MEMORANDUM

March 8, 2013

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

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of the Term Sheet and the Second Amendment to the Exclusive Negotiation Agreement between the Port and Seawall Lot 337 Associates, LLC for the mixed-use development of Seawall Lot 337 and Pier 48 bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay and adjacent to AT&T Park

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

Since executing an Exclusive Negotiation Agreement (“ENA”) in September 2010 for the mixed use development of Seawall Lot (SWL) 337 and the adjacent Pier 48 (together the “Site”, shown on Exhibit A), Seawall Lot 337 Associates, LLC (“Developer”), Port and City staff have negotiated a non-binding term sheet (the “Term Sheet”) with the proposed financial terms for the lease and development of the Site (the “Project”) discussed in this memorandum, which terms are set forth in the Term Sheet attached to this staff report as Exhibit B.

On October 9, 2012, the Port Commission approved amending the ENA to extend Phase 1 from September 15, 2012 to March 15, 2013 to provide additional time to negotiate and incorporate financing tools into the Project Term Sheet. Should the Port Commission endorse the Term Sheet, it will then be forwarded to the Board of Supervisors for consideration. As currently adopted, Phase 1 of the ENA concludes March 15, 2013. Included in Phase 1 is approval of the Term Sheet by the Board of Supervisors. Staff requests a Second Amendment to the ENA to further extend Phase 1 to August 15, 2013 to accommodate the Board’s scheduling procedures. In addition, as set forth below and summarized in Exhibit C attached to this staff report, the Second Amendment would also provide an added requirement to allow for Port oversight of Developer’s financial and professional capacity, Developer’s composition and the minor expansion of the Site.

THIS PRINT COVERS CALENDAR ITEM NO. 10C

Port staff has amended the February 22, 2013 staff report to address Port Commission and public comments from the February 26, 2013 Port Commission meeting. Such amendments can be found below under the headings:

- Project Phasing
- Port Revenue
- Fiscal Feasibility
- City Benefits Summary
- Fiscal Benefits to the City and the Port
- Economic Benefits to the City
- Direct Benefits to the City
- Cost of Construction
- Available Funding for the Project
- Long Term Operating and Maintenance Costs
- Debt Load to be Carried by the City or the Port
- Contract Monitoring Division (formerly Human Rights Commission)
- Summary
- 2nd Amendment to Exclusive Negotiation Agreement
- Next Steps
- Recommendation

PROJECT UPDATES SINCE FEBRUARY 26, 2013 PRESENTATION

At the February 26, 2013 Port Commission meeting, Port and City staff gave an informational presentation of the draft Term Sheet provisions. In response to Port Commission comments received during that meeting, staff has provided the following additional information on the Project.

Project Phasing

The Project's attached illustrative phasing plan, an attachment to the Term Sheet, is based on the first development parcels being situated along the Site's western edge, taking advantage of existing utility infrastructure in 3rd Street. The proximate location of these utilities equates to lower utility connection costs for these parcels compared to the other parcels located a greater distance from 3rd Street's robust utility lines. However, regardless of which development parcels are built first, current absorption projections indicate that the start of phase 1 and the start of phase 2 would be separated by approximately 12 months which could shorten based on demand for the new parcels.

Recognizing the aesthetic, marketing, financial and civic importance of developing new parks and open space early in the Project, the Port and the Developer are committed to conducting all appropriate due diligence to bring such public benefits on-line as soon as practical. To that end, the Term Sheet includes the potential issuance of a general obligation bond ("GO Bond") targeted towards the construction of waterfront parks including the Project's primary open space, China Basin Park. Modeled on recent Port success utilizing GO Bonds issued jointly with the City's Recreation and Park Department, a fully vetted GO Bond for waterfront parks would directly benefit the Project by reducing required Developer equity and allow Project-generated tax increment to fund Port projects elsewhere on the waterfront.

Port Revenue
Based on the financial analysis performed by Developer and reviewed by Port staff and its consultants, it is expected that at full buildout (expected in 2022) Port would receive $4.5 million in annual guaranteed base rent from SWL 337 parcel leases and $1.5 million in annual net base rent from Pier 48. Currently the Port earns approximately $3 million from SWL 337 and $1.7 million from Pier 48 (including ballgame parking in Shed A).

Based on the pro forma analysis, as summarized in the table below, Port rent is expected to be $1.56 billion (undiscounted) over the term of the Project. Anticipated capital event participation[1] revenue increases total Port revenue to $1.68 billion with a net present value of $140.2 million (2013 dollars). An annual cash flow analysis is attached as Exhibit D. Continued interim leasing of the Site is estimated to generate $1.16 billion in the same time period – without any allowance for repair expenditures that will be needed at Pier 48.

Port Revenue Summary

	Project total	**NPV**
Interim Rent	$27.1	$22.2
SWL 337 Development Parcel Base Rent	$866.2	$71.1
Pier 48 Rent (Anchor)	$385.2	$26.0
Development Parcel Participation Rent	$298.7	$14.4
Capital Event Participation	$98.1	$6.5
Total	**$1,675.3**	**$140.2**

(all dollars in millions)

Fiscal Feasibility
If the Port Commission endorses the Term Sheet, the next step in review of the SWL 337 Project is to request that the Board of Supervisors also endorse the Term Sheet and authorize environmental review of the Project by finding that the Project is fiscally feasible as required under Administrative Code Chapter 29.

Fiscal feasibility review is an assessment of the public tax revenues generated and public capital funds to be invested for a proposed Project. It provides policymakers the opportunity to assess whether the benefits of a major project[2] warrant the public investment in it prior to the City expending the resources needed to undertake environmental review. This analysis focuses on the General Fund impacts of the Project.

---

1 Defined as sale or capital refinance of a parcel lease; Under the Term Sheet, the Port receives 1.5% of net proceeds from these events.
2 Defined as projects greater than $25 million with over $1 million of public monies.

City Benefits Summary

	Annual ($m)
Property Taxes to IFD or City	$8.5
Other Taxes to the City General Fund	$10.7
Other Restricted City Tax Revenues Fund	$2.3
Total Fiscal Benefits	**$21.5**
One-time Development Impact Fees	$60.2
Construction Jobs	9,600
Permanent Jobs at buildout	11,100

(all dollars in millions, constant 2013 dollars)

Fiscal Benefits to the City and Port. Attached as Exhibit E is a fiscal feasibility analysis of the Project prepared by Economic & Planning Systems, Inc. (EPS). This report analyzes ongoing revenues to the City including new receipts from Property, Possessory, Sales, Parking, Hotel, and Gross Receipts taxes. Based on the land use program proposed in the Term Sheet, the Project will create space for businesses and residents and those residents, businesses and their workers will generate on-going revenues to the City estimated at $21.5 million a year when fully occupied. A portion of the property tax revenues will be allocated to construction of public facilities and infrastructure on the Project Site through the use of financing districts.

In concert with the development of the Project the City will also receive one-time benefits from Development Impact Fees (Jobs Housing Linkage, Child Care, Transportation Impact Development Fee), as well as revenue associated with construction of the Project. These one-time revenues are estimated to be $60.2 million.

Economic Benefits to the City. The Project will have economic impacts that benefit the City's overall economy. New direct, indirect, and induced economic activity created by the construction of the Project is projected to create approximately 9,600 annual full time job equivalents[3]. At full build-out, the Project itself is projected to support 11,100 permanent jobs in San Francisco.

Direct Benefits to the City. The proposed Project will include a number of public benefits, including over eight acres of new publicly accessible parks and open spaces; landscaped pedestrian facilities including waterfront pathways and pedestrian-only street segments; bicycle networks for both commuters and recreational riders; the rehabilitation of Pier 48, with restored public access to its apron; a new personal watercraft entry point; and a ground-level retail environment thoughtfully designed to both serve locals and attract visitors.

Cost of Construction. The Project as currently proposed will cost approximately $1.5 billion to construct. This cost estimate includes $1.3 billion for vertical building construction, and $125 million for new infrastructure and public facilities as described in the infrastructure section below.

[3] Construction jobs represent development period only.

Available Funding for the Project. Predevelopment and infrastructure costs initially will be privately financed by the Master Developer. The Master Developer will be reimbursed and the infrastructure funding augmented by several sources, including the up-front sale of Development Rights to vertical developers, proceeds of community financing district ("CFD") debt issuance, and proceeds of infrastructure facilities district ("IFD") property tax increment and debt issuance. Private funds will be used for construction of all residential and commercial uses, including costs for building design and construction, City impact fees, and other agency fees.

Long-Term Operating and Maintenance Costs. The Developer (or other subtenants) will be responsible for operations and maintenance on Pier 48 and SWL 337, including all public improvements and open space for the term of the ground lease. City departments, including the San Francisco police and fire departments, Municipal Transportation Agency ("SFMTA"), and the Department of Public Works ("DPW"), will have increased service responsibilities associated with the anticipated population and employment increase within the Project Site. The fiscal feasibility report provides additional information about the anticipated additional demands for services and cost estimates, where available. The cost estimates associated with these services will be further refined through the course of the California Environmental Quality Act ("CEQA") review of the Project.

Debt Load to be Carried by the City or the Port. As described in further detail in the Term Sheet, the Developer proposes to use proceeds of an IFD and a CFD for construction of public facilities and infrastructure. The debt obligations will be secured by special taxes and possessory interest taxes paid by the Project lessees and property owners and will not obligate the City's General Fund or the Port's Harbor Fund. The IFD property tax increment may be used to pay for infrastructure directly, repay IFD bonds, or to pay debt service on CFD bonds, as described below.

