CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

November 21, 2012

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: November 28, 2012 Budget and Finance Committee Meeting

TABLE OF CONTENTS

Item 1 **File12-1037**	**Department:** San Francisco Airport

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would (1) retroactively approve four five-year existing cellular service equipment site leases between the City, acting by and through the Airport and (a) New Cingular Wireless PCS, LLC (Cingular), (b) Nextel of California, Inc. and Sprint Spectrum Realty Company, L.P. (Sprint/Nextel) (c) GTE Mobilnet of California Limited Partnership dba Verizon Wireless (Verizon), and (d) T-Mobile West Corporation (T-Mobile) from July 1, 2009 through June 30, 2014; and (2) approve Amendment No. 1 for three of the four existing cellular service equipment site leases that would extend the leases for five years between the City and (a) Cingular, (b) Sprint/Nextel, and (c) Verizon from July 1, 2014 through June 30, 2019. The proposed resolution does not include an Amendment No. 1 for the cellular service equipment site lease with T-Mobile, which has elected to wait until the end of the current term, June 30, 2014, to extend the lease agreement.

Key Points

- The Airport originally entered into lease agreements with (a) Cingular, (b) Sprint/Nextel, (c) Verizon, and (d) T-Mobile for three years from January 1, 2006 through December 31, 2008 with initial rent of $250,000 and $25,000 annual escalations. After expiration, the original lease agreements were held over month-to-month pending negotiations of a new agreement.

- The existing lease agreements between the Airport and the four cellular providers are for five years from July 1, 2009 through June 30, 2014. The existing base rent in the first year for each of these lease agreements was $350,000 with $25,000 annual escalations, with total rent over the five-year term of $8,000,000. The Airport did not submit these four lease agreements to the Board of Supervisors for approval due to an administrative oversight.

- According to Mr. Sam El Gord, Principal Property Manager, San Francisco International Airport, the proposed five-year site lease extensions under Amendment No. 1 is necessary because the three cellular service providers, (a) Cingular, (b) Sprint/Nextel, and (c) Verizon, are making large investments in new infrastructure to meet the changing needs of the industry and to continue to provide quality service for Airport passengers.

Fiscal Impacts

- The total rent to the Airports under the proposed Amendment No. 1 for the three five-year cellular service equipment site lease extensions for (a) Cingular (b) Sprint/Nextel and (c) Verizon from July 1, 2014 through June 30, 2019, is $7,875,000 (base rent of $475,000 in the first year with $25,000 increase each year).

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

According to Administrative Code Section 23.27, leases of City property are subject to Board of Supervisors approval by resolution.

BACKGROUND

The Airport has existing cellular service equipment site lease agreements with four cellular providers:

(a) New Cingular Wireless PCS, LLC, (Cingular)

(b) Nextel of California, Inc. and Sprint Spectrum Realty Company, L.P., (Sprint/Nextel)

(c) GTE Mobilnet of California Limited Partnership dba Verizon Wireless (Verizon), and

(d) T-Mobile West Corporation (T-Mobile)

Previously, the Airport had lease agreements with these four providers for three years from January 1, 2006 through December 31, 2008 with initial base rent of $250,000 and $25,000 annual escalation.[1] When these lease agreements expired, the Airport and cellular service providers agreed to holdover the leases on a month-to-month basis while new leases were negotiated.

On March 3, 2009, the Airport Commission approved the existing lease agreements with these four cellular providers for five years from July 1, 2009 through June 30, 2014. Base rent under the existing agreement was $350,000 commencing on July 1, 2009, escalating by $25,000 per year per lease. The Airport did not submit these lease agreements to the Board of Supervisors for approval due to an administrative oversight

Cellular service equipment sites are spaces at the Airport where the four cellular service providers install their equipment in order to provide adequate cellular coverage at the Airport. Sites include small equipment rooms at the Airport that feed antennas throughout the Airport via cable and fibers running through conduits.

As shown in Table 1 below, total rent over the five-year term from July 1, 2009 through June 30, 2014 of the four existing cellular service equipment site leases is $8,000,000.

---

[1] According to Mr. El Gord, in the negotiations with the cellular service providers prior to the lease agreements that began on January 1, 2006, the Airport accepted the concept of a flat rate instead of a rent rate formula that included a flat rate plus a call capacity component (related to percentage of the cellular companies' gross revenues for cellular usage at the Airport) because the cellular service providers would not provide cell capacity information as the information was proprietary.

Table 1: Total Rent Under Existing Lease Agreements
July 1, 2009 through June 30, 2014

Term	Cingular	Sprint/Nextel	Verizon	T-Mobile	Total
July 1, 2009 through June 30, 2010	$350,000	$350,000	$350,000	$350,000	**$1,400,000**
July 1, 2010 through June 30, 2011	375,000	375,000	375,000	375,000	**1,500,000**
July 1, 2011 through June 30, 2012	400,000	400,000	400,000	400,000	**1,600,000**
July 1, 2012 through June 30, 2013	425,000	425,000	425,000	425,000	**1,700,000**
July 1, 2013 through June 30, 2014	450,000	450,000	450,000	450,000	**1,800,000**
Total	**$2,000,000**	**$2,000,000**	**$2,000,000**	**$2,000,000**	**$8,000,000**
Average Annual Percent Increase	6.5%	6.5%	6.5%	6.5%	**6.5%**

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) retroactively approve four five-year existing cellular service equipment site leases between the City, acting by and through the Airport, and (a) Cingular (b) Sprint/Nextel (c) Verizon, and (d) T-Mobile from July 1, 2009 through June 30, 2014; and (2) approve Amendment No. 1 for three of the four existing cellular service equipment site leases that would extend the leases for five years between the City and (a) Cingular (b) Nextel/Sprint and (c) Verizon from July 1, 2014 through June 30, 2019. The proposed resolution does not include an Amendment No. 1 for the cellular service equipment site lease with T-Mobile, because according to Mr. El Gord, T-Mobile elected to wait until the end of the current term, June 30, 2014, to extend the lease agreement.

According to Mr. El Gord, the proposed five-year lease extensions are necessary because the cellular service providers are making large investments in new systems such as Distributed Antenna Systems (DAS)[2] or repeaters[3] to meet the changing needs of the industry and to continue to provide quality service for Airport passengers. Mr. El Gord reports that the new DAS or repeaters will be used in addition to the current 4G upgrades[4]. The cellular service providers,

[2] Mr. El Gord reports that a Distributed Antenna System (DAS) is a network of separate antennas that are connected to a common source that provide wireless service within a geographic area or structure. Currently cellular carriers have older equipment, outdated small versions of DAS, or insufficient infrastructure that no longer support the needs of the cellular customers and the new technology requirements of the cellular as more customers rely on smartphones and tablets that require more internet data.

[3] According to Mr. El Gord, repeaters are small antennas connected to receivers that capture cellular service from the outside the terminal and distribute it in a specific area of the terminal.

[4] In telecommunications, the "G" stands for a generation of mobile technology, installed in phones and on cellular networks. 4G is the fourth generation of mobile phone mobile communications standards and is a successor of the

with the exception of T-Mobile, requested the proposed five-year extension of the existing lease to provide sufficient time to recoup their investments.

FISCAL IMPACTS

As shown in Table 2 below, total expected rent under the proposed resolution as negotiated by the Airport and the proposed lessees, for the three five-year cellular service equipment site lease extensions for (a) Cingular (b) Sprint/Nextel and (c) Verizon from July 1, 2014 through June 30, 2019, totals $7,875,000 (base rent of $475,000 with $25,000 increase each year).

Table 2: Total Rent Under Proposed Amendments to Existing Lease Agreements
July 1, 2014 through June 30, 2019

	Cingular	Sprint/Nextel	Verizon	Total
July 1, 2014 through June 30, 2015	$475,000	$475,000	$475,000	**$1,425,000**
July 1, 2015 through June 30, 2016	500,000	500,000	500,000	**1,500,000**
July 1, 2016 through June 30, 2017	525,000	525,000	525,000	**1,575,000**
July 1, 2017 through June 30, 2018	550,000	550,000	550,000	**1,650,000**
July 1, 2018 through June 30, 2019	575,000	575,000	575,000	**1,725,000**
Total	**$2,625,000**	**$2,625,000**	**$2,625,000**	**$7,875,000**
Average Annual Percent Increase	4.9%	4.9%	4.9%	**4.9%**

According to Mr. El Gord, the fair market value of the cellular equipment site leases cannot be determined because most of the sites are located in non-leasable spaces and the square footage of each lease site varies. Mr. El Gord reports that some of the sites are shared with the Airport by utilizing existing utilities and equipment rooms and other equipment are located in cargo buildings, above ceiling tiles in the terminals, and above elevator cores. According to Mr. El Gord, the negotiated proposed base rent of $475,000 and the $25,000 annual increase is based on the historical rent and annual increase of the existing and previously negotiated cellular service equipment site leases.

RECOMMENDATION

Approve the proposed resolution.

third generation (3G) standards. A 4G system provides mobile ultra-broadband Internet access, for example to laptops with USB wireless modems, to smartphones, and to other mobile devices.

Item 3 File 12-1062	Department(s): Department of Public Health

EXECUTIVE SUMMARY

Legislative Objective

The proposed resolution would approve the Third Amendment to the existing contract between the Department of Public Health (DPH) and MedImpact Healthcare Systems, Inc. (MedImpact) to provide third party administration of outpatient pharmacy benefits for Community Health Network (CHN) clinics. The proposed Third Amendment will increase the contract not-to-exceed amount by $8,804,318, from not-to-exceed $9,900,000 to not-to-exceed $18,704,318 for the six-year contract term from July 1, 2008 through June 30, 2014.

Key Points

- The federal Public Health Services Act, Section 340B Drug Program allows CHN clinics to purchase outpatient drugs for eligible patients at discounted rates. CHN clinics have contracted with eight community pharmacies including Walgreens and AG Pharmacy to dispense these discounted drugs exclusively to eligible CHN clinic outpatients on the CHN clinics' behalf. According to Dr. David Woods, DPH Chief Pharmacy Officer, DPH is planning to add an estimated 60 Walgreens pharmacies to the 340B Drug Program. Dr. Woods further noted that increasing the number of pharmacies will increase outpatient access to pharmacies, likely increasing the number of filled prescriptions and claims administration.

Fiscal Impact

- The existing contract between DPH and MedImpact, including the First and Second Amendments, is for not-to-exceed $9,900,000 for the four-year period from July 1, 2008 through June 30, 2012, which includes a base budget of $8,839,286 plus a 12% contingency of $1,060,714. The existing contract was not subject to Board of Supervisors approval because it was for less than $10 million.
- Actual expenditures under the MedImpact contract for the first four years from July 1, 2008 through June 30, 2012 were $9,407,857. Proposed expenditures for the two-year period from July 1, 2012 through June 30, 2014 are $7,292,428. Therefore, actual and proposed expenditures for the six-year term from July 1, 2008 through June 30, 2014 are $16,700,285.
- The proposed not-to-exceed amount of $18,704,318 under the Third Amendment includes a contingency of $2,004,034, equal to 12% of total actual and proposed contract expenditures of $16,700,284 for the entire six-year term from July 1, 2008 through June 30, 2014, including $9,407,857, which has already been expended on this contract and should not be included in the contingency calculation.
- A 12% contingency should be calculated on the proposed FY 2012-13 and FY 2013-14 expenditures of $7,292,428 resulting in a contingency amount of $875,092, which is $1,128,942 less than the budgeted contingency of $2,004,034.

Policy Considerations

- According to the Budget and Legislative Analyst's 2012 Performance Audit of Professional Services Contracts, although DPH established a policy in 2005 to include a 12% contingency in professional services contracts, the purpose of the 12% contingency is not well-defined. DPH does not have a written policy on including contingencies in contract budgets or guidelines on the use of contingencies to modify contracts**.**
- According to Ms. Jacquie Hale, Director of DPH Office of Contract Management and

Compliance, DPH believes for this particular contract the contingency should be maximized in order to continue uninterrupted patient care since there will likely be an increase in community pharmacy access (from 8 pharmacies to 68 pharmacies) which will increase the number of prescriptions filled and claims administered.

