

MEMORANDUM

March 8, 2006

TO: MEMBERS, PORT COMMISSION

Hon. Ann Lazarus, President
Hon. Kimberly Brandon, Vice President
Hon. Sue Bierman, Commissioner
Hon. Michael Hardeman, Commissioner
Hon. Wilfred Hsu, Commissioner

FROM: Monique Moyer
Executive Director

SUBJECT: Request approval of an Amended and Restated Exclusive Negotiation Agreement with SF Piers LLC (whose members are Shorenstein Properties LLC and Farallon Capital Management, LLC) for the Piers 27-31 Mixed-Use Recreation Project (Site Location: The Embarcadero, between Francisco and Battery Streets)

DIRECTOR'S RECOMMENDATIONS: APPROVE THE PROPOSED AMENDED AND RESTATED EXCLUSIVE NEGOTIATION AGREEMENT

Action under this item is conditioned upon the Port Commission having first adopted Resolution 06-21, pursuant to Agenda Item 5A for the March 14, 2006 Port Commission Meeting. Such resolution would consent to the assignment of the Exclusive Right to Negotiate agreement, as amended, for the Piers 27-31 Mixed-Use Recreation Project (“ERN”) from SF Piers 27-31, LLC (a wholly owned subsidiary of The Mills Limited Partnership) to SF Piers LLC (whose members are Shorenstein Properties LLC and Farallon Capital Management, LLC). This item relates to proposed amendments to the ERN - including extension of the ERN - negotiated between Port staff and Shorenstein Properties LLC and Farallon Capital Management, LLC (“Shorenstein/Farallon”) on behalf of SF Piers LLC.

Background

On August 15, 2000, the Port Commission issued an amended request for proposals for the development of the Piers 27-31 Mixed-Use Recreation Project as a public-private partnership (“RFP”).

Pursuant to the RFP, the Port Commission on April 18, 2001 awarded the exclusive right to negotiate a development agreement for the Project to SF Piers 27-31, LLC, a wholly

owned subsidiary of The Mills Limited Partnership, subject to satisfaction of certain conditions. The Port and The Mills executed an Exclusive Right to Negotiate agreement (“ERN”) on June 13, 2001. The ERN has subsequently been amended, and its term currently expires on March 31, 2006.

In January 2006, the Mills proposed assignment of its interest in the ERN to Shorenstein/Farallon. In meetings between Shorenstein/Farallon and Port staff, Shorenstein/Farallon indicated their commitment to:

1. Achieving the goals and objectives stated in the RFP; and
2. The understandings contained in the Development Memorandum with SF Piers 27-31, LLC (“Assignor”), dated December 15, 2004 (as amended) for the Piers 27-31 Mixed-Use Recreation Project (“Project”) that indicated the terms agreed upon by the Port and the Assignor regarding the Project, including general conditions, design and development guidelines, terms of the lease disposition and development agreement (“LDDA”), and lease terms.

In these meetings, Shorenstein/Farallon also expressed their desire to make modifications to the Project to address community and Board of Supervisor concerns about the Project. These modifications would include changes to the project description and Site plan. Therefore, Shorenstein/Farallon requested that the ERN be extended to allow a sufficient time period to:

1. Make changes to the Project;
2. Obtain endorsement of these changes by the Port Commission and the Board of Supervisors;
3. Negotiate and finalize the transaction documents, including the LDDA and lease;
4. Complete environmental review of the revised Project; and
5. Seek approval of the transaction documents by the Port Commission and the Board of Supervisors.

Proposed Amendments to Exclusive Right to Negotiate Agreement

Shorenstein/Farallon, on behalf of SF Piers LLC (“Assignee”), and Port staff have negotiated proposed amendments to the ERN as outlined in the table below, which have been incorporated into an Amended and Restated Exclusive Negotiation Agreement (“Amended ENA”).

Initial Term	Six-month period from 4/1/06 – 9/30/06, within which Assignee will seek Port Commission endorsement of a Revised Development Memorandum
First Extension	Upon satisfaction of Initial Performance Benchmarks, including the Port Commission endorsement resolution, the Amended ENA term will be extended from the date of the Port Commission endorsement resolution to the earlier