Contract Monitoring Division

The Developer and Port have met with the City's Contract Monitoring Division ("CMD", formerly Human Rights Commission or "HRC") on several occasions to discuss appropriate goals for the Project. One outcome of these discussions was the delivery of a Third Party Side Agreement ("TPSA") from CMD's Executive Director to Developer, dated December 8, 2011. The TPSA outlines an agreement on the framework for implementing an equal opportunity program for local disadvantaged business enterprises ("LBE's"). The TPSA states in part, "Based on the information the [Developer] has provided to CMD as well as an assessment of LBEs currently in our directory, the recommended overall LBE goal is 20% with an intermediate goal of 13% during the entitlement phase. The [Developer] agrees to work in good faith with CMD to meet/exceed the recommended LBE goal." The TPSA represents CMD's preliminary agreement with the Developer and serves to create the foundation for working collaboratively towards the Project's Equal Opportunity Program that will ultimately be memorialized in the Disposition and Development Agreement ("DDA") between the Developer and the Port.

SUMMARY

The Seawall Lot 337 and Pier 48 development represents a valuable opportunity to the Port and City to provide public benefits in the form of on and off-site historic preservation, shoreline access and public parks. It is also an opportunity to extend the fabric of the City, add vitality to Mission Bay and provide revenue to the Port. In order to realize the value of the Port's asset, the Port has secured a private partner to 1) provided leadership in design and entitlement of the Site; 2) provide capital for pre-entitlement expenditures; and 3) provide the initial investment for infrastructure design and construction.

Beginning with the 2007 Request for Qualifications/Proposals, the Port, working with the City, regulatory agencies and numerous stakeholders, has diligently, patiently and deliberately shepherded the development of Seawall Lot 337 and Pier 48. With an unparalleled location at the gateway to the Port's working southern waterfront, the Site is of vital importance to the Port and to the City. The Project team's ongoing dialogue with the Port Commission and the public assure that excellence and integrity of design, construction and management are appropriate for this highly visible, valuable location. Through the provision of market rate and affordable housing, new parks and expanded open space, vibrant retail and an appropriate amount of off street parking, the Project complements the nearly built-out Mission Bay while expanding public access to the waterfront and preserving valuable maritime activity.

The Project team strives to create a new mixed-use neighborhood on an underutilized site, preserve historic assets and maritime berths at Pier 48, create new parks and shoreline access, improve Port land and increase guaranteed base rent from the Site. The Project provides a unique opportunity for the Port to participate in the success of up to 10 new development parcels and rehabilitation of Pier 48 that would support the long term welfare of Port infrastructure and both benefit from and enhance the tremendous success of nearby Port investments including AT&T Park.

2nd AMENDMENT TO EXCLUSIVE NEGOTIATION AGREEMENT

When the Port and the Developer executed the ENA in September 2010, the Developer had two members, Giants Development Services, LLC ("GDS") and TCC Lot 337 Investors, LLC ("Cordish").

On October 5, 2012, the Developer informally notified the Port that Cordish withdrew from the Developer on September 15, 2012, in accordance with the terms of the Developer's operating agreement. By letter dated January 17, 2013, the Developer provided the Port formal notice confirming that pursuant to Section 2.3.1.2(C) of its operating agreement, Cordish withdrew from the Developer on September 15, 2012.

On October 9, 2012, the Port Commission approved a First Amendment to the ENA extending Phase 1 from September 15, 2012 to March 15, 2013 to provide additional time to negotiate and incorporate financing tools into the Project Term Sheet.

Phase 1 Extension
The First Amendment of the ENA extended Phase 1 to March 15, 2013. As described elsewhere in this staff report, Port and Developer have negotiated a Term Sheet for the Port Commission's consideration. Should the Port Commission endorse the Term Sheet, it would then be forwarded to the Board of Supervisors for its consideration. Because Phase 1 concludes March 15, 2013, staff requests an additional extension of Phase 1 to August 15, 2013 to accommodate the Board's scheduling procedures. Additionally the Developer will have two options to extend the ENA for six months each, upon payment of a $50,000 extension fee.

Oversight of Developer Financial and Professional Capacity
Staff also requests the ENA be revised to provide for ongoing Port oversight of predevelopment expenditures and any changes in Developer technical staff capacity. This would include appropriate Port review and approval rights for the admission of any new member to the Developer entity that would result in such new member or partner being accountable for any material portion of the Developer's responsibility as to funding or devoting appropriate skill and expertise to the development of the Project.

Before commencement of Phase 2 of the ENA, the parties will agree on a proposed budget for all eligible predevelopment costs. The Developer has provided a current Phase 1 and 2 budget estimate of $20 million including (Phase 1) costs plus contingency to date. The ENA amendment will require Developer to submit quarterly expenditure reports to the Port showing expenses incurred in the reporting quarter and to date as against agreed budget. Developer will provide, whenever possible, advance notice when a budgeted item will exceed budget. If budgets are exceeded parties will address how to treat these expenditures in the DDA.

Expansion of Project Site
The Developer's proposal includes small areas that were not included in the Port's offering documents, but which are significant for the overall Project. These areas are:

1. Parcel P20, an approximately 20 foot wide strip along the southern edge of SWL 337, between Terry Francois Boulevard and 3rd Street. This area benefits the Project by allowing the proposed new parking structure on Parcel D and new building on Parcel H to front directly on Mission Rock Street, maximizing the Port's land value by focusing open space and park development towards the Site's interior and along the waterfront. Additionally, adding this area allows an important Project arterial, Bridgeview Street, to directly connect with Mission Rock Street, increasing access to the Site and aiding the quick dispersal of vehicles from the parking structure. Parcel P20 currently does not have relief from the trust use restrictions in SB 815 and adding it to the Site is subject to the Successor Agency to the former San Francisco Redevelopment Agency, State Lands Commission and State Legislature approval.

2. Channel Plaza, an approximately 0.58 acre marginal wharf area to the east of Terry Francois Boulevard between Pier 48 and Pier 50, added as the terminus of the Channel Street view corridor. The Developer proposes practical hardscape improvements for this area compatible with the wharf's current maritime operations allowing the public to safely experience the working waterfront.

Below, with the exception of the Next Steps and Recommendation sections, we have included the text of the February 22, 2013 staff report with only minor changes.

BACKGROUND

In October 2007, the San Francisco Port Commission initiated a two-phase developer solicitation process for SWL 337, a 16 acre Port waterfront site located along the south side of China Basin Channel, generally bounded by Third and Mission Rock Streets, and Terry Francois Boulevard, with an option to include Pier 48, a 212,500 square foot warehouse complex adjacent to SWL 337. Currently SWL 337 is used as a surface parking lot under lease to China Basin Ballpark Company LLC (CBBC), a San Francisco Giants affiliate. As for Pier 48, a portion is leased to CBBC and a portion is leased to the City Department of Elections. Pier 48 uses include, among other things, ballpark overflow parking in the northern shed and storage for the Department of Elections in the southern shed. All of these current tenants are on short term leases in anticipation of development.

On May 12, 2009, the Port Commission awarded the SWL 337 development opportunity to Developer and authorized exclusive negotiations for a mixed used development project at SWL 337 and Pier 48. As agreed, the ENA outlines a 2 phase approach to Developer's pre-entitlement efforts. Phase 1 allocates 24 – 30 months for the parties to reach agreement on a Project plan and financial terms culminating in Term Sheet endorsement by the Port and the Board of Supervisors. Phase 2 allocates 3 years to complete the entitlement and permitting process for the Project.

On March 15, 2012, Developer submitted a revised proposal describing a mixed-use program that balances residential, office, retail, exhibition and parking uses distributed over a network of newly constructed fine-grained city blocks. The combination of uses will evolve as this Project moves forward to meet market demands and reflect community and regulatory concerns.

On October 5, 2012, the Developer notified the Port that one of its two members, TCC Lot 337 Investors, LLC ("Cordish") had withdrawn from the Developer on September 15, 2012, in accordance with the terms of the Developer's operating agreement and that it remained in discussions with Cordish concerning a possible future role in the Project. By letter dated January 17, 2013, the Developer provided the Port formal notice confirming that pursuant to Section 2.3.1.2(C) of its operating agreement, Cordish withdrew from the Developer on September 15, 2012.

On October 9, 2012, the Port Commission approved amending the ENA to extend Phase 1 from September 15, 2012 to March 15, 2013 to provide additional time to negotiate and incorporate financing tools into the Project Term Sheet. The amended ENA includes an additional Performance Benchmark requiring Developer, at Port's sole discretion, to confirm its financial capacity to entitle the Project and build early infrastructure. See Developer Financial Capacity, below.

SB 815
Under SB 815, adopted by the legislature in October 2007, the Port is authorized to lease all or a portion of SWL 337 free from the use restrictions of the public trust and the Burton Act. The lease term is not to exceed 75 years or not to extend later than January 1, 2094. Revenues generated from the lease in excess of the base year revenues will be utilized in support of the preservation of the Port's historic piers and other historic structures, the construction and maintenance of waterfront plazas and open space, and the remediation of the Port's environmental conditions on Port land.

SWL 337 will otherwise continue to be held by the Port subject to the terms and conditions of the public trust, the Burton Act Trust, and the Burton Act Transfer Agreement. SB 815 represents a unique opportunity for the Port to realize value from its property and to address its own capital program needs. Staff has worked accordingly to structure a transaction that maximizes the potential benefits from SWL 337 while managing risks appropriately.