- In the absence of a formal written policy or guidelines on the use of contingencies in professional services contracts, the Budget and Legislative Analyst recommends that the contingency amount under the proposed third amendment be set at 12% rather than 27.5% of the budget for the third amendment.
- Under the Health Commission's policy, contract increases of more than 10% require Health Commission approval. Therefore, the Budget and Legislative Analyst recommends that any expenditures under the third amendment to the contract between DPH and MedImpact that exceed 10% of the third amendment's budget of $7,292,428 be submitted to the Health Commission for approval.

Recommendations

- Amend the proposed resolution to reduce the not-to-exceed amount by $1,128,942, from a total not-to-exceed amount of $18,704,318, to a total not-to-exceed contract amount of $17,575,376.
- Amend the proposed resolution to require that any expenditures under the Third Amendment to the contract between DPH and MedImpact that exceed 10% of the Third Amendment's budget of $7,292,428 be submitted to the Health Commission for approval.
- Approve the proposed ordinance, as amended.

MANDATE STATEMENT/BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118, any contract (a) for more than $10,000,000, (b) or that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

Background

According to Section 340B of the Federal Public Health Services Act, the Department of Public Health's Community Health Network (CHN) clinics are able to purchase outpatient drugs for eligible patients at discounted rates from drug manufacturers who enter into drug purchasing agreements with the United States Department of Health and Human Services. CHN clinics have contracted with certain pharmacies in the community, largely Walgreens, to dispense these discounted drugs exclusively to eligible CHN clinic outpatients on the CHN clinics' behalf. The program is referred to as the 340B Drug Program.

In December of 2007, MedImpact Healthcare Systems, Inc. (MedImpact) was selected by DPH through a competitive Request for Proposals (RFP) process to provide third party pharmacy administration services to support the 340B Drug Program by providing online, point-of-service electronic claims administration for prescriptions issued by CHN clinics and filled by select pharmacies, which includes instant verification of patient and provider eligibility for the 340B

Dug Program as well as information on the patient's co-pay status and formulary status of prescribed medication[1].

In 2008, the City entered into a contract on behalf of the Department of Public Health with MedImpact for an amount not-to-exceed $840,000 for three years, beginning July 1, 2008 and ending June 30, 2011 with an option to extend the term for a maximum of nine-years as defined in the RFP. This contract was amended in 2009 (First Amendment) to increase the contract amount by $6,888,000, from $840,000 to $7,728,000, and in 2011 (Second Amendment) to increase the contract amount by $2,172,000, from $7,728,000 to $9,900,000 and extend the contract term by three years from July 1, 2011 through June 30, 2014, for a term of six years. Because the initial contract and first two amendments were less than $10,000,000, they were not subject to Board of Supervisors approval.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the Third Amendment to the existing contract between the City and MedImpact to provide third party administration of outpatient pharmacy benefits including online, point-of-contact electronic claims administration as well as other services to community pharmacies for discounted prescriptions issued from Community Health Network (CHN) clinics for CHN eligible patients. As shown in Table 1, the proposed Third Amendment would increase the contract's total not-to-exceed amount by $8,804,318, from $9,900,000 to a total not-to-exceed amount of $18,704,318 for a six-year term that began July 1, 2008 and will end June 30, 2014. The proposed six year not-to-exceed amount of $18,704,318 includes a $2,004,034 contingency.

Table 1: Difference Between Current Contract and the Proposed Amendment

Contract	Current Contract Budget	Contingency	Total Not-to-Exceed Amount
Current Contract	$8,839,286	$1,060,714	$9,900,000
Proposed Amendment to Contract	$16,700,284	$2,004,034	$18,704,318
Increase from Current Contract to Proposed Contract	**$7,860,998**	**$943,320**	**$8,804,318**

Currently, MedImpact provides services for eight community pharmacies and is responsible for maintaining accurate information for all eligible patients. In FY 2011-12, MedImpact was responsible for maintaining information for approximately 50,000 eligible patients and administered 317,336 paid claims, which are prescriptions that have been picked up and paid for by the patient. MedImpact's claims processing fee is a fixed per member per month fee which does not change if the patient does not pick up or pay for the prescription.

[1] A formulary is a list of prescription drugs, both generic and brand name, that are preferred by a given health plan and are covered or partly covered in and are less expensive than name-brand or non-formulary prescription drugs.

As shown in Table 2 below, total expenditures have increased each year due to an increase in prescription volume. According to Dr. David Woods, DPH Chief Pharmacy Officer, expenditures under the contract include (1) a fixed fee for each eligible CHN patient, and (2) a pharmacy fee for each prescription that is filled, which compensates pharmacists for filling prescriptions on behalf of CHN clinics. As shown in Table 2, there has been an increase in paid claims each year, which means that more prescriptions are being filled which increases the amount of Pharmacy Professional Fees.

Table 2: MedImpact's Actual and Projected Administered Claims from FY 2008-09 to FY 2012-13

Fiscal Year	Total Expenditures	Paid Claims	Percent Increase in Paid Claims
FY 2009-10	$2,111,439	290,137	Not available
FY 2010-11	$2,522,160	307,591	6.0%
FY 2011-12	$3,111,481	317,336	3.2%
FY 2012-13 (Projected)	$3,646,214	327,390	3.2%

Table 3 below provides a breakdown of MedImpact's total expenditures for FY 2011-12.

Table 3: MedImpact's Expenditures for FY 2011-12

Expenditures	Amount
Med-Impact Fees (claims processing, reports, etc.)	$128,721
Prior Authorization Review Fee	$46,875
Medications Unable to Replenish	$16,834
Pharmacy Professional Fees	$2,919,051
Total for FY 2011-12	**$3,111,481**

Pharmacy Professional Fees constitute the largest portion of MedImpact's expenditures. According to Dr. Woods, DPH is planning to add an estimated 60 Walgreens pharmacies to the 340B Drug Program, and DPH has submitted paperwork to the United States Department of

Health and Human Services/Office of Pharmacy Affairs requesting this addition. Dr. Woods expects that the addition of pharmacies will be approved and take effect in January 2013.

Dr. Woods further noted that improving access to pharmacies will make it more convenient for patients to fill their prescriptions and will likely result in an increase in filled prescriptions and an increase in Pharmacy Professional Fees.

FISCAL IMPACTS

As of June 30, 2012, actual MedImpact contract expenditures over the first four years of the contract were $9,407,857, as shown in Table 4 below.

Table 4: Actual Expenditures from FY 2008-09 through FY 2011-12 and Proposed Expenditures FY 2012-13 and FY 2013-14 for MedImpact's Services

Fiscal Year	Expenditures
FY 2008-09	$1,662,777
FY 2009-10	$2,111,439
FY 2010-11	$2,522,160
FY 2011-12	$3,111,481
Subtotal Actual Expenditures	**$9,407,857**
FY 2012-13 (Proposed)	$3,646,214
FY 2013-14 (Proposed)	$3,646,214
Subtotal Proposed Expenditures	**$7,292,428**
Total Actual and Proposed Expenditures	$16,700,284
12% Contingency on Total Actual and Proposed Expenditures (12% of $16,700,284)	$2,004,034
Proposed Not-to-Exceed Contract Total	$18,704,318

As noted in Table 4 above, the proposed not-to-exceed amount of $18,704,318 includes a 12% contingency of $2,004,034, which was calculated using the total actual and proposed contract expenditures of $16,700,284 for the entire six-year term from July 1, 2008 through June 30, 2014, including $9,407,857, which has already been expended on this contract and should not be included in the contingency calculation.

A 12% contingency should be calculated on the proposed FY 2012-13 and FY 2013-14 expenditures of $7,292,428 resulting in a contingency amount of $875,092 rather than the proposed contingency of $2,004,034 which equals 27.5% of the proposed FY 2012-13 and FY 2013-14 expenditures. A 12% contingency on the proposed expenditures for FY 2012-13 and FY 2013-14 ($875,092) is $1,128,942 less than the budgeted contingency of $2,004,034. Therefore, the total contract not-to-exceed amount should be reduced by $1,128,942, from $18,704,318 to $17,575,376.

POLICY CONSIDERATIONS

The contingency percentage should be calculated on the balance of the contract when contract amendments are executed.

According to the Budget and Legislative Analyst's 2012 Performance Audit of Professional Services Contracts, although DPH established a policy in 2005 to include a 12% contingency in professional services contracts, the purpose of the 12% contingency is not well-defined. DPH does not have a written policy on including contingencies in contract budgets or guidelines on the use of contingencies to modify contracts.

According to Ms. Jacquie Hale, Director of DPH Office of Contract Management and Compliance, DPH believes that for this particular contract the contingency should be maximized in order to continue uninterrupted patient care since there will likely be an increase in community pharmacy access (from 8 pharmacies to 68 pharmacies) which will increase the number of prescriptions filled and claims adjudicated. Moreover, the proposed expenditures for FY 2012-13 and FY 2013-14, as shown in Table 4 above, only assumes a 3.2% increase in claims which will likely be much greater if the increase in pharmacies is approved in January 2013.

Ms. Hale further noted that the proposed contingency of $2,004,034, as shown in Table 4 above, would afford the DPH time to negotiate a final amendment with MedImpact extending the contract for three more years for a total of 9 years which is the maximum number of years set by the RFP, as well as the necessary time needed to submit the final amendment to the Board of Supervisors prior to the end of the existing contract in 2014. Ms. Hale stated that it takes a long time to negotiate a contract or change in contract terms with large national providers, which could interrupt service.

However, the Budget and Legislative Analyst notes that the proposed contingency of $2,004,034 equals 27.5% of the contract's Third Amendment budget of $7,292,428, shown in Table 4 above. This contingency of 27.5% compares to actual contingency expenditures under the existing contract of 6.4% from July 1, 2008 through June 30, 2012.[2] In the absence of a formal written policy or guidelines on the use of contingencies in professional services contracts, the Budget and Legislative Analyst recommends that the contingency amount under the proposed third amendment be set at 12% rather than 27.5% of the budget for the proposed Third Amendment.

Under the Health Commission's policy, contract increases of more than 10% require Health Commission approval. Therefore, the Budget and Legislative Analyst recommends that any expenditures under the Third Amendment to the contract between DPH and MedImpact that exceed 10% of the Third Amendment's budget of $7,292,428 (see Table 4 above) be submitted to the Health Commission for approval.

[2] Expenditures of $9,407,857 from July 1, 2008 through June 30, 2012 include the base budget of $8,839,286 plus contingency expenditures of $568,571 which is 6.4% of $8,839,286.

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the not-to-exceed contract amount by $1,128,942, from a total not-to-exceed amount of $18,704,318, to a total-not-exceed amount of $17,575,376.

2. Amend the proposed resolution to require that any expenditures under the Third Amendment to the contract between DPH and MedImpact that exceed 10% of the Third Amendment's budget of $7,292,428 be submitted to the Health Commission for approval.

3. Approve the proposed ordinance, as amended.

Item 4 **File 12-1070**	**Department:** San Francisco Municipal Transportation Agency (SFMTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would amend the contract between SFMTA and New Flyer of America Inc. (New Flyer), which authorized the purchase of 45 40-foot, heavy-duty, low-floor diesel hybrid buses in order to purchase an additional 17 40-foot, heavy-duty, low-floor diesel hybrid buses for a total of 62 buses. The total contract amount is not-to-exceed $48,669,369 for a term not to exceed six-years.

