

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

RESOLUTION NO. 12-78

- 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, in trust, a cluster of several historic buildings in need of substantial rehabilitation (the "20th Street Historic Buildings"), located on or near 20th Street, east of Illinois Street, and identified as the "Historic Core (Orton)" on Exhibit A to the staff report accompanying this resolution; and
- WHEREAS, On February 28, 2012, by Resolution 12-18, the Port Commission awarded Orton Development Inc. ("ODI") an exclusive right to negotiate with the Port for the development, rehabilitation, and lease of the 20th Street Historic Buildings ("the Project"); and
- WHEREAS, On April 24, 2012, by Resolution 12-36, the Port Commission authorized the Executive Director or her designee to execute an Exclusive Negotiating Agreement ("ENA") between the Port and ODI for the Project and the Port and ODI entered into the ENA effective May 17, 2012, which ENA required, among other things, for the Port and ODI to negotiate a Term Sheet to describe the fundamental deal terms for the Project; and
- WHEREAS, ODI and Port staff have negotiated the Term Sheet attached as Exhibit C to the staff report accompanying this resolution (the "Term Sheet"),, which sets forth the essential terms upon which the Port and ODI will negotiate in good faith to reach agreement on the final transaction documents; and
- WHEREAS, Prior financial analyses conducted by Port to develop and rehabilitate the 20th Street Historic Buildings of this Project found that the projected income would not be insufficient to support the projected capital costs of over \$100 million, thus requiring such that a significant subsidy would be required; and
- WHEREAS, The proposed financial terms between Port and Orton for the Project are structured as a participating rent deal in which the Port contributes \$1.5 million to the capital costs and defers minimum rent for a certain period, ODI contributes up to \$14 million in equity, and both parties share equally in the long-term net revenues of the Project, creating a structure that maximizes the ability to secure third-party capital for the Project; and

WHEREAS The parties acknowledge that the Term Sheet is not itself a binding agreement that commits the Port or ODI to proceed with the approval or implementation of the Project and that the Project will first undergo environmental review under 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; 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 and present the Term Sheet to the Board of Supervisors for their endorsement and for consideration of a finding that the Project is fiscally feasible and responsible under San Francisco Administrative Code Chapter 29 (the "Fiscal Feasibility Finding"), and in the event the Board of Supervisors fails to make a Fiscal Feasibility Finding for the Project, to either terminate the ENA or revise the Term Sheet; and be it further

RESOLVED, That provided the Board of Supervisors endorses the Term Sheet and makes a Fiscal Feasibility Finding for the Project, the Port Commission authorizes that directs the Executive Director of the Port, or her designee, to work with ODI to undertake project review and negotiate the terms and conditions of any development agreement, lease, and related documents ("Transaction Documents"), with the understanding that the final terms and conditions of the Transaction Documents negotiated between Port staff and ODI 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 approval of the Term Sheet 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 ODI, nor does 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 appropriate environmental review under CEQA, and while the Term Sheet identifies certain essential terms of a proposed transaction with the Port, it does not necessarily 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 has reviewed and considered environmental documentation prepared in compliance with the CEQA for the Project and the Port Commission, and as applicable, the Board of Supervisors and the Mayor, have approved final Transaction Documents for the Project.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of October 9, 2012.



Secretary