DEVELOPER EXPERIENCE

As noted above, Developer is a single-purpose limited liability company whose sole member, as of September 15, 2012, is Giants Development Services LLC (GDS), a wholly-owned subsidiary of San Francisco Baseball Associates, LLC (SFBA). Port staff has reviewed the development expertise of Developer as currently composed and finds that its staff has the skill and experience to execute the mixed-use development contemplated under the Project, including expertise in the unique real estate market in the vicinity of the Site. While recent comment has focused on the departure of prior members of Developer it should be noted that key staff expertise from those departing members has been retained by Developer in its current form. Port staff further notes that this expertise combined with the relationship between Developer and the San Francisco Giants buttress a key objective of the proposed transaction: to create a new neighborhood on the waterfront that enhances and complements the success of AT&T Park across China Basin Channel. See Exhibit F for further background on Developer experience and financial capacity.

DEVELOPER FINANCIAL CAPACITY

Port financial staff have reviewed and confirmed the Developer's financial capacity in amounts sufficient to satisfy its obligations under the ENA. SFBA owns the San Francisco Giants Major League Baseball franchise. As mentioned above, GDS is the wholly-owned subsidiary of SFBA formed for development opportunities such as the proposed SWL 337 development. In January 2013 Port finance staff reviewed the financial statements and other financial materials of SFBA to form an opinion regarding its financial ability to provide the requisite $15 - $20 million in equity financing over the next 2 years as the costs estimated by both Developer and Port to complete the entitlement process for the Project. In the opinion of Port Finance staff, SFBA has the financial capacity to provide up to $20 million to fund the entitlement phase of the SWL 337 development Project.

Port staff has confirmed SFBA's written agreement to fund GDS' obligation under the Developer's operating agreement through Project entitlement. Staff has also confirmed that GDS' budget for these costs has been approved by SFBA in the amount of approximately $14.7 million going forward from December 2012. The Developer has also agreed to an ongoing process by which the Port will oversee the predevelopment expenditure budget and obtain updated information as to Developer's financial capability and development expertise to perform its obligations under the ENA if the predevelopment budget increases or its staffing materially changes. The ENA amendment will also include appropriate review and approval rights for the admission of any new member to the Developer entity that would result in such new member or partner being accountable for any material portion of the Developer's responsibility as to funding or devoting appropriate skill and expertise to the development of the Project.

<u>Public Outreach</u>

The Port, City and the Developer have visited the following community groups with detailed Project briefings:

Advisory/Regulatory Bodies

- Maritime Commerce Advisory Committee
- Central Waterfront Advisory Group
- Mission Bay Community Advisory Group
- Southeast Waterfront Advisory Council
- Bay Conservation and Development Commission (staff)
- State Lands Commission (staff)

City Groups

- Chamber of Commerce
- Bayview Builders
- Rincon/South Beach Neighborhood Group
- Potrero Boosters
- SF Housing Action Coalition Endorsement Committee
- SF Bike Coalition (informal)
- SPUR (informal)
- San Francisco Parks Alliance
- Individual neighbors and business owners
- SPUR formal lunchtime session as part of Port portfolio series
- SPUR Project Review Committee

In addition to these presentations and meetings, the Project team held a well-attended public design workshop and multiple open house meetings with members of the community to discuss proposed land use including review of several bulk and site massing alternatives. This outreach effort is a productive, ongoing process that has helped shape the Project over time.

DEAL STRUCTURE

Overview

The Term Sheet discussions between the Port and Developer have yielded a financial structure where the Developer is responsible for funding entitlement and infrastructure (generally, underground utilities, site preparation, streets and sidewalks, parks and open spaces). The Developer is reimbursed by Port for its entitlement and infrastructure costs from a combination of payments received in connection with the execution of parcel leases or sales and public financing. In return, Developer receives a market-based return on its investment in entitlement and infrastructure for the Site and a share in ongoing economic benefits from developed parcels. The Port receives fair market value for its improved parcels through ground rent under long term leases or sales proceeds and a share of increases in land value through various forms of participation. The overall financial structure is discussed below.

Parcelization Strategy

The parties' fundamental strategy for the Project is to treat the development plan as a series of individual development parcel leases. Each parcel lease will be entered into by the Port in consideration for a set of up-front and ongoing payments reflective of fair market value for the parcel. The term sheet is structured to provide Developer with the option to obtain each parcel lease itself or through affiliates as the vertical developer, subject to certain exceptions. In those exceptional circumstances, or in instances when the Developer declines its option for a parcel lease, the Port will be able to select a tenant to develop a parcel through a competitive process for these parcel leases. In all instances the payments under the lease will be verified as fair market value through an appraisal process prior to lease execution.

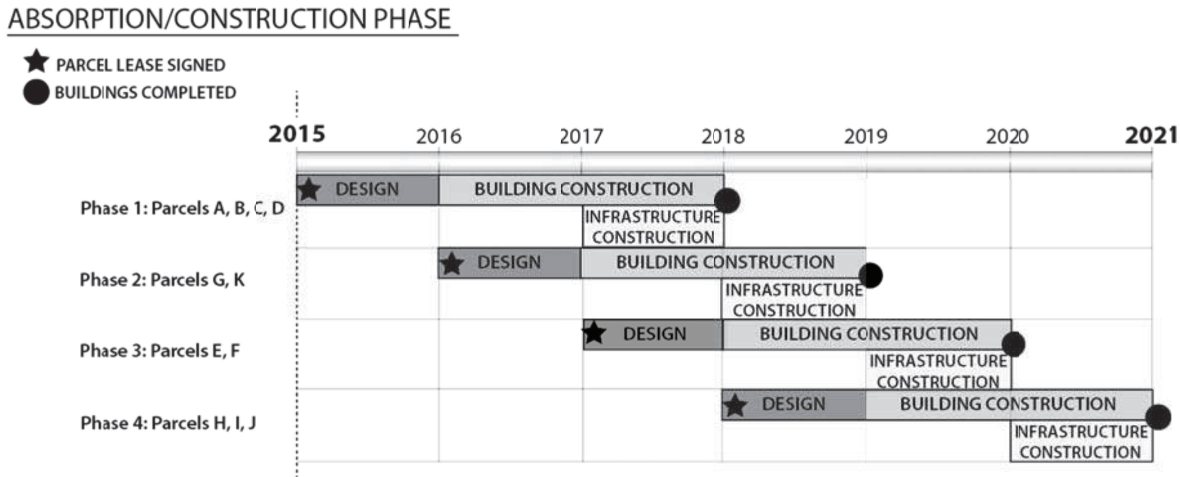
The Term Sheet also contemplates the possibility that the Port may seek approvals to remove up to two parcels from the public trust. In such a situation the Port will sell the parcels instead of entering into a 75-year ground lease. Developer will have the first option to purchase such parcel(s), subject to potential exceptions, but only after payment of an appropriate premium above the appraised value.

Phased Development and Related Infrastructure

Each parcel will have its own infrastructure needs in order to function after buildout, so the Term Sheet calls for the Developer and Port to meet and agree at each stage how best to bundle development of 2-4 parcels and their related infrastructure into a development "phase" when market conditions support the proposed level of investment. The Term Sheet aligns the parties' interests in moving quickly to complete a phase when the fair market values of the individual parcels are sufficient to provide the Port with:(i) lump-sum payment (prepaid rent or sales proceeds) sufficient to reimburse the Developer for its investment in entitlement and infrastructure and (ii) for most parcels, ongoing monthly rent payments to the Port. Upon completion of each phase the process starts anew with the next bundle of 2-4 parcels and their associated infrastructure.

Due to its size, buildout of the Site is projected to extend beyond the length of a single typical market cycle. The parties agree that this parcelization and phased development strategy combined with the infrastructure financing plan and flexible zoning approach described below provide the greatest opportunity for the efficient and successful buildout of the Site. In addition, parcel transfers through leases will be timed to lock in the benefits of a stable or growing real estate market through a combination of base rent, proceeds from the sale of development rights, and ongoing Port participation in lease revenues and future sales provide the Port with a cushion against a weakened market and a path to recover lost value if a given parcel transfer takes place in a weaker market.

For each phase, upon execution of the vertical lease(s) for parcels included in the phase, the individual parcel developer (vertical developer) (which may or may not be affiliated with the Developer) will commence construction. Developer will commence construction of the public improvements required for that phase after vertical construction has commenced but before it is completed. This timing will be managed in a manner designed to allow for the completion of such infrastructure "just in time" to support the occupancy of the completed building but not too far in advance of the CFD special tax payments and the collection of tax increment that together are intended to reimburse Developer for its investment. This "just in time" scheduling concept is graphically represented below:



Public improvements include the installation of streets, sidewalks, parks / open space, public access areas, water, sewer and electrical utilities, and other infrastructure referred to as "horizontal development". Developer will bear the cost of the horizontal development, which is currently estimated to be in the range of $126 million for the entirety of SWL 337 as shown in the table below. In accordance with the Project plan of finance the amounts reflected in the table include the cost of preparing and stabilizing the land over which public infrastructure is built, but do not include the costs of piles and supports under the parcels to be privately-leased for above ground development, referred to as "vertical development". This table represents the currently anticipated timing of each project area infrastructure investment. Timing is subject to change.

PHASE	COMPONENT	UNINFLATED COSTS	INFLATED COSTS (3%)	START YEAR
Entitlements	Entitlements	$20,000,000	$20,000,000	2012
Phase 1	Parcels A, B & C	$18,390,613	$21,523,162	2017
Phase 1a	Parcel D Garage	$ 5,216,622	$6,164,578	2017
Phase 2	Parcels G & K	$31,832,900	$38,227,462	2018
Phase 3	Parcels E & F	$17,362,012	$21,364,776	2019
Phase 4	Parcels H, I & J	$14,687,489	$18,441,259	2020
Total		$107,489,636	$125,721,237	

Phase 4 also includes projected costs for Pier 48 of $22,050,000 ($28,428,311 inflated to 2021/2022), which will be paid for through a combination of Pier 48 tenant-funded capital improvements and IFD proceeds from Pier 48 and SWL 337.