Key Points

- On October 2, 2012 the Board of Supervisors approved a resolution that authorized the SFMTA Director of Transportation to execute a contract with New Flyer to purchase 45 40-foot low-floor diesel hybrid buses under a competitive process through the Minnesota Cooperative Purchasing Venture.
- The Federal Transit Administration subsequently awarded the SFMTA $15 million in a State of Good Repair grant toward the replacement of its fleet of 40-foot low-floor diesel hybrid buses that have been in service beyond their useful life of 12 years. SFMTA staff has analyzed their local and federal funding sources and determined SFMTA could fund an additional 17 diesel hybrid buses, for a total of 62 buses (45 plus 17).
- SFMTA staff determined that the most cost-effective and expeditious way to procure the additional 17 diesel hybrid buses is to amend the previously approved existing contract with New Flyer.

Fiscal Impacts

- The proposed amendment for an additional 17 buses would increase the contract not-to-exceed amount by $11,780,005, from not-to-exceed amount of $36,889,364 to not-to-exceed amount of $48,669,369. The contract amount includes: (1) the cost of 62 new heavy-duty low-floor diesel-hybrid coaches; (2) tools and diagnostics to maintain the new vehicles; (3) training for staff to drive the new buses; (4) insurance and storage costs; and (5) an allowance for tools and spare parts.
- SFMTA will incur associated project costs with the contract, including: (1) an 8.5% Sales Tax on the new buses, tools, and spare parts; (2) warranty support; (3) SFMTA and consultant staff to provide project support to acquire and implement the new buses, and (4) Federal Transit Authority required vehicle inspection at the New Flyer plant. These associated costs total $6,747,768, resulting in a total project cost of $55,417,137 ($48,669,369 plus $6,747,768).
- SFMTA has identified funds to pay for the total project cost of $55,417,137 including $39,113,138 in Federal grants, (which include the $15,000,000 State of Good Repair grant funds), $16,257,805 in funds from Proposition K Sales Tax monies, and $46,194 in previously appropriated SFMTA Operating Funds.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT/BACKGROUND

Mandate Statement

In accordance with Charter Section 9.118, any agreement (a) for more than $10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than $500,000, is subject to Board of Supervisors approval.

Background

On September 4, 2012, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted a resolution that authorized the Director of Transportation to execute a contract with New Flyer of America Inc. (New Flyer), to purchase 45 40-foot, heavy-duty, low-floor diesel hybrid buses under a competitive process through the Minnesota Cooperative Purchasing Venture. On October 2, 2012 the Board of Supervisors approved the resolution authorizing this contract (Resolution No. 356-12).

In July 2012, the Federal Transit Administration (FTA) awarded the SFMTA $15 million in a State of Good Repair (SOGR) grant toward the replacement of its fleet of 40-foot, heavy-duty, low-floor diesel hybrid buses that have been in service beyond their useful life of 12 years. This grant was to partially fund the original 45 vehicle procurement. Since the Board of Supervisors approval of the original contract, SFMTA staff has analyzed their local and Federal funding sources as well as the cost of diesel hybrid buses and determined that SFMTA could fund an additional 17 diesel hybrid buses, for a total of 62 buses (45 plus 17).

SFMTA staff determined that the most cost-effective and expeditious way to procure the additional 17 diesel hybrid buses is to amend the previously approved existing contract with New Flyer. If the proposed amendment is executed prior to the end of 2012, then SFMTA would receive the same price per model for the additional 17 diesel hybrid buses as the original 45 diesel hybrids (see Table 1 below) and all the buses would be in the same production run. On November 6, 2012, the SFMTA Board of Directors adopted a resolution authorizing the purchase of the 17 additional diesel hybrid buses.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would amend the previously approved existing contract between SFMTA and New Flyer, which authorized the purchase of 45 40-foot, heavy-duty, low-floor diesel hybrid buses as well as related tools, training, manuals, and spare parts, to allow for the purchase of an additional 17 40-foot low-floor diesel hybrid, totaling 62 new buses. The proposed amendment to the existing contract for an additional 17 buses would increase the not-to-exceed amount by $11,780,005, from not-to-exceed amount of $36,889,364 to not-to-exceed amount of $48,669,369. The contract term of six years would remain unchanged.

The 17 additional buses will have the same specifications as the 45 buses to be acquired under the original contract.

Since the effective date of the original contract, October 23, 2012, New Flyer has begun work on the buses for the original contract and will deliver a prototype of the bus within 180 days of October 23, 2012. Once SFMTA approves the prototype, New Flyer has 180 days to deliver a total of 62 new buses. The term of the contract is for six years to cover the vehicle warranty periods.

FISCAL IMPACT

As shown in Table 1 below, the budget for the proposed amended contract with New Flyer is $48,669,369. This amount includes: (1) the cost for a total of 62 new heavy-duty low-floor diesel-hybrid coaches; (2) tools and diagnostics to maintain the new vehicles; (3) training for staff to drive the new vehicles; (4) insurance and storage costs; and (5) an allowance for spare parts.

Table 1: Itemized Costs of New Flyer Contract

Item	Per Item Cost	Number	Total Cost
XDE40 (ISL/EV50) Hybrid Bus	$741,069	23[1]	$ 17,044,587
XDE40 (ISB/BAE) Hybrid Bus	691,941	39	26, 985,699
Subtotal for All Vehicles		62	$44,030,286
Tools and Diagnostics	NA	NA	278,037
Training	NA	NA	1,299,046
Fee for Insurance/Storage of Engines	1,000	62	62,000
Allowance for Spare Parts	NA	NA	3,000,000
Subtotal for Other Contract Costs			4,639,083
Contract Total			**$48,669,369**

[1] Total of 62 buses with 23 buses having a slightly different hybrid technology than the remaining 39 buses.

SFMTA will incur other associated project costs with the contract, including: (1) an 8.5% Sales Tax on the new buses, tools, and spare parts; (2) warranty support; (3) SFMTA and consultant staff to provide project support to acquire and implement the new buses, and (4) Federal Transit Administration required vehicle inspection at the New Flyer plant. As shown in Table 2 below, with associated costs of $6,747,768, the total estimated project costs are $55,417,137 ($48,669,369 plus $6,747,768).

Table 2: Associated Project Costs for the New Flyer Contract Amendment

Item	Cost
Tax (8.5%)	$4,136,896
Warranty support	229,622
Project support (SFMTA staff, ODC)	1,781,250
Vehicle Inspection at Plant (FTA Required)	600,000
Subtotal Other Associated Costs	$6,747,768
Contract Total (see Table 1 above)	$48,669,369
Total Estimated Project Costs Including Contract Total & Associated Costs	**$55,417,137**

As shown in Table 3 below, the SFMTA has identified the needed funding sources of $55,417,137 to pay for this project.

Table 3: Financial Plan for Total Project Cost

Fund Source	Amount
Federal State of Good Repair Grant	$15,000,000
Federal 5307 Grant	24,113,138
Subtotal, Federal Grants	39,113,138
Proposition K Sales Tax[2]	16,257,805
SFMTA Operating Funds	46,194
Total	**$55,417,137**

RECOMMENDATION

Approve the proposed resolution.

[2] Proposition K was passed by San Francisco voters in November 2003, allowing the half-cent transportation Sales Tax to be allocated to the Prop K Expenditure Plan. The Expenditure Plan does not provide guidance as to the allocation of those revenues over the 30-year period, but instead only stipulates eligible programs.

Item 5 **File 12-1034**	**Departments:** Department of Public Health (DPH) and Real Estate Division (RED)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would approve the exercise of the first of two five-year options to extend the lease between the Department of Public Health (DPH), as tenant, and Cort Family Trust, as landlord, for office space at 1380 Howard Street from January 1, 2013 through December 31, 2017.

Key Points

- In 2006, the Board of Supervisors approved a lease between DPH and the Cort Family Trust, for 79,950 square feet of office space at 1380 Howard Street that includes two five-year options to extend.

- Under the lease, the office space at 1380 Howard Street includes administration and clinical programs under the Community Programs for the Department of Public Health. The primary DPH programs that occupy space serve the DPH Community Programs' Administrative Office. Other DPH client service programs that occupy space include: (a) DPH's Pharmacy, (b) Opiate Addiction Treatment Program, (c) Behavioral Health Access Center, and (d) Substance Abuse Crime Prevention Act (SACPA).

Fiscal Impacts

- Under the proposed five-year lease extension, the initial monthly base rent of $118,259 is an increase by $1,665 or 1.4% from the current monthly rent of $116,594 for the first six months of the lease from January 1, 2013 through June 30, 2013. The subsequent monthly base rent of $131,584 would increase by $14,990 or 12.9% from the current monthly rent of $116,594, for the remaining 54 months of the lease. Total first year rent from January 1, 2013 through December 31, 2013 is $1,499,058.

- In addition to the first year annual rent of $1,499,058, DPH incurs annual operating costs of $564,107 and utility costs of $114,578, resulting in first year General Fund costs to DPH of an estimated $2,177,743. These costs are included in the DPH FY 2012-13 and FY 2013-14 budgets as previously approved by the Board of Supervisors.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Under Administrative Code Section 23.27, leases with a term of more than one year or rent of more than $5,000 per month, in which the City is the tenant, are subject to the Board of Supervisors approval, by resolution.

Background

In 2006, the Board of Supervisors approved a lease between the Department of Public Health (DPH), as tenant, and Cort Family Trust, as landlord, for 79,950 square feet of office space at 1380 Howard Street. Under the existing lease, DPH leased (a) 70,300 square feet of space on the second through fifth floors, for a term of six years and six months from July 1, 2006, through December 31, 2012; and (b) an additional 9,650 square feet of space on the ground floor for a term of six years and four months, from September 1, 2006, through December 31, 2012. The existing lease includes two five-year options to extend. The base monthly rent of the existing lease is $116,594, or approximately $1.46 per square foot. Under the lease, the office space at 1380 Howard Street includes administration and clinical programs under the Community Programs for the Department of Public Health. The primary DPH programs that occupy space serve the DPH Community Programs' Administrative Office, and include program administration for: (a) Community Oriented Primary Care, (b) Business Office, (c) Contracts Office, and (d) Information Technology/MIS, and (e) Cultural Competency and Client Relations. Additionally, other DPH client service programs that occupy space include: (a) DPH's Pharmacy, (b) Opiate Addiction Treatment Program, (c) Behavioral Health Access Center, and (d) Substance Abuse Crime Prevention Act (SACPA).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the first of the two five-year options to extend the lease, as follows:

Table 1: Summary of Proposed Extended Lease Terms

Term	Five years January 1, 2013 through December 31, 2017
Square feet (approximate)	79,950 (first floor through fifth floor for office space)
Rent per Month Jan 1, 2013 - June 30, 2013 (six months)	$1.48 per square foot (approximate) $118,259 per month
Rent per Month July 1, 2013 - Dec 31, 2017 (balance of 54 months)	$1.65per square foot (approximate) $131,584 per month
Total Rent (60 months)	$7,815,090
Utilities and services	Utilities and janitorial services paid by the City

The lease would continue to provide office space for the DPH Community Programs' Administrative Office and other DPH client service programs that include: (a) DPH's Pharmacy, (b) Opiate Addiction Treatment Program, (c) Behavioral Health Access Center, and (d) Substance Abuse Crime Prevention Act (SACPA).

FISCAL IMPACTS

Under the proposed five-year lease extension, and as shown in Table 2 below, the initial monthly base rent of $118,259 would increase by $1,665 or 1.4% from the current monthly rent of $116,594 for the first six months of the lease from January 1, 2013 through June 30, 2013. The subsequent monthly base rent, for a balance of 54 months, of $131,584 would increase by $14,990 or 12.9% from the current monthly rent of $116,594. According to Mr. Charlie Dunn, Senior Real Property Officer, Real Estate Division, monthly rent of $131,584, effective as of July 1, 2013 represents 95% of prevailing market rate rentals, as determined by the Landlord and the Real Estate Division, and pursuant to the existing lease agreement and proposed extension. According to Mr. Dunn, 95% of the prevailing monthly market rate is $1.65 per square foot; however, the City was able to negotiate the lower monthly rate of 1.48 per square foot for the first six months to accommodate the City's budgetary cycle, as an additional concession from the Landlord.