	of: (1) execution of the Revised Development Memorandum; or (2) 120 days (plus certain legal notice delays) from the date of the Port Commission endorsement resolution.
Second Extension	Upon obtaining the Board of Supervisors' endorsement of the Revised Development Memorandum within the First Extension, the Amended ENA term will be extended 18 months.
Negotiating Fees	<ul style="list-style-type: none"> • \$25,000 prior to Port execution of the Amended ENA • \$50,000 upon adoption of the Port Commission endorsement resolution • \$50,000 upon adoption of the Board of Supervisors endorsement resolution • \$50,000 upon Planning Commission certification of the environmental impact report • \$75,000 upon execution of the LDDA
Transaction Costs	Assignee will reimburse Port for staff time, legal fees and outside consultants fees incurred by Port regarding the Project, to be paid quarterly.
Project Requirements	<p>During the initial 6-month term of the Amended ENA, Assignee and Port will negotiate a Revised Development Memorandum whose provisions will be consistent with the basic principles and terms of the following Project Requirements:</p> <ul style="list-style-type: none"> • Revised Project will achieve the Port's goals and objectives stated in the RFP. • Active Recreation uses will be operated by an experienced Active Recreation Operator and will provide affordable, pay-as-you-go active recreation activities. • The terms and financial benefits will be equivalent or more favorable to the Port than the terms in the existing Development Memorandum. • For purposes of participation rent to the Port, the calculation of "Development Costs" will not include consideration paid by the Assignee to Assignor for the assignment of the ERN, but will include the lesser of: the legitimate, direct predevelopment costs for the Project incurred by Assignor between April 18, 2001 and March 31, 2006; or \$21 Million. • Assignee will provide a satisfactory guarantee of completion. • The Project will be constructed in accordance with the Secretary of Interior Standards for Historic

	<p>Rehabilitation.</p> <ul style="list-style-type: none"> The use program will include the following Required Uses: Active Recreation uses on a majority of the programmed space; a programmed and improved Marine Sports Basin similar to that described in the existing Development Memorandum; Public Access and Open Space on no less than 35% of the Site footprint (not including water areas and the Northeast Wharf Plaza as defined in the BCDC Special Area Plan and the Port’s Waterfront Land Use Plan); a water taxi landing; and transient berthing for recreational boats in the Marine Sports Basin. <p>(The Project Requirements are described in more detail in Exhibit B of the proposed Amended ENA.)</p>
<p>Endorsement of Revised Development Memorandum by Board of Supervisors</p>	<p>As described below under Performance Benchmarks, upon the Port Commission endorsing a Revised Development Memorandum, the Port will submit the Revised Development Memorandum to the Board of Supervisors for its review and endorsement; if not endorsed by the Board and executed by the end of the First Extension, then either: the Amended ENA will terminate, or the Port Commission, in its sole discretion, may extend the term of the Amended ENA.</p>
<p>Performance Benchmarks</p>	<p>Initial Performance Benchmarks:</p> <ul style="list-style-type: none"> Monthly progress reports Proposed plan of development, development schedule, community outreach program, trust consistency proposal, and regulatory approval strategy by July 1, 2006. Annual budget for Transaction Costs by August 1, 2006. Letter of intent with Active Recreation Operator by September 1, 2006. Port Commission endorsement resolution regarding Revised Development Memorandum by September 30, 2006. <p>Board Endorsement Resolution: Within 120 days of Port Commission endorsement resolution.</p> <p>Additional Performance Benchmarks:</p> <ul style="list-style-type: none"> Implementation of community outreach program. Submit revised environmental review application within 30 days of the Board endorsement resolution. Schematic Design Drawings within 120 days of the

	<p>Board endorsement resolution.</p> <ul style="list-style-type: none"> Obtain environmental review certification, operating agreement/sublease with the Active Recreation Operator, and agreement on LDDA and lease by expiration of the Amended ENA. <p>(The Performance Benchmarks are described in more detail in Exhibit C of the proposed Amended ENA.)</p>
Public Trust Consistency	Assignee and Port will work together in a process for determination of the public trust consistency for the Project, which may include regular discussions with the staffs of BCDC and the State Lands Commission.
Press Releases/Conferences	Assignee will not issue press releases about the Project without prior consent of the Port, and will not hold press conferences about the Project without giving the Port the opportunity to participate.
Ballot Measures	Assignee will not initiate any ballot measure regarding the Project without the Port's prior consent.
Community Outreach	Assignee shall conduct a community outreach program approved by the Port to community groups, stakeholders and regulatory agencies. Assignee agrees and acknowledges that maintaining professional working relations with Port's constituents, the public and regulatory agencies is critical to implementing the Port's management obligations.
Project Materials	All studies, reports, plans, drawings and permits pertaining to the substructure of Piers 27-31 will be assigned to the Port if Assignee withdraws from or abandons the Project or the Amended ENA is terminated. Assignee will also provide the Port with copies of all other project materials prepared regarding the Project for Assignee by architects, engineers and other consultants.
Incurable Defaults	The following are considered incurable defaults: failure by Assignee to obtain Port Commission endorsement of the Revised Development Memorandum by the end of the Initial Term; failure by Assignee to obtain Board endorsement of the Revised Development Memorandum by the end of the First Extension; assignment of the Amended ENA by Assignee without the prior consent of Port; Assignee pursuing a ballot measure without the prior consent of Port; violation of the campaign contributions law by Assignee.