Developer Responsibilities and Return

In order to realize the value of the Port's asset, the Port has secured Developer as a private partner to 1) provide leadership in design and entitlement of the Site; 2) provide capital for pre-entitlement expenditures; and 3) provide the initial investment for infrastructure design and construction.

As reflected in the ENA, the Developer’s responsibility is to procure all Project entitlements and pay related costs, as well as to construct all horizontal infrastructure as described below. The Developer will be reimbursed for its expenditures plus an agreed upon market-based rate of return as more fully described below. As a general matter the Developer’s return is calculated as the greater of (i) the equivalent of 20% of Developer’s eligible costs compounded annually or (ii) Developer’s equity multiplied by a factor of 1.5. For example if the Developer invests $10 million in equity capital they would be entitled to $10 million return of equity and $5 million return on their equity investment even if the rate of return exceeds 20%. As a practical matter 20% returns exceed this 1.5x multiple within 2 ½ years of investment. The Project pro forma analysis show Developer’s equity investment in a given phase repaid within 2 to 4 years so returns attributable to the 1.5x multiple are low. These two standards for Developer’s return measure the rate of return and the total amount of return dollars to Developer and have been verified by staff as representative of the current financing market relative to the unique risks of this Site[4].

In addition, the parties have negotiated a right for the Developer to participate in 20% of the total Port Site-wide rent amounts above $4.5 million for 45 years. This participation right is intended to align the parties’ interests in expeditiously securing the full completion of the Site, which ultimately is the means for the Port to maximize its rent revenues from the Project. Additional risk-sharing provisions relating to the Developer’s return are described in “Description of Project Stages” below and motivate the Developer to continue to invest in Site in out years to support ongoing growth in Project revenues.

DESCRIPTION OF PROJECT STAGES

The structure described generally above creates a framework for the overall transaction. In addition, the parties’ negotiations have identified additional considerations and mechanisms at each stage of the Project, from predevelopment through the completion of Phase 4, that are meant to align incentives and share risks where appropriate. These considerations and provisions are described in more detail below.

Entitlement

The Developer will pay all entitlement costs including planning, environmental review, and land use approvals. The Developer’s investment in such eligible costs, plus its return as described above, will be repaid from the payments associated with each parcel transfer. After entitlement and execution of a Disposition and Development Agreement (“DDA”), the Developer will enter into an interim master lease for SWL 337, with rent terms based on the current parking lease between the Port and China Basin Ballpark Company, LLC and base rent allocated among development parcels. The interim lease will provide that as parking activities are removed from development

[4] See also discussion below titled, “Development Risk”.

parcels that are leased and prepared for construction the interim rent terms will be reduced pro rata in reflection of the decrease in parking spaces.

Phase 1

Phase 1 will commence upon execution of a DDA at conclusion of the entitlement process. The Port will sell development rights to the Developer concurrent with Project approvals through prepaid 75-year leases (for two parcels or, in circumstances where the Port has been successful in lifting trust restrictions on such parcel(s), fee interests) at fair market value. The Developer may choose to develop these parcels itself or through an affiliate or sell development rights to these parcel leases to a qualified third party acceptable to the Port. Net proceeds from these sales will be applied to reimburse Developer for predevelopment costs and pay accrued return, if any. In the event of a market downturn where fair market value of Phase 1 parcels is not sufficient to reimburse Developer's predevelopment costs and pay all accrued return, Developer has agreed to risk-sharing measures on its outstanding equity.

The Developer will finance all costs to install infrastructure and public benefits for Phase 1 – utilities, streets, sidewalks, etc. The Port or the City will have the right to use any available alternative source of public funds (at its sole option).

To reimburse such Developer expenditures plus accrued return, the Term Sheet calls for the Port (at its discretion) to work with the City to issue Mello-Roos community facilities district ("CFD") bonds. These CFD bond proceeds will be used to reimburse Developer's eligible infrastructure costs for Phase 1 and pay accrued return to the extent it is legally payable from such source. The bonds will be secured by a pledge of special taxes and the City will levy such special taxes as needed to pay debt service. As Phase 1 parcels are constructed and placed on the City's tax roll, the related tax increment will supplement the special taxes in servicing the CFD bonds.

Phases 2 - 4

Each subsequent phase commences at the point in time that the Port and the Developer agree that market conditions will support the next phase of development. The Developer and the Port will enter into 75-year leases with vertical developers for parcels after completing an appraisal process. The Port and Developer will confer and agree on the sources and uses of funds to be budgeted for the current phase, which will include a projection of the costs and timing of building needed infrastructure. The total budget will be based on the estimate of the amount needed to pay off (i) the Developer's outstanding prior phase costs, if any, (ii) the current phase costs plus (iii) accrued returns. Such anticipated costs will then be compared to CFD bond proceeds expected to be available to reimburse such costs. If anticipated costs are greater than anticipated CFD bond proceeds, a portion of the rent under each parcel lease will first be applied to retire Developer's outstanding costs and accrued return. Prepaid rents to Developer would reduce the amount of the ongoing rental stream to the parties, so it will be in the Port's financial interest to maximize the amounts available from the public finance strategy and minimize the need to fund Developer reimbursements through the parcel leases.

The Port will work with the City to issue CFD bonds in amounts and at the time of Port's choosing. The current Project underwriting contemplates that the CFD bonds would be issued concurrently with the Port's issuance of certificates of occupancy for the buildings on the subject parcel. At Port and City's election, these bonds could be issued earlier if the benefits of increased property values outweigh issuance risks. CFD bond proceeds will reimburse Developer's infrastructure costs and, to the extent eligible, pay Developer return. As tax increment flow is stabilized, Port will use net available tax increment flowing from the Site as an additional source to pay CFD debt, reducing special tax levies

If IFD proceeds are available in Phases 3-4, the Term Sheet provides for the use of IFD proceeds to fund the costs of piles to support foundations for vertical development at SWL 337 (projected pile depths are in the range of 250-290 feet), subject to corresponding increases to base rent for vertical parcels that receive IFD proceeds for this purpose.

The Developer's base rent obligation under the master interim lease will reduce proportionately as parking spaces are removed from the master lease through the execution of new development parcel leases and development of buildings. At the same time, rental revenues from those development parcels will begin to flow and will replace (and eventually exceed) the prior parking revenues.

The overall Project will proceed as market conditions allow, though both parties are incentivized to complete full buildout as quickly as possible. The Term Sheet and associated financial analysis currently project completion of all four Phases by 2022.

LAND USE PROGRAM SUMMARY

Developer will create a new mixed-use neighborhood, linking Mission Bay to the urban fabric of the City. Though subject to flexible zoning that could change the uses or intensities of various parcels, for purposes of analysis the Site is projected to include the land use program shown below. The parties anticipate that the Project will continue to evolve through modifications made through the CEQA, the public review processes and, with regard to the final mix of commercial and residential uses, to market demands.

Parcel	Land Use	Program Area [Gross Sq. Ft.]							Maximum Height [feet]	Total GSF Building
		Commercial	Residential	Residential [Units]	Retail	Parking	Parking [Spaces]	Pier Use		
A	Residential	0	296,000	304	25,000	80,500	163		320	**401,500**
B	Office	230,000	0	0	25,000	60,000	128		160	**315,000**
C	Office	260,000	0	0	20,000	60,000	128		280	**340,000**
D	Parking/Office	50,000	0	0	7,500	850,000	2,297		100	**907,500**
E	Office	140,000	0	0	10,000	0	0		120	**150,000**
F	Residential	0	344,000	353	12,400	0	0		380	**356,400**
G	Office	175,000	0	0	17,500	47,000	100		160	**239,500**
H	Office	243,000	0	0	12,000	0	0		160	**255,000**
I	Office	185,000	0	0	12,000	0	0		190	**197,000**
J	Residential	0	180,000	185	10,000	0	0		190	**190,000**
K	Residential	0	100,000	103	10,000	0	0		160	**110,000**
Pier 48	Mixed							212,500	38	**212,500**
TOTAL		**1,283,000**	**920,000**	**944**	**161,400**	**1,097,500**	**2,816**	**212,500**		**3,674,400**

Developer proposes dividing SWL 337 into 11 buildable parcels (Parcels A – K) 10 of which would be developed as a mix of commercial/office, retail, and residential uses. The 11th parcel would hold structured parking to serve new development and other nearby uses, including games and other events at AT&T Park. As discussed below, Pier 48 would be leased to Anchor Brewing Company for the expansion of their production capacity (which would be the 12th parcel). As noted in the description of Phase 1 above, Developer will obtain rights to the first two parcels (likely parcels A & B) as part of the reimbursement for its entitlement period equity investment and associated return. Developer will have an option to develop each of the 9 remaining development parcels and Pier 48, subject to exceptions specified in the Term Sheet.

Open Spaces, Parks and Recreation

Developer will create major new open spaces connecting the Site with surrounding neighborhoods and the waterfront, including:

- **China Basin Park**, will be expanded into a 5-acre regional waterfront park located on China Basin across from AT&T Park, with a great lawn open space and special event area, a waterfront café with outdoor seating, a junior baseball field, gardens and picnic areas, and a promenade connection to the marginal wharf between Piers 48 and 50 (see Channel Plaza description below).

- **The Square**, a 1.3 acre park located at the heart of Site. The Square will include a large multi-use lawn, plaza, and café pavilion. The Square will be framed by a mix of residential and commercial uses, including ground-floor retail and a pedestrian connection to Channel Plaza.