Table 2: Comparison of Rent under the Existing Lease and the Proposed Lease Extension

	Jan 1, 2012 - Dec 31, 2012	Jan 1, 2013 - June 30, 2013			July 1, 2013 - June 30, 2014		
Rent per Month	**Current rent**	**Proposed rent**	**Increase over current rent**	**Percent increase**	**Proposed rent**	**Increase over current rent**	**Percent increase**
Square foot	$1.46	$1.48	$0.02	1.4%	$1.65	$0.19	12.9%
Total	$116,594	$118,259	$1,665	1.4%	$131,584	$14,990	12.9%

The first year annual rent of $1,499,058[1] is funded by General Fund monies as previously appropriated by the Board of Supervisors in the FY 2012-13 and FY 2013-14 DPH budget.

As shown in Table 3 below, the first year total rent and operating costs total $2,177,743 paid from General Fund monies included in DPH's FY 2012-13 and FY 2013-14 budgets as previously approved by the Board of Supervisors.

[1] The first year annual rent is $709,554 from January 1, 2013 through June 30, 2013 ($118,259 per month x 6 months) plus $789,504 from July 1, 2013 through December 31, 2013 ($131,584 per month x 6 months).

Table 3: Total Estimated First Year General Fund Costs from January 1, 2013 through December 31, 2013

Cost Category	Annual Amount
Rent	$1,499,058
Per square foot	$18.75
Operational Costs	
Pest Control Service	$1,984
Data Center Maintenance & Repairs	305,688
Garbage Collection	24,866
Janitorial Service & Supplies	226,293
Fire Extinguisher inspection	276
Misc. Repair Allowance	5,000
Subtotal	$564,107
Subtotal, per square foot	$7.06
Utilities	
Water / Waste Water	$26,674
Electricity	87,904
Subtotal	$114,578
Subtotal, per square foot	$1.43
Total General Fund Costs	**$2,177,743**
Total per square foot	**$27.24**

RECOMMENDATION

Approve the proposed resolution.

Item 6 File 12-1035	Departments: Department of Public Health (DPH) and Real Estate Division (RED)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would retroactively approve the exercise of the second of two five-year options to extend the lease between the Department of Public Health (DPH), as tenant, and Cort Family Living Trust, as landlord, for mental health service clinic space at 760 Harrison Street from July 1, 2012 through June 30, 2017.

Key Points

- In 1996, the Board of Supervisors approved a lease between DPH and the Cort Family Living Trust, for approximately 13,000 square feet of clinic space at 760 Harrison Street that includes two five-year options to extend. In July 2007, the Board of Supervisors retroactively approved the first of five-year option to extend from July 1, 2007 through June 30, 2012.
- Under the existing lease, DPH's South of Market Mental Health Services Clinic occupies the space.

Fiscal Impacts

- Under the proposed five-year lease extension, the annual rent is $304,200 with the monthly base rent of $25,350 for all five years of the extension, which the same as the current annual and monthly rent.
- In addition to the first year annual rent of $304,200, DPH incurs annual operating costs of $35,967 and utility costs of $9,349, resulting in first year General Fund costs to DPH of an estimated $349,516.
- According to Ms. Claudine Venegas, Senior Real Property Officer, Real Estate Division, the lease extension was not brought to the Board of Supervisors prior to the termination of the first five-year extension, because DPH and the Real Estate Division were waiting to review the Landlord's base rental determination for the extended term in accordance with the terms of the existing lease.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

Under Administrative Code Section 23.27, leases with a term of more than one year or rent of more than $5,000 per month, in which the City is the tenant, are subject to the Board of Supervisors approval, by resolution.

Background

In 1996, the Board of Supervisors approved a lease between the Department of Public Health (DPH), as tenant, and Cort Family Trust, as landlord, for 13,000 square feet of clinic space at 760 Harrison Street from November 1, 1996 through June 30, 2007. The lease included two five-year options to extend. In July 2007, the Board of Supervisors retroactively approved the first of five-year option to extend from July 1, 2007 through June 30, 2012. The base monthly rent of the existing lease is $25,350, or approximately $1.95 per square foot per month for 13,000 square feet. Under the lease, DPH's South of Market Mental Health Services Clinic, which is part of DPH Community Programs – Community Behavioral Health Services, occupies the space. As the existing lease extension terminated on June 30, 2012, the landlord, Cort Family Living Trust, and DPH exercised a month-to-month holdover option, with the existing base monthly rent of $25,350 until authorization is obtained from the Board of Supervisors to retroactively exercise the second of the two five-year options. According to Ms. Claudine Venegas, Senior Real Property Officer, Real Estate Division, the lease extension was not brought to the Board of Supervisors prior to the termination of the first five-year extension, because DPH and the Real Estate Division were waiting to review the Landlord's base rental determination for the extended term in accordance with the terms of the existing lease.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would retroactively approve the second of the two five-year options to extend the lease, as follows:

Table 1: Summary of Proposed Extended Lease Terms

Term	5 years (July 1, 2012 through June 30, 2017)
Square feet (approximate)	13,000
Rent per square foot per month Total rent per month Total annual rent	Approximately $1.95 $25,350 $304,200
Annual rent increases	None
Utilities and services	Utilities and janitorial services paid by the City

The lease would continue to provide mental health services clinic space for DPH's South of Market Mental Health Services Clinic.

FISCAL IMPACTS

Under the proposed five-year lease extension, the monthly base rent of $25,350, for all five years of the extension, is the same as the current monthly rent. According to Ms. Venegas, monthly rent of $25,350 was negotiated by the Landlord and the Real Estate Division on behalf of the City and pursuant to the existing lease agreement and proposed extension.

As shown in Table 2 below, the first year total rent and operating costs are $349,516. Total General Fund monies of $349,516 are included in DPH's FY 2012-13 budget as previously approved by the Board of Supervisors.

Table 2: Total First Year General Fund Estimated Costs From July 1, 2012 through June 30, 2013

Cost Category	Annual Amount
Rent	$304,200
Per square foot	$23.40
Operational Costs	
Pest Control Service	$1,234
Janitorial Service & Supplies	33,843
Fire Extinguisher inspection	240
Misc. Repair Allowance	650
Subtotal	$35,967
Subtotal, per square foot	$2.77
Utilities	
Water / Waste Water	$5,311
Electricity	4,038
Subtotal	$9,349
Subtotal, per square foot	$0.72
Total General Fund Costs for FY 2012-13	**$349,516**
Total FY 2012-13 per square foot for 13,000 square feet	**$26.89**

RECOMMENDATION

Approve the proposed resolution.

Item 7 **File 12-1045**	**Departments:** Port of San Francisco

EXECUTIVE SUMMARY

Legislative Objective

Approval of the proposed resolution would find that (1) the proposed 20th Street Historic Buildings project in the Pier 70 area is fiscally feasible; and (2) endorse the proposed Term Sheet between the Port and Orton.

Key Points

- Administrative Code Chapter 29 requires that certain development projects be submitted to the Board of Supervisors for approval of the project's fiscal feasibility prior to submitting the project to the Planning Department for environmental review. Additionally, the Budget and Legislative Analyst recommended in the 2004 Management Audit of the Port that the Port should submit term sheets for projects with development costs greater than $10 million to the Board of Supervisors for endorsement. The finding that the proposed 20th Street Historic Buildings project is fiscally feasible and endorsement of the proposed Term Sheet between the Port and Orton does not commit the Board of Supervisors to future approval of environmental findings under the California Environmental Quality Act (CEQA) or approval of the final lease between the Port and Orton.
- The 20th Street Historic Buildings rehabilitation project consists of six office and industrial buildings on Port property in the area of Pier 70. None of the six buildings are currently occupied and all need extensive rehabilitation. The Port is currently applying for historic district designation from the National Register of Historic Places for the Pier 70 area.
- The Port Commission selected Orton in February 2012 to develop the six buildings as a mixed use office, restaurant and light industrial complex based on a competitive Request for Proposal (RFP) process; and authorized Port staff to enter into an Exclusive Negotiation Agreement with Orton in April 2012. The Port and Orton are currently negotiating the terms of a ground lease and lease disposition and development agreement, for which the basic terms are contained in the proposed Term Sheet, attached to this report.

Term Sheet

- Under the proposed Term Sheet, the Port and Orton would enter into a 66-year ground lease. Orton would rehabilitate the 20th Street Historic Buildings at an estimated project cost of $58.5 million. In response to the RFP, Orton proposed that they invest up to $14 million in equity in the 20th Street Historic Buildings project with a 14% per year return on their equity investment. The balance of funding is to be funded from federal Historic Preservation Tax Credits and loans to be obtained by Orton, and by a $1.5 million contribution from Port capital revenues.
- The Port would receive participation rent from the 20th Street Historic Buildings once Orton's equity investment of up to $14 million has been fully paid. However, the Port would receive annual base rent of approximately $415,000 in year 21 of the 66-year ground lease, even if Orton's equity investment has not yet been fully paid. The Port would receive 50%

participation rent in the 20th Street Historic Buildings annual net revenues beginning in year 27 of the project, based on current estimates of project costs and revenues. The Budget and Legislative Analyst estimates that the net present value of rent to the Port over 66 years is $15.7 million.

- Orton is currently conducting a detailed evaluation of the 20th Street Historic Buildings site and developing a more refined design plan and cost estimate for the project. To ensure than the future ground lease and associated development and disposition agreement are consistent with the proposed Term Sheet and the Board of Supervisors finding of fiscal feasibility, the Port should report to the Board of Supervisors, when the Board of Supervisors considers the project's ground lease, on the (1) revised cost estimates, project financing and pro forma financial analysis; and (2) Port's procedures to control and verify project costs.
- In order to ensure that the proposed 20th Street Historic Buildings project qualifies for Historic Preservation Tax Credits, which are intended to fund up to 20% of project costs, the proposed resolution should be amended to require that the 20th Street Historic Buildings project meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Fiscal Feasibility

The proposed 20th Street Historic Buildings project would (1) yield annual estimated tax revenue to the City of $919,000; (2) generate an estimated 500 new permanent jobs; (3) provide an estimated $58.5 million in construction expenditures; (4) be financed by $14 million in available developer equity, $1.5 million in available Port funds, and $43.0 million in federal Historic Preservation Tax Credits and loans to be obtained by the developer; (5) incur no ongoing maintenance and operating costs to the Port or the City; and (6) incur no debt load by the Port or the City.

Based on these criteria, the Budget and Legislative Analyst finds the proposed development to be fiscally feasible under Chapter 29 of the City's Administrative Code. As noted above, in accordance with Administrative Code Chapter 29, the finding of "fiscal feasibility" means only that the project merits further evaluation and environmental review. If the proposed resolution is approved by the Board of Supervisors, the City will be authorized to commence environmental review of the project under CEQA.

Recommendations

- Amend the proposed resolution to require that the 20th Street Historic Buildings project meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.
- Amend the proposed resolution to require the Port to report back to the Board of Supervisors, when the Board considers the project's ground lease, on the (1) revised cost estimates, project financing and pro forma financial analysis; and (2) Port's procedures to control and verify project costs.
- Amend the proposed resolution to require that any reopener to the proposed ground that materially changes the financial terms of the agreement is subject to Board of Supervisors approval
- Approve the proposed resolution as amended.

MANDATE STATEMENT

Chapter 29 of the City's Administrative Code requires Board of Supervisors' approval of certain projects to determine the project's fiscal feasibility[1] prior to submitting the project to the Planning Department for environmental review if (a) the project is subject to environmental review under the California Environmental Quality Act (CEQA), (b) total project costs are estimated to exceed $25,000,000, and (c) construction costs are estimated to exceed $1,000,000.

Chapter 29 specifies five areas for the Board of Supervisors to consider when reviewing the fiscal feasibility of a project, including the (1) direct and indirect financial benefits to the City, (2) construction costs, (3) available funding, (4) long term operating and maintenance costs, and (5) debt load carried by the relevant City Department. Chapter 29 also limits the definition of "fiscal feasibility" to mean only that the project merits further evaluation and environmental review and does not include a determination that the project should be approved.

