to endorse the Term Sheet</td>
<td>10/15/2012</td>
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<tr>
<td>10. Final Transaction Documents: Developer and Port must reach final agreement on the form of LDDA, Lease and all related transaction documents</td>
<td>12/15/2013</td>
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<td>11. Approval of Final Transaction Documents: Port Commission to adopt Public Trust consistency findings and approve final Transaction Documents</td>
<td>1/15/2013</td>
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<tr>
<td>12. Board of Supervisors’ Approvals: Board to approve Lease as required.</td>
<td>End of Term</td>
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