- **Channel Plaza**, subject to Port Commission approval to add to the Site, the marginal wharf between Piers 48 and 50 will be converted to a hardscaped one-half acre plaza set upon an active maritime wharf with views of working vessels and other maritime uses.

The development of these parks and open spaces will be distributed among the Project phases to assure completion is concurrent with the completion of adjacent vertical development. Under the illustrative phasing plan shown below, China Basin Park would be included in the second phase and The Square would be provided in the third phase.

Parks and open spaces will be owned by and remain under the jurisdiction of the Port, and will be programmed by Developer subject to Port approval and conditions of the San Francisco Bay Conservation and Development Commission ("BCDC") major permit applicable to the Site. Maintenance of the parks and open spaces is proposed to be funded by Mello-Roos special taxes imposed on privately-owned and occupied land and buildings on the Site.

Parking Garage

The parking garage will be developed on Parcel D as part of an early phase of the Project and is proposed to provide approximately 2,297 spaces for use by the entire development and for ballpark, event, and other public parking. The parties have initiated discussions with the San Francisco Municipal Transportation Agency ("SFMTA") to explore the feasibility of SFMTA financing and operating the parking structure. Should SFMTA conclude that the parking structure is not feasible as an SFMTA project, the parties will continue to explore other sources of financing and other measures needed for the garage, including Developer investment.

Affordable Housing

New rental housing built for the Project will meet City inclusionary housing requirements under Planning Code §§ 415.1-415.11 for on-site inclusionary housing for 15% of the units at 55% of area median income as determined by the U.S. Department of Housing and Urban Development for the San Francisco area. Developer will be required to deliver affordable housing in a balanced manner throughout the phasing of the Project.

Pier 48
Currently the Port and Developer are in negotiations with Anchor Brewing Company to expand its production capacity through a lease for the entirety of Pier 48. The proposed lease terms are consistent with the Port's parameter rent for similar shed structures, subject to possible offset by rent credits for qualifying capital improvement costs that extend the life of the facility. In light of current projections of sea level rise, the maximum initial term would be 30 years. The current financial model anticipates that Pier 48 would be upgraded as part of Phase 4; however the parties agree that such occupancy could be accelerated depending on the specifics of the proposal. The Port's review of any tenant or use will consider its preservation of maritime uses and historic features of Pier 48 as a necessary component to its thoughtful rehabilitation.

Transportation Demand Management Plan
Developer will implement a Transportation Demand Management Plan that provides a comprehensive strategy to manage the transportation demands created by the Project. The mixed-use nature of the Project's land use program, its rich transit options, and proximity to resources and services along San Francisco's waterfront and in downtown areas give rise to an overall strategy of reducing single-occupancy vehicle trips. The transportation strategy at the Project is based on reducing vehicle miles traveled by fostering multiple modes of sustainable transportation, emphasizing pedestrian, bicycle, and public transit options. This strategy will interact with and be informed by the ongoing waterfront transportation assessment currently being led by SFMTA.

Jobs and Equal Opportunity Program
The Developer and the Port anticipate that the build-out of the Project will create thousands of construction and permanent jobs, and that the planning, design, and construction work will provide substantial contracting opportunities for local contractors and professional service firms as well as countless businesses, employers, and organizations. Developer will implement a Jobs and Equal Opportunity Program designed to assure that a portion of the jobs and contracting opportunities generated by the Project be directed, to the extent possible (based on the type of work required and consistent with collective bargaining agreements) to local, small, and economically disadvantaged companies and individuals.

Site Zoning
Developer and the Port will work with the Planning Department to establish the development parameters for the Project through a Special Use District ("SUD"), which will be incorporated into the City's Planning Code after environmental review is complete and the Project has been approved by appropriate Port Commission, Planning Commission, Board of Supervisors, and other regulatory actions. SWL 337 is currently zoned MB-OS (Mission Bay Open Space), and Pier 48 is zoned M-2 (Heavy Industrial).

Flexible Land Use
A key element of the design proposal for the Project is a flexibility to respond to future market demands while still upholding the objective of creating an authentic mix of uses. The proposed SUD would designate certain parcels as residential and certain others commercial. The SUD would provide flexibility for some later determination as to product type within certain types of zoning. Given this flexibility the Developer has

studied various ranges for building heights. Heights of buildings, reflecting the mixed-use nature of their uses, will be diverse. Up to two tall slender signature residential towers are anticipated. The SUD will establish height limits ranging from 90 feet up to 380 feet, allowed density expressed as permissible floor area ratio ("FAR") limits, bulk limits, and other controls on development. In cooperation with the Planning Department, the Port and Developer are currently studying a range of possible height schemes. Community design engagement is ongoing and will further assist in defining the heights, which will likely be represented in the SUD as ranges for uses and parcels.

Retail Programming and Ground Level Operations

While zoning will allow a certain amount of flexibility, Developer will retain control over ground floor design, tenant mix, and, through a maintenance agreement with the Port, park operations and maintenance. Comprehensive planning and programming of ground floor spaces will address both the design and the nature of the Project's retail uses, defining the public realm and neighborhood identity. A dynamic range of restaurants, cafés, boutique stores, grocery stores, bookstores, and other shops will only be possible through careful programming of the entire Site. In consultation with the Port and community, Developer will create a blueprint for locations and tenant types for each vertical development. This comprehensive programming will address not only types of stores, but also the appropriate mix of local, regional, and national retailers. Minimum threshold requirements for local and regional operators will reduce the threat of homogeneity that otherwise might adversely affect the Project's retail success. This building-to-building variety will strengthen the pedestrian environment and establish an authentic, sustainable neighborhood for San Franciscans to enjoy.

Sustainability

Developer will implement a Sustainability Plan that will provide a comprehensive strategy to achieve the Project goal of becoming a model of sustainability by exhibiting the concepts and practices of sustainable community development throughout the development process. Developer will collaborate with the City and the Port, specifically, the Department of the Environment, the Planning Department, and the Port Planning Division, to develop the Sustainability Plan.

Developer and the City will develop an integrated plan that identifies measurable goals, standards, and performance metrics. This Sustainability Plan will be included in the DDA. Multiple sustainable Site strategies will be considered from the outset of horizontal development to enable vertical development design proposals to exceed compliance with Port Building Code requirements and achieve Project goals for integrated sustainable design and a low carbon community.

The Project has been identified by City Planning as a Type 1 Eco-District which works with the opportunities horizontal infrastructure development can provide to optimize Eco-District goals. Port and City staff are committed to working with the Developer to help the City meet its environmental goals through horizontal infrastructure and vertical development, as identified in the Term Sheet.

Statutory, Regulatory and Plan Amendments

BCDC
The proposed Project will require approvals by state bodies, including amending the Bay Area Seaport Plan sponsored by BCDC and the San Francisco Bay Area Metropolitan Transportation Commission, which designates Pier 48 as a future site for neobulk cargo shipping and the eastern six acres of SWL 337 adjacent to Pier 48 and Pier 50 as a "port priority" area to provide backland area for potential cargo operations. Amendments to the Seaport Plan may trigger a need to amend BCDC's San Francisco Waterfront Special Area Plan. In addition, all development within 100 feet of the shoreline will be subject to BCDC approval.

State Lands Commission
The Port must obtain the State Lands Commission's ("State Lands") prior approval of (a) the conclusions of a Port study on the retention of trust uses (including public parks and walkways, restaurants, hotels, maritime training, sales, and rentals, and waterfront visitor-serving retail services) at SWL 337, (b) the location of trust uses at SWL 337 and Pier 48, and (c) the transportation needs of the ballpark and trust uses on nearby Port property.

State Lands must find that all nontrust leases are executed at fair market value, consistent with the trust (other than land use restrictions), and otherwise in the best interests of the State. In addition, staff will work with State Lands to obtain legislation for a technical amendment to SB 815 to add an approximately 20 foot wide strip along the southern edge of SWL 337. This area currently does not have relief from the trust use restrictions in SB 815. To the extent necessary and after further consultation with staff of the State Lands and Developer, the Port may seek other technical amendments to the Burton Act and other state legislation.