BACKGROUND

Pier 70

Pier 70 encompasses approximately 69 acres on the Port's Central and Southern Waterfront, bounded by Mariposa, Illinois and 22nd Streets. The Pier 70 Master Plan, approved by the Port Commission in April 2010, sets as goals:

- Creation of a Pier 70 National Register Historic District, which includes restoration of historic buildings on 20th Street;
- Preservation of the ship repair industry;
- Creation of new shoreline open space and enhanced public access to the Central Waterfront;
- Promotion of mixed-use infill development and economic activity;
- Development of sites office, research, emerging technology, light industrial, cultural and recreational uses;
- Creation of pedestrian-oriented and alternative transportation practices; and
- Remediation of environmental contamination.

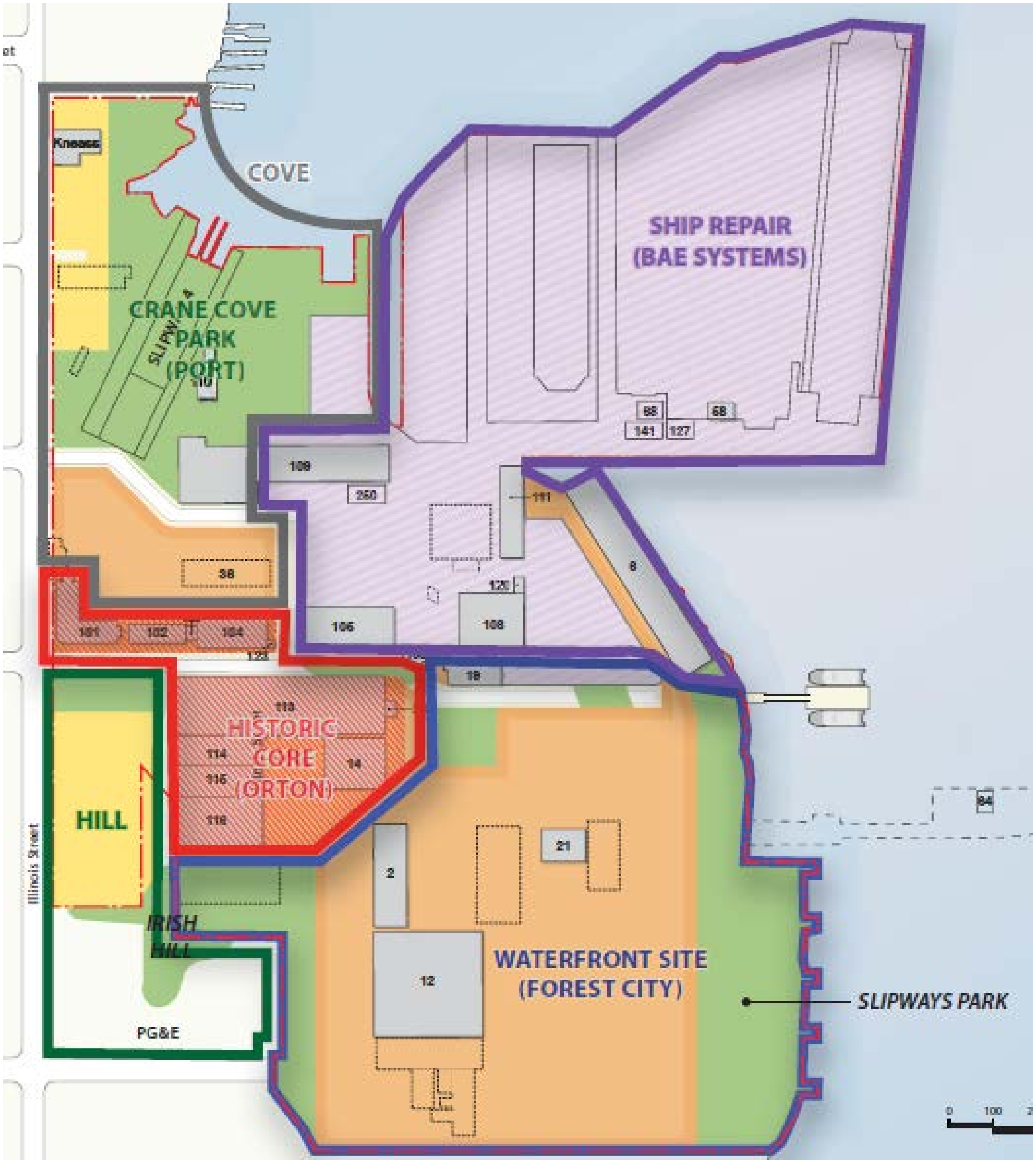
As shown in Figure 1 below, Pier 70 consists of:

- A ship repair facility currently operated by BAE San Francisco Ship Repair, Inc., under a lease with the Port from 1987 to 2017;
- Existing or planned open space projects, including Crane Cove Park, Slipways Park and the Irish Hill;
- Planned new mixed-use development on the Pier 70 Waterfront Site, for which approval of the fiscal feasibility of development of the project and endorsement of the term sheet will be submitted to the Board of Supervisors in early 2013;[2] and

[1] Chapter 29 excludes various types of projects from the fiscal feasibility requirement, including (a) any utilities improvement project by the Public Utilities Commission, (b) projects with more than 75 percent of funding from the San Francisco Transportation Authority, and (c) projects approved by the voters of San Francisco.
[2] The Port Commission approved an Exclusive Negotiation Agreement with Forest City Development California, Inc. in July 2011, following a competitive solicitation process.

- Planned rehabilitation of the 20th Street Historic Buildings (Historic Core) by Orton Development, Inc. (Orton), which is the subject of this resolution.

Figure 1: Existing and Proposed Pier 70 Projects



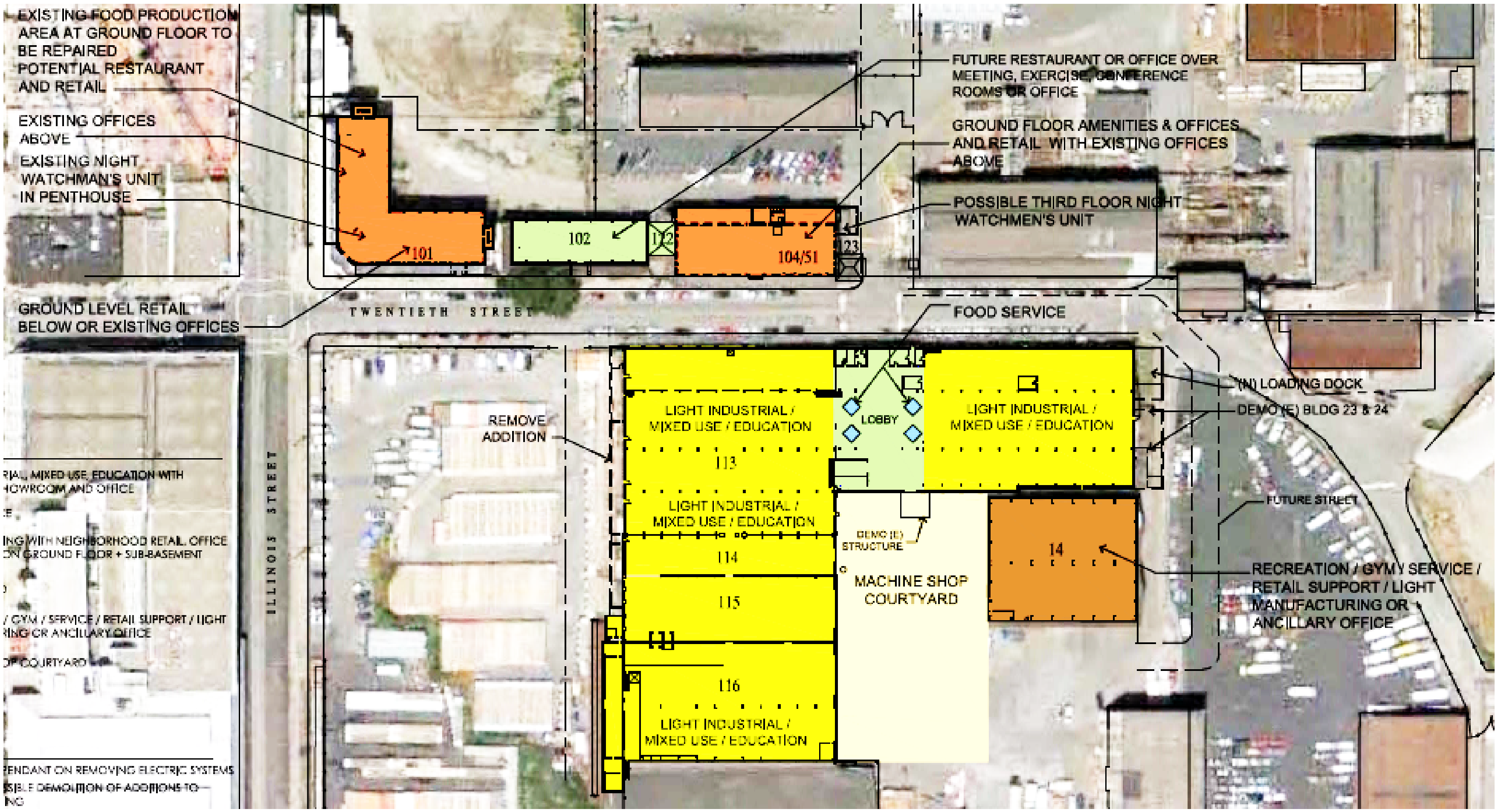
Proposed 20th Street Historic Buildings Project

The Port's Waterfront Land Use Plan ("Plan") identifies the area between 18th Street and 21st Street, adjacent to Pier 70, as a "mixed-use opportunity area", permitting non-maritime land uses that result in the preservation and adaptive use of the three historic Union Iron Works buildings (buildings #101, 102, and 104).

The Port's Pier 70 Design and Access Element (1) established 20th Street as the main street of the Pier 70 area, and (2) called for protecting the historic character of the three historic Union Iron Works buildings and the Union Iron Works Machine Shop (buildings #113 and 114).

As shown in Figure 2 below, the proposed 20th Street Historic Buildings project includes six buildings: buildings #101, 102, 104, 113/114, 115/116, and 14, and the proposed Machine Shop Courtyard.

Figure 2: Proposed 20th Street Historic Buildings Project



Prior Actions Supporting 20th Street Historic Buildings Project

Proposed Use of Properties under the Public Trust

The six buildings which comprise the proposed 20th Street Historic Buildings project are part of the public trust, in which the State granted title to the Port of tidelands and formerly tidelands properties. Public trust uses are restricted to promoting maritime commerce, navigation, fisheries, environmental and public recreation. The State Lands Commission, consisting of the Lieutenant Governor, State Controller and State Director of Finance, has oversight over the public trust.

Several of the proposed uses of the 20th Street Historic Buildings project, such as office, light industrial, commercial, and emerging technology uses, are not consistent with the public trust. Assembly Bill (AB) 418, signed by the Governor in October 2011, delegates to the State Lands Commission the authority to reorient these properties to benefit the trust, including non-public trust uses of historic buildings to finance rehabilitation of the buildings consistent with federal standards.

Proposed Listing of Pier 70 on the National Register of Historic Places

The Port proposes to request listing of Pier 70 as an historic district on the National Register of Historic Places in order to be eligible for federal Historic Rehabilitation Tax Credits. In order to qualify for federal Historic Rehabilitation Tax Credits, the 20th Street Historic Buildings project will require design review by both the California State Office of Historic Preservation and the U.S. National Park Service.

Selection of Orton to Develop the 20th Street Historic Buildings

The Port issued a Request for Proposals (RFP) in October 2011 to ten developers for development of the 20th Street Historic Buildings, and received four responses in January 2012[3]. Subsequently, two proposers voluntarily withdrew their proposals. The Port evaluated the proposals of the two remaining proposers – Equity Community Builders and Orton – based on (a) the concept of the development, (b) developer qualifications, financial projects, and sources of funds, and (c) confidential financial statements. The RFP did not require the proposals to provide detailed rehabilitation plans or a binding economic proposal.

The evaluation team included:

- Mike Buhler, Executive Director of San Francisco Architectural Heritage;
- Toby Levine, Chair of the Central Waterfront Advisory Group;

[3] Respondents included (1) CultureStructures Partners, LLC, consisting of Development Advisory Services and NCA Real Estate; (2) Equity Community Builders, LLC, in conjunctions with Build Inc., and the nonprofit organization established by Build Inc, UP; (3) Orton, Development, Inc.; and (4) Placeworks LLC, which submitted a proposal specifically for rehabilitation of Building 14.

- Terezia Nemeth, Vice President for Asset Services and Development, Alexandria Real Estate Equities, Inc.; and
- Jennifer Sobol, former Port Senior Development Project Manager.

Additionally, an outside consultant, Conley Consulting Group, reviewed the confidential financial statements and provided an analysis of how well each proposal met the RFP criteria. As shown in Table 1 below, Orton received the highest score and was selected as the project developer.

Table 1: Scoring of Project Proposals

	Maximum Score	Equity Community Builders	Orton
Developer Qualifications	30	27.25	28.25
Rehabilitation Concept	20	16.75	16.50
Feasibility	25	15.25	21.75
Financial Capacity	25	14.0	23.00
Total	**100**	**73.25**	**89.50**

The Port Commission authorized Port staff to negotiate an Exclusive Negotiation Agreement with Orton on February 28, 2012. The Exclusive Negotiation Agreement committed the Port to negotiate exclusively with Orton on the proposed 20th Street Historic Buildings project and set conditions for negotiating future agreements, including time frames and milestones for the Port Commission's and Board of Supervisors' required reviews and approvals.

DETAILS OF PROPOSED LEGISLATION

Approval of the proposed resolution would (1) find that the proposed 20th Street Historic Buildings project is fiscally feasible; and (2) endorse the proposed Term Sheet between the Port and Orton. As noted above, under the Administrative Code, the Board of Supervisors must the find the development to be fiscally feasible prior to the Port submitting the project to the Planning Department for environmental review. Additionally, the Budget and Legislative Analyst recommended in the 2004 Management Audit of the Port that the Port should submit term sheets for projects with development costs greater than $10 million to the Board of Supervisors for endorsement. The finding that the proposed 20th Street Historic Buildings project is fiscally feasible and endorsement of the proposed Term Sheet between the Port and Orton does not commit the Board of Supervisors to future approval of environmental findings under the California Environmental Quality Act (CEQA) or approval of the final lease between the Port and Orton.

TERM SHEET

Under the proposed 20th Street Historic Buildings project, Orton would rehabilitate six Port buildings, including two buildings that made up the former Bethlehem Steel and Union Ironworks office buildings (buildings #101, 104), , the former Power House (building #102), the former Union Ironworks Machine Shop (buildings #113/ 114) and surrounding warehouses (buildings #115/116, and 14). New uses of these buildings would be office, restaurant, and light industrial, as shown in Table 2 below.

Table 2: Proposed 20th Street Historic Buildings Project

Building	Square Feet	Proposed Use
101	56,268	Office
102	8,428	Restaurant
104	42,846	Office
113/114	149,964	Light Industrial
115/116	42,486	Light Industrial
14	16,315	Light Industrial
Total	**316,307**	

The Port and Orton are currently negotiating the terms of a ground lease and lease disposition and development agreement. The basic terms and conditions for the future ground lease and lease disposition and development agreement, on which the parties agree to further negotiations, are contained in the proposed Term Sheet as summarized in Table 3, which is subject to Board of Supervisors' endorsement under the proposed resolution. The Term Sheet is not contractually binding. The proposed 66-year ground lease is subject to Board of Supervisors approval.

Table 3: Summary of Proposed Term Sheet

Lease Provision	Proposed Terms
Term of Lease	66 years
Total Project Cost	$58,500,000
Port Capital Contribution	- $1,500,000 in Port funds - $250,000 in California Cultural Equity Endowment grant funds (if available)
Project Debt	- Parties agree to cooperate to secure the greatest amount of debt and the lowest cost of third-party capital and debt as reasonably possible - Orton will pay down remaining equity and equity interest in project through additional debt - Orton may obtain additional debt or assign the lease as security for project financing, with Port approval
Orton Equity	- Orton's equity contribution equals total project cost, less tax credits, debt proceeds, and Port's capital contribution - Orton's return on the project is 14% per year (a maximum of $1,960,000 per year based on $14 million in equity) - Orton equity shall equal no more than the lesser of 20% of total project costs ($11.7 million, based on estimated total project costs of $58.5 million) or $14 million, once permanent debt is in place - Once debt financing is secured, Orton's equity shall not exceed $14 million
Orton Equity Repayment/ Participation Rent	- Port would participate in 50% of annual net revenues - Under the base case scenario (development costs of $58.5 million), the Port would begin to receive participation rent of $618,000 in year 10 - Under the high cost scenario (development costs of $75 million), the Port would begin to receive participation rent of $4.6 million in year 35
Initial Base Rent	- $200,000 per year. - Base rent is counted toward the Port's 50% participation rent, and will begin after Orton's equity is paid in approximately year 10. - Base rent is due in Year 20 even if Orton equity is not repaid
Base Rent Escalation	- Escalated every 5 years based on the Consumer Price Index (CPI) but no more than 20%
Base Rent Re- Sets	- Adjusted every 10 years to the higher of (1) base rent as escalated by the CPI; or (2) every 10 years after the commencement of Base Rent Payments, 60% of the average Port participation rent over the previous 5 years
Participation in refinancing proceeds	- If Orton refinances, excess proceeds will be used to pay down Orton's equity and interest - Net proceeds after repaying debt and Orton's equity will be shared equally between the Port and Orton
Participation in sale or assignment	- Port receives 10% of any net sales proceeds

The Attachment to this report contains further details of the proposed Term Sheet.

Project's Sources and Uses of Funds

The estimated sources of funds and total project costs for the 20th Street Historic Buildings are shown in Table 4 below.

Table 4: Estimated Project Sources and Uses of Funds

Sources of Funds	
Port Capital Funds (2.6%)	$1,500,000
Federal Historic Preservation Tax Credits (18%)	10,530,000
Debt Financing (60%)	35,100,000
Developer Equity (19.4%)	11,370,000
Total Sources	**$58,500,000**
Uses of Funds	
Architect (10% Construction Costs)	$3,946,140
Developer (4% Construction Costs)	1,578,456
Financing (4% Construction Costs)	1,578,456
Permits (3% Construction Costs)	1,104,919
Environmental (2% Construction Costs)	789,228
Legal (2% Construction Costs)	789,228
Tenant Improvements ($5 per square foot)	1,582,035
Contingency (5% Construction Costs)	1,973,070
Subtotal, Soft Costs	13,341,532
Construction Costs[4]	39,461,402
Initial Operating and Leasing Expenses	2,708,371
Construction Period Interest (Approximately 5%)	2,970,165
Total Uses	$58,481,470
Total Uses (Rounded)	**$58,500,000**

Sources of Funds

Port Capital Funds

The Port included $1.5 million in the FY 2011-12 capital budget, as previously appropriated by the Board of Supervisors, to pay for the costs of temporarily shoring up Building 113 to reduce safety risks. Under the proposed project, the Port's $1.5 million contribution will pay a share of costs to seismically rehabilitate Building 113.

Federal Historic Preservation Tax Credits

The 20th Street Historic Building development may be eligible for federal Historic Preservation Tax Credits, up to 20% of qualified historic rehabilitation expenses. To qualify, the historic buildings must (a) be listed in the National Register of Historic Places; (b) meet the substantial rehabilitation test in which the cost of the rehabilitation exceeds the pre-rehabilitation cost of the building; (c) meet the Secretary of the Interior's Standards for Rehabilitation; and (d) after rehabilitation, used for income-producing purposes for at least 5 years. Based on information provided by the Port, the 20th Street Historic Buildings meet the minimum eligibility requirements. According to Ms. Kathleen Diohep, Port Project Manager, the Port is requiring the project to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties, which is required to secure the tax credits. Because the proposed Term Sheet does not include the Port's requirement that the 20th Street Historic Buildings project meet the Secretary of the Interior's Standards for the Treatment of Historic Properties, the proposed resolution should be amended to specify this requirement.

Debt Financing

Under the proposed Term Sheet, Orton is to borrow the largest amount of possible debt in order to reduce Orton's equity contribution and the associated impact on rent revenues to the Port stemming from the proposed 14% annual return on Orton's equity investment. According to the proposed Term Sheet, as soon as additional financing is reasonably supported by the project, Orton agrees to pay down its remaining equity investment through additional debt

Although Orton estimates that they will be able to secure debt financing up to 80% of the project costs, Orton has not yet secured loan commitments from lenders. According to the February 21, 2012 memorandum from Conley Consulting Group, a consultant retained by the Port to evaluate the financial terms of Orton's proposal to rehabilitate the 20th Street Historic Buildings, Orton has current relationships with 18 commercial banks and other institutional lenders. According to Ms. Diohep, Orton will be more likely to secure debt financing once the Board of Supervisors endorses the proposed Term Sheet and environmental review under the California Environmental Quality Act (CEQA) is completed. Further, according to Ms. Diohep, the proposed Term Sheet facilitates Orton obtaining financing on favorable terms because lenders will receive repayment on the debt before Orton begins to pay rent to the Port.[4]

Orton's Equity Investment

In response to the RFP, Orton proposed that they invest up to $14 million in equity in the 20th Street Historic Buildings project with a 14% per year return on their equity investment. A review by the Port's consultant, Conley Consulting Group, determined that Orton had sufficient cash assets to fund the proposed $14 million in equity.

Under the proposed Term Sheet, Orton will earn 14% per year return on their equity on a simple interest basis (i.e., does not compound from year to year) up to $14 million. According to an internal Port memorandum, dated October 24, 2012, the 14% return on investor equity in a real estate development project is on the low side of returns demanded by investors for at-risk developments.

Uses of Funds (Project Costs)

Currently, Orton estimates total project costs to be $58,500,000. According to a February 2010 evaluation by Economic & Planning Systems, Inc., the estimated cost to rehabilitate the 20th Street Historic Buildings was $456 per square foot, or an estimated $144,235,992 for 316,307 square feet. Subsequently, the Port reduced the estimated costs to $106,000,000 by revising the concepts for rehabilitating the 20th Street Historic Buildings. According to the Port's October 24, 2012 memorandum, Orton was able to propose project costs of $58,500,000, or $47,500.000

[4] Under the proposed Term Sheet, Orton will begin to pay base rent in year 21 of the ground lease, even if Orton's debt and equity investment has not been fully repaid.

(44.8%) less than the Port's estimates of $106,000,000, by proposing less extensive rehabilitation, including maintaining the buildings in their existing form.

Project costs of $58,500,000 are preliminary estimates. Under the proposed Term Sheet, Orton is to submit to the Port a complete underwriting package that provides a detailed estimate of total projects costs, financing costs, expected lease rates, and pro forma financial analysis. The complete underwriting package will be used by the Port and Orton to negotiate the terms of the lease disposition and development agreement.

As shown in the Attachment detailing the proposed Term Sheet, if project costs are higher than estimated due to unforeseen conditions prior to the start of construction, Orton can:

(1) remove buildings other than buildings #113 and 114 from the project;

(2) increase the equity investment to more than $14 million with the Port's approval;

(3) renegotiate the agreement; or

(4) terminate the agreement.

If project costs are higher than estimated due to unforeseen conditions after the start of the construction, Orton can:

(1) increase the equity investment to more than $14 million with the Port's approval; and

(2) delay the start date of base rent payments to the Port.