FINANCIAL DEAL TERMS

The key financial provisions of the Term Sheet are as follows:

Section and Title	Basic Terms and Conditions
1. Parties	Port and Seawall Lot 337 Associates, LLC.
2. Site Description	Seawall Lot 337, an approximately 16-acre parcel located south of Mission Creek/China Basin Channel, bordered by Third Street on the west, Mission Rock Street on the south, and Terry Francois Boulevard on the east; Pier 48, a 212,500 square-foot facility, with two main pier sheds.
3. Project Description	Mission Rock will create a new mixed-use neighborhood, linking Mission Bay to the urban fabric of the City as described in the Land Use Summary section above.
4. Transaction Documents	The parties anticipate the following primary Transaction Documents: • <u>Disposition and Development Agreement</u> between the Port and Developer (the "DDA") for horizontal and vertical development of the Site. • <u>Master Ground Lease</u> ("Master Lease"): the Port and Developer will enter into a

	new ground lease covering all development parcels at SWL 337 except the two lead parcels as described below. Rent and other key terms will be generally consistent with those in the existing parking lease with a term ending after final parcel development. • <u>Form of Parcel Ground Lease</u>: The form of Parcel Ground Lease to be used for development parcels at SWL 337 will be attached as an exhibit to the DDA. • <u>Pier 48 Lease(s)</u> between the user(s) identified by Developer and the Port as further described below.
5. Phasing	The parties anticipate that the Project Site will be developed in four Phases. • Each Phase will consist of one or more development parcels and associated areas for streets and open spaces. • Public benefits, including development of parks and the Parking Structure, will be distributed among the Phases, assuring that these benefits are completed concurrent with the completion of vertical development and associated infrastructure of each Phase.
6. Statutory, Regulatory, and Plan Amendments	The Project will require approvals by State bodies, including BCDC and State Lands Commission. To the extent necessary and after consultation with staff of the State Lands and Developer, the Port may seek technical amendments to the Burton Act and other state legislation.
7. Zoning	• SWL 337 is currently zoned MB-OS, and Pier 48 is zoned M-2. Developer will seek approval of a new Special Use District ("SUD") for the Mission Rock area. The SUD will, among other things, establish new height and bulk limits for the Site. • The Waterfront Land Use Plan will be amended to incorporate Development Controls for Mission Rock and will incorporate SUD limitations and other development requirements, such as the role of the Waterfront Design Advisory Committee in the design review process.
8. Master Lease Terms	<u>Base Rent under Master Lease</u>: The rent structure under the interim master lease will be equivalent to the existing parking lot lease with China Basin Ballpark Company, LLC: $2.4 million base rent and percentage rent of 66% of gross revenues after allowed expenses. As phased development of the Site occurs over time, the parcels will be removed from master lease and base rent will be reduced on a pro rata basis as the Port enters into each Parcel Ground Lease. <u>Base Rent under Parcel Ground Leases</u>: Based on the program described in the Term Sheet, the Port has established a minimum of $3.5 million (the "Reserve Rent") in annual rent in the aggregate for eight of the ten development parcels, (excluding the two "lead" parcels, the parking structure, and Pier 48). • The Reserve Rent will be allocated among each of these eight development parcels, setting a floor for the total annual rent anticipated for each parcel ground lease, exclusive of any upfront prepaid rent payments. Initial rent for each development parcel will be set by valuation procedures to be undertaken as each parcel is offered for vertical development. • The lead parcels will be transferred to Developer affiliates by parcel ground leases under which fair market rent, as established by appraisal, will be fully prepaid. The intent of the prepaid leases , which are anticipated to be the two parcels most likely

	to meet market conditions, is to generate proceeds which can then be used to reimburse Developer's entitlement costs, including developer return accrued thereon. As described in the Term Sheet, the DDA will provide specific rules for how such proceeds are applied. • Base rent under each parcel ground lease (excluding lead parcels because these are fully prepaid) will escalate as follows: In every 10^{th} lease year, annual base rent will be increased to 85% of the average of the sum of annual base rent plus percentage rent ("total rent") paid to the Port pursuant to such parcel lease over the immediately preceding three years.
9. Rent Under Parcel Leases	Each parcel ground lease (except for lead parcels) will include percentage rent in a form dictated by use, as described in the Term Sheet. Vertical developers will be required to pay the Port the greater of percentage rent or base rent, as documented in periodic reports to the Port in a manner similar to that required in other comparable Port development leases.
10. Port Participation in Capital Events	• When the capital event is a sale to a third party of a vertical developer's lease or fee interest and the sale occurs after vertical development is complete, the vertical developer will pay to the Port 1.5% of the net proceeds of the sale; provided that if the parcel is a lead parcel and the sale occurs within 10 years after the date that construction of the lead parcel is complete, no such payment will be required on the first such capital event. Payments will be required on all subsequent events. • When the capital event is a sale to a third party of an affiliated vertical developer's lease or fee interest in a lead parcel and the sale occurs within 36 months following transfer by the Port of the lead parcel, the affiliated vertical developer will pay to the Port 50% of the net proceeds; provided that if the parcel is a lead parcel acquired through an upset transfer, as defined in the Term Sheet, no such payment will be required. • Trust swap parcels that are sold to a vertical developer will be subject to a deed restriction providing for a contractual transfer fee (not a tax) on each sale after the initial sale of the parcel or, where the parcel has been subdivided, a residential or commercial condominium. The transfer fee will be (i) 1% of the sales price of a residential condominium sale, and (ii) 1.5% of the Net Proceeds of any other sale to a third party of an Affiliated Vertical Developer's lease or fee interest in a lead parcel, including commercial condominiums and multi-family rental buildings. • When the capital event is a refinancing, the DDA will provide that the Port will be entitled to a transfer fee of 1.5% of the net proceeds of the refinancing. In the case of a refinancing, loan proceeds that are to be invested back into the developed parcel will be excluded from net proceeds.
11. Horizontal Development Costs	The Port and Developer anticipate using public financing mechanisms funded by revenues generated by the Project to meet the Port's obligation to pay directly for or reimburse Developer's eligible horizontal development costs with the goals of reducing Project risks, accelerating Project benefits, and increasing Port participation payments and other benefits to the parties, vertical developers, and the public. A Project financing plan that will be a part of the DDA will set forth all financing mechanisms that the parties anticipate using for the Project.
12. Developer Return	Generally, the Developer's return on investment ("Developer Return") will be calculated separately as to each Phase (with entitlement costs considered separately) and will be the greater of (i) the amount that is equivalent to 20% cumulative annual return on unreimbursed horizontal development costs for such Phase outstanding from time to time; and (ii) the amount equal to 1.5 times the Developer's highest balance outstanding for such

	Phase. • The Term Sheet provides detailed guidelines for how the Developer Return is treated in the "upset" case, in which the amount of funds available from Development Rights Payments and other sources falls short of the amount necessary to fully reimburse the Developer's entitlement costs including Developer Return. • When Port total annual revenue exceeds $4.5 million from base and percentage rents from the parcel leases, the Developer will share in a portion of this revenue stream representing 20% of the rents above $4.5 million for a term of up to 45 years.
13. Public Financing Mechanisms	The primary financing mechanisms currently contemplated are: • <u>Community Facilities District (CFD)</u>: The City would form a CFD, with improved areas annexed to the CFD at each Phase. Special taxes will be levied against leasehold and fee interests in taxable parcels. The parties anticipate that CFD debt will be issued in accordance with each Phase Finance Plan. • <u>Infrastructure Financing District (IFD) Project Areas</u>: Consistent with the Port IFD Guidelines the City would form a single IFD consisting of all Port property ("waterfront district"). Following CEQA review for waterfront development projects, the City would then consider formation of a Project-specific project area and adoption of project-specific infrastructure financing plans for the Site ("IFD financing plan") allocating tax increment from the project area to the waterfront district to finance public facilities specified in the adopted IFD financing plan. • <u>Bonds</u>. CFD (or IFD) bonds will be issued at the City's sole discretion consistent with the DDA and Project Financing Plan. Any bonds issued will be consistent with the Port's reimbursement obligations under the DDA, a phase budget, applicable federal tax law and regulations, other applicable law, and any Acquisition Agreement executed by the Port and Master Developer. • <u>Maintenance Districts</u>: The Parties will create a maintenance CFD over the entire Site. Maintenance special taxes levied against each taxable development parcel would provide pay-as-you-go funds for operating and maintenance costs of certain public facilities to be specified in the DDA.
14. Development Rights Payments	Prepaid rent payable by vertical developers upon execution of parcel ground leases ("Development Rights Payments") will provide a source of funds from which Port will reimburse Developer's horizontal development costs (in conjunction with public finance sources) and pay Developer Return. The amount of the required Development Rights Payment for each Phase will be calculated for each phase.
15. Open Spaces, Parks, and Recreation	Developer will develop major new open spaces connecting Mission Rock with surrounding neighborhoods and the waterfront. The development of these parks and open spaces will be distributed among the Phases. • Parks and open spaces will be owned by the Port, and managed and programmed by Developer, subject to Port approval and conditions of the BCDC major permit. Maintenance of the parks and open spaces will be funded by special taxes imposed on vertical developers through the maintenance CFD.
16. Parking	The Project will include a parking structure, developed in an early phase, of approximately 2,297 spaces that will support new development and maximize shared parking for the ballpark. The parties have initiated discussions with the San Francisco Municipal

Structure	Transportation Agency ("SFMTA") to explore the feasibility of SFMTA financing and operating the Parking Structure. • Should the City conclude that the parking structure is not feasible as an SFMTA project, the parties will continue to explore other potential sources of financing and other measures needed to make the parking structure financially feasible. • The Port is not expected to provide any public financing for the parking structure except CFD bond financing that can be serviced by special taxes levied on the taxable parcels at the Site or taxable parcels off-site that will benefit from the Parking Structure.
17. Master Developer's Option Rights	Developer will have the right to lease each of the development parcels at its fair market value through an option process. • The parties must approve a phase budget that sets upfront lease payments based on expected infrastructure costs, net bond proceeds and timing and other costs and revenues related to the phase. • The parties will agree on the fair market rental value of the parcel, verified by appraisals. • If the Port determines that market conditions support development of a particular development parcel, the Port will have the right to require Developer to either exercise its option or allow the Port to offer the parcel to the market through a parcel Request for Proposals ("RFP").
18. Public Offerings	A parcel RFP will be used if Developer fails to exercise its option or if Developer fails to timely close escrow on a parcel after exercising its option on such parcel. Trust Swap Parcels will be publicly offered unless the Developer agrees to pay a premium above fair market value for an option.
19. Pier 48	Currently the Port and Developer are in negotiations with Anchor Brewing Company to expand its production capacity through a lease for the entirety of Pier 48. The Port will prepare detailed terms for a direct lease to Anchor Brewing Company for Pier 48 after receiving more information about the proposed improvements to the facility, but anticipates leasing the facility at the Port's parameter rent for similar shed structures. In light of current projections of sea level rise, the Port will limit the maximum initial term to 30 years. Options to extend the term to a total of 66 years may be exercised only after the City and the Port have established policies and procedures to address sea level rise, and the Port and the tenant agree on measures necessary to mitigate the risks associated with sea level rise that will be implemented at Pier 48 and their respective obligations with respect to those measures. The Port's review of any tenant or use will consider its preservation of maritime uses and historic features of Pier 48 as a necessary component to its thoughtful rehabilitation.

FINANCIAL AND POLICY ANALYSIS

The Term Sheet presents a roadmap for development including terms regarding required returns on Developer investment, rules governing distribution of revenue and the sources of finance for the Project. To analyze the financial outcomes of the Term Sheet, Developer created a financial pro forma analysis that makes certain assumptions regarding: 1) likely land use mix and phasing resulting from the flexible zoning; 2) the cost and phasing of infrastructure; 3) payments and rent that building developers could be expected to pay based on pro forma analysis of commercial and residential development on Site parcels; and 4) special tax and public finance timing, costs, interest rates and structure. This pro forma analysis was reviewed by Port staff, assisted by technical financial and economic feasibility analysis conducted by the Port's consultants, Seifel Consulting Inc. and Conley Consulting Group. The expected financial results are outlined below. A broader discussion of the fiscal benefits of the Project will be presented in the Fiscal Feasibility Report that will be prepared for the Board of Supervisors and presented to the Port Commission the meeting.

Paying for Infrastructure
In order to realize the value of the Site there are significant design, entitlement and infrastructure expenditures that must be made for parcels to reach their full value and be readied for development. The primary sources to pay these expenses are: 1) Developer equity, 2) upfront payments due at the beginning of parcel leases (up to the full rental value of prepaid rent), 3) CFD bond proceeds that can be repaid by special taxes levied on the taxable parcels or tax increment from the parcel's property tax proceeds available through the Port IFD, and 4) Site tax increment not needed to service CFD bonds. The challenge of funding these expenditures is amplified because most of these funding sources only start to flow after development of the Site has commenced. The funding of the predevelopment and early infrastructure is primarily through Developer equity. Once the Site is entitled, Port land value (in the form of pre-paid leases) is expected to pay down Developer equity and accumulated returns. As development commences CFD bonds, ultimately serviced by tax increment, become the primary source of funding Site infrastructure and public amenities. To pay the costs associated with entitlement and development the financial analysis estimates the following sources of funding:

Sources	**Amount**
Developer Equity	$100 million
Upfront Lease Payments	51 million
CFD Bond Proceeds	140 million
IFD Pay-as-you-go	9 million
Total	**$300 million**

Uses	**Amount**
Project Infrastructure	$154 million
Return of Developer Equity	$100 million
Return on Developer Equity	46 million
Total	**$300 million**

Public Finance

The Term Sheet proposes the use of CFD bonds as a primary form of funding Site infrastructure and other public improvements. The Term Sheet would create a special tax district on the Site that would impose special taxes on all taxable leasehold and fee interests. Additionally, the Port would establish an IFD project area on the Site to collect property tax increment from this new development which would also be available to pay directly for public improvements and pay the debt service on these CFD bonds, reducing the amount of special taxes. This mechanism allows the development to generate bond proceeds to fund needed infrastructure and public benefits without encumbering the Port balance sheet. CFD special taxes and bonds can be structured to maximize the flexibility of issuing debt while reducing risk to the Port and City for its repayment. This use of public financing is consistent with the Port's current Capital Plan strategy. On December 17, 2012, the City's Capital Planning Committee reviewed the Port's IFD policy[5] and recommended the policy to the Board of Supervisors.

CFD bonds are issued by a special district established by the City and backed exclusively by the special taxes from the district. Tax increment would also be used later to pay debt service. . These bonds present a special risk profile not directly implicating the Port Harbor Fund or the City in the event of a default on the bonds, but nevertheless there are certain risks to the City and Port in association with establishing the CFD and authorizing bonding. The Site is uniquely situated to maximize the benefits of this financing mechanism allowing the Port to leverage the significant investments of the Developer and the vertical developers of each individual parcel in constructing infrastructure and buildings and capturing this tax increment for public purposes (i.e., infrastructure and public amenities such as parks). Because nontrust uses will be allowed pursuant to SB815, this leverage enhances the realizable value of the Port's land and allows the Port to utilize the increase in Port rent as a source to fund the Port's 10-year Capital Plan.

Additionally the IFD allows tax increment, after funding Site investments, to flow back to the City's General Fund. The pro forma estimates that $356 million in tax increment will support CFD bonds, $9 million will directly reimburse Site costs, and over the 75-year term of the Project almost $1.3 billion of tax increment will flow to the City.

Port Revenue

Based on the financial analysis performed by Developer and reviewed by Port staff and its consultants, it is expected that at full buildout (expected in 2022) Port would receive $4.5 million in annual guaranteed base rent from SWL 337 parcel leases and $1.5 million in annual net base rent from Pier 48. The pro forma analysis current projection for SWL 337 is above the $3.5 million minimum reserve rent referenced in the Term Sheet.

Eight SWL 337 parcel leases (all except the 2 pre-paid "lead parcels" and the parking structure parcel) would generate percentage rents that would result in aggregate rent of $4.5 million growing in pace with inflation. These percentage rents are not guaranteed but would allow Port rent revenue to increase with the underlying revenues of the built

[5] See http://onesanfrancisco.org/cpc-meeting-agenda-december-17-2012/

parcels. Over the term of these parcel leases Port rent is projected at $1.56 billion with a net present value of $133 million.

For each lease, every 10 years base rent would reset to 85% of the average of all rent (base and percentage rents) received for that parcel over the prior 3 years, resulting in increased guaranteed minimum rent within the existing Project economics. Additionally, each parcel would include provisions for the Port to participate in net proceeds from the sale or capital refinance of these parcels. Though these revenues are difficult to project due to the varying assumptions as to how long the lease would be held by a specific parcel tenant, as a general matter this lease provision would allow the Port to participate in situations where the appreciation of the lease reflects an increase in the value the parcel tenant receives from Port land. Pro forma analysis of individual parcel development and sale indicate that the Port's participation in capital events could yield over $1 million per sale depending on various factors such as building type, timing, and market.

When Port total annual revenue exceeds $4.5 million from base and percentage rents from the parcel leases, the Developer will share a 20% portion of this rental revenue stream above $4.5 million for a term of up to 45 years. Based on the Project pro forma analysis this revenue is equivalent to approximately $30 million over the 45 year period. By creating this sharing mechanism, the Developer is aligned with the Port's major financial objective, creating an ongoing program of escalating rent streams.

Currently the Site is used for parking, generating $2.4 million of base rent and approximately $3.5 million total rent annually. From 2012 through the 75 year lease terms the net present value of the current use is approximately $106 million[6]. The Term Sheet is expected to generate significantly more guaranteed rent than the current use and create an opportunity for the Port to collect percentage rents, participate in capital events and generate significant amounts of tax increment.

Development Risks

Though the Site is publicly owned, the public-private partnership between the Developer and the Port is subject to all the standard risks associated with development. Typical categories of development risk are analyzed below.

<u>Entitlement Risk</u>

All developments that seek entitlements assume the risk that the process is longer and more expensive than expected and bear the risk of failing to gain public support and regulatory approval to build the proposed Project. This entitlement risk is compounded on a site as high profile as the Site, especially given the high level of public scrutiny of this waterfront location. The level of entitlement risk presented by the Project is linked to the level of blended pre-entitlement (with higher risk) and infrastructure returns agreed to in the Term Sheet. The parties have agreed that the 20% developer returns with a 1.5x multiple represent a fair market return commensurate with the perceived Project risks.

[6] Assumes initial rent $3.5 million per year, a 6% discount rate and 3% per annum increases.

Additionally it should be noted that the financial terms above reflect the level of investment balanced against the value created by the Project's 3.7 million square feet of development. The Port can only expect to receive this level of revenue from the Project's proposed density. If ultimately a lower density is approved for the Site, it is likely that infrastructure costs will only go down incrementally (and they could go up if the public amenities are more extensive or costly) but the Port's residual revenues after development would bear the majority of the decrease in value resulting from lower density. In this situation, new financial terms would need to be negotiated and approved by the Port Commission.

<u>Financing Risk</u>
The availability and cost of funding is a major development risk for any development. The proposed sources of funding for the Project represent diverse funding streams that are largely within public control. By utilizing these public sources, specifically Site value (in the form of pre-paid ground rent and sales proceeds), tax increment and CFD bonds, the Port and City retain control of many of the financing sources. The Term Sheet structure removes some of the typical financing risk of development, but CFD bonds are ultimately subject to risk-based pricing from the bond markets to set price and availability.

<u>Cost Risk</u>
The parties are subject to uncertainty regarding the costs of entitlement and infrastructure. The just-in-time infrastructure phasing and the use of guaranteed maximum price ("GMP") construction contracts (to the maximum extent feasible) will partially offset this risk. As noted above additional costs from the entitlement of the Project are also a risk to be managed by the parties.

<u>Market Risk</u>
The structure of the Term Sheet exposes the Port to market cycle risks. Today the San Francisco market is one the strongest in recent history, supporting historically high land prices and sales prices for finished buildings. It is not reasonable to assume that current strong market conditions will exist over the span of the development period. Though the pro forma analysis underwrites market conditions below today's historic highs, the Port is at risk that future development phases could support lower land rental income than is currently indicated in the Project's pro forma analysis.