Fiscal Impact to the City

Currently, the Port does not receive rent from the six buildings that comprise the 20th Street Historic Buildings project, which require significant rehabilitation. In order to finance rehabilitation of the 20th Street Historic Buildings and other Pier 70 properties that the Port cannot finance by itself, the 2010 Pier 70 Master Plan proposes private developer rehabilitation of Pier 70 properties.

Under the proposed Term Sheet, the Port would be required to pay $1.5 million in capital funds toward the costs to seismically rehabilitate building #113. The Term Sheet does not require other Port or City expenditures.

Orton would enter into a 66-year ground lease, subject to Board of Supervisors approval, and lease disposition and development agreement with the Port, which would set the terms of development and ongoing operation of the 20th Street Historic Buildings. Orton would pay the costs of rehabilitating the 20th Street Historic Buildings; market the completed office, restaurant and light industrial properties to tenants; and operate and maintain the properties as the master tenant. Orton would receive all rental and other operating revenues from the 20th Street Historic Buildings.

Estimated Rent to the Port

Under the proposed Term Sheet, the Port would receive rent from Orton only after Orton's investment in the project is repaid.

- The Port would receive base annual rent of $200,000, which is the amount negotiated by the Port and Orton, escalated every five years by the CPI up to 20%. Base rent of approximately

$415,000 ($200,000 in year 1 escalated by 20% every five years) would begin in year 21 of the ground lease even if Orton's investment has not been fully repaid. In addition, after Orton has begun base rent payments, base rent would be adjusted every 10 years to the higher of (a) base rent as escalated by the CPI, or (b) 60% of the average Port participation rent over the previous 5 years.

- The Port would receive 50% participation rent of annual net revenues[5] after Orton has been fully repaid on their equity investment. The Port would receive rent equal to the greater of the base rent or the 50% participation rent.

The Port staff and Orton developed a preliminary pro-forma analysis to evaluate the financial performance and cash flow of the proposed 20th Street Historic Building project, based on expected rents and other operating revenues, financing costs, and financial provisions in the proposed Term Sheet. As noted above, this preliminary pro-forma analysis will be revised based on more detailed evaluation of project costs, financing, and tenant rents by Orton.

According to the preliminary pro-forma analysis, under the base case scenario (see Table 5), the Budget and Legislative Analyst estimates that the Port would receive annual rent of $415,000 for the first time in Year 21 of the ground lease, and total rent over the 66 year term of the ground lease with a net-present-value of $15,670,000[6].

Table 5: Estimated Rent to Port Over 66 Year Term of Proposed Ground Lease

	Base Case Scenario	**High Project Costs Scenario**	**Low Rent Scenario**
Rents	Average $12.96 per square foot	Average $12.96 per square foot	Average $9.07 per square foot
Project Costs	$58,500,000	$75,000,000	$58,500,000
Financing			
Tax Credits (up to 20% of costs)	$10,530,000	$13,500,000	$10,530,000
Port Funds	1,500,000	1,500,000	1,500,000
Loans (approximately 53% to 62% of costs)	35,100,000	46,125,000	31,260,000
Orton's Equity Investment (up to 20% of costs)	11,370,000	13,875,000	15,210,000
Total Financing	$58,500,000	$75,000,000	$58,500,000
Orton's Equity Investment Fully Repaid	Year 27	Year 31	Year 39
First Year of Base Rent to Port	Year 21	Year 21	Year 21
Amount of Base Rent in First Year	$415,000	$415,000	$415,000
Net Present Value of Rent to Port Over 66 Years	**$15,670,000**	**$14,378,000**	**$7,567,000**

Source: Port, Orton, Keyser Marston Associates, Inc., Budget & Legislative Analyst (some revisions in Base Case Scenario)

[5] Annual net revenues include rental and other income, less operating expenses.

[6] Keyser Marston estimated rent to the Port of net present value of $23 million in the base case scenario, based on Orton obtaining loans of $44.4 million (or approximately 76% of project costs) and Orton's equity investment of $2 million (or approximately 3.4% of project costs). The Budget and Legislative Analyst's estimated rent to the Port of net present value of $15.7 million in the base case scenario is based on Orton obtaining loans of $35.1 million (or approximately 60% of project costs) and Orton's equity investment of $11.4 million (or approximately 19.4% of project costs).

If rents from 20th Street Historic Buildings tenants are less than projected by Orton or construction costs are higher, the Port's rent from the proposed ground lease will be less than $15,670,000, as shown in Table 5. Orton is currently conducting a detailed evaluation of the 20th Street Historic Buildings site and developing a more refined design plan and cost estimate for the project. According to Ms. Diohep, prior to approval of the proposed 66-year ground lease, the Port will obtain a third party evaluation of the revised cost estimates, project financing, and pro forma financial analysis. The more detailed pro forma analysis (or complete underwriting package) will form the basis of negotiations between the Port and Orton on the terms of the ground lease, subject to Board of Supervisors approval, and lease disposition and development agreement.

20th Street Historic Buildings Rents

The Port's projections for the 20th Street Historic Buildings rents are $30 per square foot per year for office space and $12 per square foot per industrial space. These projections are consistent with current Port rents for comparable space, contained in the Port's FY 2012-13 Minimum Monthly Rate Schedule.

According to Ms. Diohep, demand for office and industrial space such as the space proposed for the 20th Street Historic Buildings is strong. According to Ms. Diohep, Orton has received interest from prospective tenants for the 20th Street Historic Buildings space, and the nearby American Industrial Complex, consisting of 800,000 square feet of light industrial, commercial and office space, is fully occupied.

Orton's Project Costs

Orton's estimated project costs of $58.5 million are based on (1) construction cost estimates of $125 per square foot[7] by Orton's contractor, Nibbi Brothers General Contractors; (2) planning, design, permitting, legal and other costs equal to 33.8% of construction costs; (3) initial operating and leasing expenses; and (4) loan interest payments during the construction period.

As noted above, Orton is currently conducting a detailed evaluation of the 20th Street Historic Buildings site and developing a more refined design plan and cost estimate for the project. To ensure than the future ground lease and associated lease disposition and development agreement are consistent with the proposed Term Sheet and the Board's finding of fiscal feasibility, the Port should report to the Board of Supervisors, when the Board considers the project's ground lease, on the (1) revised cost estimates, project financing and pro forma financial analysis; and (2) Port's procedures to control and verify costs.

Re-Opener

As noted in the Attachment, the Port and Orton may re-open the proposed ground lease, which could include (1) increasing the cap on Orton's equity investment to more than $14 million; (2) delay the start date of the base rent; (3) removing buildings from the project; or (4) other business terms of the proposed lease and disposition agreement. The Budget and Legislative Analyst recommends that any reopener to the proposed lease disposition and development

[7] This estimate is consistent with average construction costs per square foot for office and industrial space in San Francisco contained in the 2010 Construction Cost Survey by Real Estate Investment Center.

agreement that materially changes the financial terms of the agreement should be subject to Board of Supervisors approval.

FISCAL FEASIBILITY ANALYSIS

As discussed in the Mandate Statement Section above, Chapter 29 of the City's Administrative Code requires that certain projects be submitted to the Board of Supervisors for approval of the project's fiscal feasibility prior to submitting the project to the Planning Department for environmental review if: (a) the project is subject to environmental review under the California Environmental Quality Act (CEQA); (b) total project costs are estimated to exceed $25,000,000; and, (c) construction costs are estimated to exceed $1,000,000.

Chapter 29 of the City's Administrative Code specifies five areas for the Board of Supervisors to consider when reviewing the fiscal feasibility of a project, including: (1) direct and indirect financial benefits to the City; (2) construction costs; (3) available funding; (4) long term operating and maintenance costs; and (5) debt load carried by the relevant City Department. Chapter 29 also limits the definition of "fiscal feasibility" to mean only that the project merits further evaluation and environmental review.

1) Direct and Indirect Financial Benefits to the City

The proposed 20th Street Historic Buildings project, would provide: (1) direct financial benefits to the City through increased tax and fee revenues; and (b) indirect financial benefits from creation of an estimated 500 new jobs.

<u>Direct Benefits</u>

The Port's consultant, Keyser Marston Inc., provided estimates of tax revenues to the City, which the Budget and Legislative Analyst finds to be reasonable. As shown in Table 6 below, the estimated annual revenues to the City resulting from increased taxes and fees are approximately $919,000.

Table 6: Estimated Annual Tax and Fee Revenues to the City

Annual Revenues to General Fund	
Property Taxes	$340,000
Payroll Tax[1]	238,000
Property Tax In-Lieu of Motor Vehicle License Fee	64,000
Utility Users Tax	58,000
Sales Tax	47,000
Parking Tax	12,000
Business Registration Fee	12,000
Other	5,000
Total General Fund	$776,000
Annual Revenues to Other Funds	
Library, Open Space, Children's Fund	$48,000
Transportation Authority	71,000
Public Safety Fund	24,000
Total Other Funds	$143,000
Total Revenues	**$919,000**

Source: Keyser Marston Associates, Inc.

[1] Estimates of payroll tax revenues will change due to the approval on November 6, 2012 of the City's gross receipts tax (Proposition E), which will replace the payroll tax over the four-year period from 2014 through 2018.

Indirect Benefits

Keyser Marston estimated an additional 500 new permanent jobs to be created by the 20th Street Historic Buildings project, based on two employees per 1,000 square feet of 274,000 square feet of rentable space. According to Keyser Marston, because of the relatively small scale of the project, the impact of short-term construction jobs and new permanent jobs has not been quantified.

2) Construction Costs

Project costs, estimated to be $58.5 million, include $1.5 million in Port capital funds (2.6%). The balance of $57.0 million (97.4%) will be borne by Orton, through Historic Preservation Tax Credits, loans, and equity investment.

3) Available Funding

$15.5 million (26.5%) of the estimated $58.5 million project costs are available funds, including $14 million in Orton's equity and $1.5 million in Port capital funds. The balance of $43 million is to be funded by Historic Preservation Tax Credits and loans, which have not yet been obtained by Orton (see "Sources of Funds" above).

4) Ongoing Maintenance and Operating Costs

The Port will have no ongoing maintenance or operating costs, which will be borne solely by Orton.

5) Debt Load

Neither the Port nor the City will carry any debt for the project.

CONCLUSION

Term Sheet Endorsement

The Budget and Legislative Analyst's 2004 Management Audit of the Port recommended that the Port submit development project negotiation term sheets to the Board of Supervisors for endorsement, allowing the Board of Supervisors to consider the financial goals of the project prior to approval of the lease. However, with endorsement of the proposed Term Sheet, the final 66-year ground lease between the Port and Orton will still be subject to future Board of Supervisors approval.

The proposed Term Sheet provides for Orton to finance the rehabilitation of the 20th Street Historic Buildings, for which the Port does not have sufficient funds to rehabilitate itself. The Port's contribution to the project would be limited to $1.5 million in previously appropriated capital funds.

The Port does not currently receive rent for the 20th Street Historic Buildings. Based on the preliminary pro forma financial analysis prepared by the Port and Orton and provisions in the proposed Term Sheet, the Budget and Legislative Analyst estimates that the Port would receive rent revenues over the 66-year term of the future ground lease with an estimated net present value of $15.7 million.

However, the estimated net present value of rent revenues to the Port will be less than $15.7 million if project costs are higher or tenant rents are lower than estimated in the preliminary pro forma financial analysis. Orton is currently conducting a detailed evaluation of the 20th Street Historic Building site and developing a more refined design plan and cost estimate of the project. The proposed Term Sheet requires Orton to submit a complete underwriting package with detailed estimates of the total project costs, financing costs, and expected lease rates to the Port to be used to negotiate the lease disposition and development agreement. To ensure that the future ground lease and associated lease disposition and development agreement are consistent with the proposed Term Sheet, the Port should report to the Board of Supervisors when the Board considers the proposed ground lease on the (1) revised cost estimates, project financing, and pro forma financial analysis; and (2) Port's procedures to control and verify project costs.