As with entitlement risk, the Port's land value is most at risk from fluctuations in land market values. The Term Sheet balances the market risk of the parties by capping the Developer's return on equity while providing a guaranteed 20% return. In exchange, the Port receives the vast majority of all residual value above this return level. Typically a developer would receive most of the potential upside created from development, negotiating a land price in advance of entitlement. For this Project, the Port participates in market risk, valuing the parcels after entitlement as served by infrastructure, but also receives most of the upside value of the entitled land.

<u>Counterparty Risk</u>
In public-private partnerships where there is a long-term partnership between parties, development risks can be addressed in part by reliance on the expertise and reliability

of one's partner (and conversely can be exacerbated when those qualities are absent). The Developer, through the RFQ/P process, collaborative land-use discussions and Term Sheet negotiations, has consistently shown the highest commitment to the public-private partnership and exhibited great expertise in structuring this complex master development leasing deal.

<u>Operating Risk</u>
The Port's percentage rent income is dependent on the operating skills of the future vertical developers. The Port's rents are subject to the vertical developer's future capability to maintain high occupancy levels and rental income streams, to maintain and re-invest in the property to continue to capture high rents over time, and to seek new investment to maintain the buildings' competitive position in the market place.

NEXT STEPS
If the Port Commission endorses the Term Sheet, it will be submitted to the Board of Supervisors ("Board") for endorsement and finding that the Project is fiscally feasible and that it is prudent to commence environmental review as required under Administrative Code Chapter 29. The Board action will include public hearings and opportunities for public comment. The Board review of the Term Sheet is consistent with the recommendations of the 2004 Management Audit of the Port by the Board of Supervisor's Budget Analyst as a means of providing the Board with an "early read" on Port development projects.

If the Port Commission and the Board endorse the Term Sheet, Port staff will move forward with Project entitlement and initiate the negotiation of Project transaction documents and an Environmental Impact Report pursuant to the California Environmental Quality Act.

RECOMMENDATION
Port staff recommends that the Port Commission approve the attached resolution endorsing the Term Sheet and approving the Second Amendment to the ENA as described in this staff report and further detailed in Exhibit C attached hereto.

Prepared by: Phil Williamson, Port Project Manager
James Hurley, Port Feasibility Analyst
Jonathan Stern, Port Assistant Deputy Director, Waterfront Development
Brad Benson, Port Special Projects Manager
Michael Martin, Office of Economic and Workforce Development, Development Project Manager

For: Byron Rhett, Port Deputy Director
Planning & Development
Jennifer Entine Matz, Office of Economic and Workforce Development, Director of Waterfront Development

<u>Exhibits</u>

Exhibit A – Site Map
Exhibit B – Term Sheet
Exhibit C – ENA Amendment Summary
Exhibit D – Projected Port Revenues from Project
Exhibit E – Fiscal Feasibility Report
Exhibit F – Developer Experience and Financial Capacity

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 13-10

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, The Port owns approximately 16 acres at Seawall Lot 337 ("SWL 337") and Pier 48, bounded generally by China Basin, the San Francisco Bay, Mission Rock Street and Third Street, including China Basin Park and a portion of the existing Terry Francois, Jr. Blvd. (the "Site"); and

WHEREAS, The Port Commission previously awarded to Seawall Lot 337 Associates, LLC ("Developer") the opportunity to negotiate for the development of SWL 337 and Pier 48 as a mixed-use development project (the "Project"), authorized Port staff to negotiate an Exclusive Negotiation Agreement (the "ENA") for development of the Site, and authorized the Executive Director or her designee to execute the ENA and amendments all as set forth in Resolution Nos. 08-25, 08-26, 09-26, 10-32, and 12-77, which are incorporated by this reference; and

WHEREAS, Developer and Port staff have negotiated the Term Sheet attached as Exhibit B to the staff report accompanying this resolution (the "Term Sheet"), which sets forth the essential terms upon which the Port and Developer will negotiate in good faith to reach agreement on the final development agreement, lease, and related documents ("Transaction Documents") and is incorporated by this reference; and

WHEREAS, The parties acknowledge that the Term Sheet is not itself a binding agreement that commits the Port or Developer to proceed with the approval or implementation of the Project and that the Project will first undergo environmental review under the California Environmental Quality Act ("CEQA") and will be subject to public review in accordance with the processes of the Port Commission, other City departments and offices, and other government agencies with approval over the proposed Project before any entitlements and other regulatory approvals required for the Project will be considered; and

WHEREAS, Developer and Port staff have agreed on the Term Sheet; however, as the Phase 1 ENA performance benchmarks require Developer to obtain Term Sheet endorsements by the Port Commission and the Board of Supervisors by the end of Phase 1, which ends on March 15, 2013, Developer has requested an ENA amendment extending Phase 1 further to August 15, 2013 to accommodate the Board of Supervisors' procedural processes; and

WHEREAS, Giants Development Services, LLC ("GDS"), the sole remaining member of Developer, is a wholly-owned subsidiary of San Francisco Baseball Associates, LLC ("SFBA"), the Major League Baseball franchise holder of the San Francisco Giants. Under Developer's operating agreement, GDS is responsible for its proportionate share (now 100%) of Developer's operating expenses. SFBA has entered into an agreement with GDS affirming SFBA's obligation to fund GDS's activities for the Project from December 2012 through Phase 1 and Phase 2 of the ENA (for the years 2012 through 2014) to the extent of its approved budget of $14,694,589, and Port financial staff have reviewed and confirmed SFBA's financial capacity in amounts sufficient to satisfy its obligation to fund, through GDS, Developer's remaining obligations under Phase 1 and 2 of the ENA; and

WHEREAS, Port staff has reviewed the development experience of the real estate professionals responsible for Developer's day-to-day operations and believe that Developer's staff is capable of successfully shepherding the Project through Phase 1 and 2 of the ENA; now, therefore be it

RESOLVED, That the Port Commission hereby endorses the Term Sheet and authorizes and directs the Executive Director of the Port, or her designee, to execute the Term Sheet following its presentation to and endorsement by the Board of Supervisors and a finding by the Board of Supervisors that the Project is fiscally feasible and responsible under San Francisco Administrative Code Chapter 29 (the "Fiscal Feasibility Finding"), and if the Board of Supervisors fails to make a Fiscal Feasibility Finding for the Project or endorse the Term Sheet, to either terminate the ENA or negotiate revisions to the Term Sheet consistent with the Board of Supervisors resolution; and be it further

RESOLVED, That if the Board of Supervisors endorses the Term Sheet and makes a Fiscal Feasibility Finding for the Project, the Port Commission directs the Executive Director of the Port, or her designee, to work with the Planning Department and Developer to undertake review of the Project under CEQA and negotiate the terms and conditions of the final Transaction Documents, with the understanding that the final terms and conditions of the Transaction Documents negotiated between Port staff and Developer during the exclusive negotiation period will be subject to the approval of the Port Commission and as applicable, the Board of Supervisors and the Mayor; and be it further

RESOLVED, That the Port Commission authorizes amending the ENA as described in Exhibit C to the staff report accompanying this resolution and incorporated by this reference, including the following: (1) to extend the Phase 1 term and the corresponding Performance Benchmark dates to August 15, 2013 to provide additional time for Developer to obtain endorsement of the Term Sheet by the Board of Supervisors; (2) to require that the parties agree on a Phase 2 ENA budget and for

Developer to provide quarterly and annual budget reports to the Port in form and substance reasonably satisfactory to Port staff; (3) if predevelopment costs are projected to exceed the approved budget, to provide for Developer to produce evidence satisfactory to the Port, in its reasonable discretion, of Developer's financial capacity and, should Developer's staffing materially change, its professional capacity; (4) to provide for Port Commission review and approval, in its sole discretion, of the qualifications of any person or entity that Developer proposes to admit as a new member, if the new member will be obligated for any material portion of Developer funds, skill, or expertise for the Project during the term of the ENA; (5) to expand the Site to include P20, subject to approval to the extent required by the Successor Agency to the San Francisco Redevelopment Agency, the State Lands Commission, and the California State Legislature, and the approximately 0.58-acre marginal wharf between Pier 48 and Pier 50; and (6) to extend the time under Section 4.3 under and on certain conditions; and the Port Commission further authorizes the Executive Director to enter into any subsequent modifications (including the exhibits or related documents) to the ENA that the Executive Director, in consultation with the City Attorney determines are in the best interests of the Port and otherwise do not materially increase the obligations or liabilities of the Port or materially decrease the public benefits accruing to the Port or the City, and are necessary or advisable to implement the intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the revised ENA; and be it further

RESOLVED, That the Port Commission reserves the right, if exclusive negotiations with Developer are unsuccessful and do not lead to approval of Transaction Documents, to undertake other efforts such as issuing a new request for proposals, at the Port Commission's sole discretion; and be it further

RESOLVED, That the Port Commission's endorsement of the Term Sheet, approval of the ENA amendment, and direction to Port staff does not commit the Port Commission or the City to approval of final Transaction Documents or implementation of the Project or grant any entitlements to Developer, nor does endorsement of the Term Sheet foreclose the possibility of considering alternatives to the proposal, mitigation measures or deciding not to grant entitlement or approve or implement the Project, after conducting and completing appropriate environmental review under CEQA, and while the Term Sheet identifies certain essential terms of a proposed transaction with the Port, it does not set forth all of the material terms and conditions of any final Transaction Documents; and be it further

RESOLVED, That the Port Commission will not take any discretionary actions committing the Port to implement the Project, and the provisions of the Term Sheet are not intended and will not become contractually binding on the Port unless and until the Port Commission and the Planning Commission have reviewed and considered environmental documentation prepared in compliance with CEQA for the Project and the Project has been approved.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 12, 2013.

____

Secretary