Finding of Fiscal Feasibility

The proposed 20th Street Historic Buildings project would (1) yield annual estimated tax and fee revenues to the City of $919,000; (2) generate an estimated 500 new permanent jobs; (3) provide an estimated $58.5 million in construction expenditures; (4) be financed by $14 million in available developer equity by Orton, $1.5 million in available Port funds, and $43.0 million in federal Historic Preservation Tax Credits and loans to be obtained by the developer; (5) incur no ongoing maintenance and operating costs to the Port or the City; and (6) incur no debt load by the Port or the City.

Based on these criteria, the Budget and Legislative Analyst finds the proposed development fiscally feasible under Chapter 29 of the City's Administrative Code. As noted above, in accordance with Administrative Code Chapter 29, the finding of "fiscal feasibility" means only that the project merits further evaluation and environmental review. If the proposed resolution is approved by the Board of Supervisors, the City will be authorized to commence environmental review of the project under CEQA.

RECOMMENDATIONS

1. Amend the proposed resolution to require that the 20th Street Historic Buildings project meet the Secretary of the Interior's Standards for the Treatment of Historic Properties.
2. Amend the proposed resolution to require the Port to report to the Board of Supervisors, when the Board considers the project's ground lease, on the (1) revised cost estimates, project financing and pro forma financial analysis; and (2) Port's procedures control and verify costs.
3. Amend the proposed resolution to require that any reopener to the proposed ground lease that materially changes the financial terms of the agreement is subject to Board of Supervisors approval.
4. Approve the proposed resolution as amended.

Lessor	Port of San Francisco
Lessee/ Key Man	• Orton Development, Inc. or an affiliated entity controlled by J.R. Orton III. • J.R. Orton III to remain actively involved in the project until at least project completion.
Premises	• Historic buildings 14, 101, 102, 104, 113, 114, 115, 116, 122, and 123, at Pier 70. See Exhibit A. ODI and the Port will negotiate a precise premises boundary to address needed ingress and egress with the current, and the future street grid. • Parties anticipate entering into a license for adjacent areas.
Term of Lease	• 66 years.
Uses	• Buildings 101, 104: Office and ancillary uses; • Building 102: restaurant and commercial; • Buildings 113/114, 115/116, and 14: Light industrial, arts production, education, recreation, ancillary retail, and ancillary office uses.
As-Is Conditions	• For all buildings and site areas, Developer takes in “as-is” conditions.
Hazardous Materials	• Developer is responsible for implementing the Risk Management Plan, including any and all costs, regulatory, and operational responsibilities specified therein for aboveground environmental conditions. If Developer disturbs belowground soils, Developer will follow the Risk Management Plan for those areas. • If previously unidentified below ground environmental conditions unrelated to the Developer's activities require additional investigation or remediation, the Port will be responsible for those costs including regulatory costs. • Prior to issuance of the Risk Management Plan, Developer will be responsible for compliance with existing regulatory requirements and conducting activities in manner consistent with the Remedial Action Plan (Treadwell and Rollo, May 2012). • PCB transformer removal and abatement in Building 102 remains responsibility of the Port. • Removal of existing PCB transformer in the northwest corner of Building 113 and abatement of all above ground hazardous materials are the responsibility of ODI.
“Early Work”	• ODI can propose to undertake at its cost weatherizing, cleanup or security improvements (“Early Work”) under the existing access agreement terms, which include Port approval of the work scope. • Approval of any scope of Early Work would include agreement on a budget for that work. • Under the ENA, ODI has paid a $75,000 negotiation fee that is non- refundable if the ENA is terminated. If ODI terminates the ENA and does not execute a Lease for the project, the Port will return to ODI the documented expenditures not to exceed the agreed-to cost of any Early Work performed but no more than $75,000. • If the project moves forward, Early Work costs will be included in Total Project Costs and the $75,000 negotiation fee will be applied to the lease deposit as agreed in the ENA .

Building 102	• Building 102 is an active part of the electrical systems serving the BAE ship repair facility. Developer will assess existing conditions, meet with BAE to understand their needs, and recommend a solution for: 1. Removing electrical equipment 2. Establishing separate service to BAE 3. Establishing service to other electric uses now served from building 102 including ODI's project • Developer to recommend options and provide conceptual cost estimates for the options to meet objectives (1), (2), and (3) above. • Port and Developer to negotiate in the Development Agreement how to undertake and fund the work needed to re-use Building 102 for new uses and sustain electrical service to the shipyard. • Cost of BAE equipment and service remains a Port or BAE responsibility. To the extent designing a new BAE service incurs third party fees, such fees shall be reimbursed by Port or BAE.
Total Project Cost	• "Total Project Cost" shall include Lessee's hard and soft costs such as permit, development, and impact fees, if any, construction and materials costs, subcontractor and design fees, legal and other professional fees, financing costs that are capitalized, and all project-related expenses of Lessee or Orton Development Inc. (ODI), including a proportionate share of ODI's overhead such as salaries paid by ODI for employees (other than J.R. Orton III). • ODI will not charge a developer fee. • Parties to negotiate the level of performance or surety bond or completion guaranties in the LDDA.
Port Capital Contribution	• $1.5 million with an additional $250,000 grant funding from the California Cultural Equity Endowment, if available. • The Port has the option to, but is not bound to, secure additional capital above $1.5 million in seismic funding to pay down the amount of Orton Equity at any time before the Orton Equity is fully repaid, subject to any finance conditions.
Project Debt	• Port and ODI agree to cooperate to secure the greatest amount of debt and the lowest cost third-party capital and debt as reasonably possible for the project. • As soon as additional financing is reasonably supported by the project, ODI agrees to pay down its remaining equity interest and remaining equity through additional debt. • ODI may propose that, once Orton Equity is re-paid, additional debt be placed on the site to the advantage of both the parties. The Port's approval of additional debt will not be unreasonably withheld. • Port consent shall not be unreasonably withheld for any assignment of the lease as security for project financing or refinancing. The lease will contain mortgagee protection and related provisions reasonably satisfactory to Lessee's lender(s) and investor(s), including future amendments as may be reasonably required for such purpose.
Orton Equity	• Orton Equity is defined as Total Project Cost through project completion less tax credit equity, permanent debt proceeds, and Port capital contribution. • Orton Equity will accrue a simple return of 14% per year. Orton Equity shall be no more than the lesser of 20% of Total Project Cost or $14 million, once permanent debt is in place to achieve the shared goal of the lowest overall cost of capital for the project. • Unpaid return accumulates until paid without compounding. • Re-Opener process may increase cap on Orton Equity above $14 million.

Orton Equity Repayment/ Participation Rent	• Participation Net Revenue is defined as project revenue (on a triple net basis or its equivalent) less reasonable unrecovered operating expenses on vacant space, appropriate reserves using standard accounting, tax credit equity payments, and debt service and related fees (on the Total Project Cost). • Participation Net Revenue shall be distributed as: 1. To Lessee until the accumulated 14% return on Orton Equity is paid; 2. To Lessee to pay down outstanding Orton Equity until paid; 3. Split equally between Lessee and Lessor
Right to Pre-pay	• Port has right to pre-pay accumulated interest on Orton Equity and Orton Equity at any time, at no charge or payment of any penalty.
Complete Underwriting Package	• ODI will submit a Complete Project Underwriting Package ("Project Underwriting") with a detailed estimate of total project costs including hard and soft costs, finance costs, and expected lease rates, with a pro forma projecting ODI and Port income. • Port and ODI will use this package to negotiate the LDDA.
Unknown Base Building Costs Found Prior to Lease Execution	After approval of the Transaction and/or execution of the development agreement, ODI can request re-opening of business terms, if it can demonstrate that due to costs of unforeseen base building conditions, the required Orton Equity for the entire project exceeds $14 million or that the project returns significantly differ from the Project Underwriting projected returns. At this stage, ODI will have the right to: 1. Remove buildings – except Building 113/114 – from the Project 2. Invest additional equity into the transaction and, if so, the Base Rent will not be applicable until all Orton Equity plus the 14% return is repaid, 3. Renegotiate the deal – subject to returning to the Port Commission and the Board of Supervisors for approval, or 4. Terminate its Development Agreement without incurring a termination fee
Unknown Base Building Costs After Lease Execution	• Lease to include a provision to address unknown base building costs discovered during construction, including that ODI may (i) invest additional equity, in the project to address the unforeseen costs at a market rate of return to be negotiated based on the investment returns expected by real estate equity investors, but in no event more than 14% per annum, into the transaction to address the unforeseen costs and (ii) delay the start of the Base Rent.
Initial Base Rent	• Beginning in Year 20 after lease execution, a base rent of $200,000 (expressed in 2012$) per year will be paid even if all Orton Equity has not been repaid. • If Orton Equity is repaid before year 10, Base Rent shall commence 10 years after Orton Equity is repaid. • Re-opener provisions can delay the start of Base Rent.
Base Rent Escalation	• Base Rent shall be adjusted every 5 years but in no event decrease, based on CPI, limited to a 20% increase.
Base Rent Re-Sets	• Every 10 years after commencing payment of Base Rent, the Base Rent amount will be adjusted to equal the higher of (i) the then payable Base Rent or (ii) 60% of the average of the previous 5 years of participation rent paid to the Port. • Any participation in refinancing or sales proceeds is not included in the five year average calculation.
Participation in refinancing proceeds	• If Lessee refinances, excess funds shall be applied first to Orton Equity interest and second to Orton Equity. • Net proceeds after repaying debt and Orton Equity shall be split equally between Port and Orton and paid to each party at close of escrow
Participation in sale or assignment	• Port receives 10% of any net sales proceeds (remaining after repayment of debt, return on outstanding Orton Equity, return of Orton Equity, and Lessee's standard sales costs such as brokerage commissions and legal fees)

Parking:	• Port shall manage parking, as part of a Pier 70 wide parking plan, for the proposed project. Parking rates will be set through the Port parameter rate setting process. Consistent with the Pier 70 Master Plan, parking of one space per 1,000 square feet of building area will be provided.
Subleasing and Assignment	• Lessee shall have the right to sublease the premises for all uses allowed under the lease. • Port shall have rights at its sole discretion over any lease assignment or change in control of ODI prior to project completion. • After project completion, the lease may be assigned to any qualified purchaser, subject to Port's reasonable approval.
Property Management	• ODI may manage the property or use third-party management. In either case, the records and financials shall be completely transparent. • In the event ODI is managing the project and the Port objects reasonably to the quality of property management, it shall put such objections in writing. ODI shall have a reasonable time to cure, no less than 30 days. In the event ODI is unable to reasonably cure in the time period, Port may request that the project be managed by a third party management and ODI shall select a reasonable established third party management company for the project. All asset and management fees will be consistent with those prevailing in the marketplace.
Utility and Impact fees	• To the extent due for this project, utility connection and impact fees are Lessee's responsibility. Port to reasonably cooperate with Lessee in the investigation and applicability of impact fees.
Infrastructure Costs	• In the future, a Master or Sub Developer(s) may replace the infrastructure in 20th Street. Lessee will bear its equitable share of costs with respect to repair of infrastructure including roadway and sidewalks.
Condition of Premises at the end of the lease; Capital Reserves	• The condition of the property at the end of the lease shall be as constructed, well-maintained, minus reasonable wear and tear. • Mutually agreed upon reasonable reserves to meet this standard are project expenses and will be included in the operating budget.
Development over the course of the lease	• Lessor and Lessee are aware that a Preferred Master Plan for Pier 70 was published in 2010 addressing the complete redevelopment of Pier 70. During the course of the lease, a complete redevelopment of Pier 70 may occur. • Lessor and Lessee agree to reasonably cooperate on any future master plan, agreements with other Pier 70 developers and tenants, and their implementation.
Standard Lease Terms	The development agreement and lease, except as negotiated above or in the Exclusive Negotiating Agreement between the Port and ODI, will address the terms and conditions of the Port's October 4, 2011, Request for Proposals for the 20th Street Historic Buildings.