Assignee's Remedies	If Port breaches the Amended ENA, Assignee has the option to terminate the Amended ENA and receive a refund of Negotiating Fees (as liquidated damages) or seek specific performance of the Amended ENA. The Amended ENA includes mutual releases for the period prior to the term of the Amended ENA.
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Staff Recommendation

Port Staff recommends that the Port Commission approve the Amended ENA as described above.

Prepared by: Kirk Bennett, Assistant Deputy Director
Planning & Development

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

RESOLUTION NO. 06-22

- WHEREAS, Charter Section B3.581 grants to the Port Commission the authority and duty to use, conduct, operate, maintain, regulate and control the lands within the Port jurisdiction; and
- WHEREAS, By a Request for Proposals dated November 12, 1999, including a subsequent Amended Request for Proposals dated August 31, 2000, Addendum No. 1 dated October 2, 2000, and Addendum No. 2 dated November 17, 2000 (collectively, the "RFP"), the Port solicited proposals from qualified parties to lease an approximately 19-acre complex of piers under the Port's jurisdiction located at Piers 27, 29, 29-1/2 and 31, in the City and County of San Francisco, and to develop and operate on the property a mixed-use recreation project (the "Project"); and
- WHEREAS, The Port Commission at its April 18, 2001 meeting by Resolution No. 01-30, awarded the opportunity to enter into an Exclusive Right to Negotiate agreement for the lease of the site for the Project to SF Piers 27-31, LLC ("Assignor"), conditioned upon Assignor satisfying certain conditions, and authorized and directed the Executive Director of the Port, or his designee, to enter into an Exclusive Right to Negotiate; and
- WHEREAS, Port and Assignor entered into an Exclusive Right to Negotiate agreement, dated as of June 13, 2001, as modified by the terms of letters dated December 12, 2001, March 14, 2002 and June 11, 2002, the First Amendment to Exclusive Right to Negotiate dated as of November 27, 2002, the Second Amendment to Exclusive Right to Negotiate dated as of January 13, 2004, the terms of the letter dated June 24, 2004 and Port Commission Resolution Nos. 04-32, 04-50 and 04-83, and the Third Amendment to Exclusive Right to Negotiate dated as of December 15, 2004 (collectively, the "ERN"); and
- WHEREAS, The Port Commission at its November 9, 2004 meeting by Resolution No. 04-95 endorsed the Revised Development Memorandum for the Project, including a Revised Preferred Alternative Project and financial terms; and
- WHEREAS, The Port Commission at its June 14, 2005 meeting by Resolution No. 05-40 endorsed certain amendments to the Revised Development Memorandum and the Revised Preferred Alternative Project; and

WHEREAS, The Port Commission at its March 14, 2006 meeting by Resolution No. 06-21, approved the assignment of the ERN and related documents from Assignor to SF Piers LLC, a Delaware limited liability company ("Assignee"); and

WHEREAS, The term of the ERN is due to expire on March 31, 2006; and

WHEREAS, Assignee has proposed further changes to the Revised Development Memorandum and the Revised Preferred Alternative Project to address issues and concerns raised by various stakeholders during the public approval process, and has requested an extension of the ERN term to negotiate such revisions; and

WHEREAS, Assignee, the Executive Director and Port staff have negotiated terms for an Amended and Restated Exclusive Negotiation Agreement ("Amended ENA") that amends and restates the ERN in its entirety, extends the term through September 30, 2006, and upon satisfaction of certain Performance Benchmarks (as defined in the Amended ENA) by such date, allows an additional extension of the ENA through 2007 and into 2008, with certain other Performance Benchmarks for Assignee during the extended term, as described in the Memorandum to Port Commissioners dated March 8, 2006 for Calendar Item No. 5B (the "Staff Report") (copies of the Amended ENA and the Staff Report are on file with the Secretary for the Port Commission and incorporated herein by this reference); now, therefore, be it

RESOLVED, That the Port Commission hereby approves the terms of the Amended ENA and authorizes and directs the Executive Director of the Port, or her designee, to execute the Amended ENA, with the understanding that the final terms and conditions of any lease disposition and development agreement, lease or related documents negotiated between the Port and Assignee during the exclusive negotiation period will be subject to the approval of the Port Commission; and be it further

RESOLVED, That entering into the Amended ENA does not commit the Port Commission to approval of a final lease, lease disposition and development agreement or related documents, and that the Port Commission shall not take any discretionary actions committing it to the Project until it has reviewed and considered environmental documentation prepared in compliance with the California Environmental Quality Act (CEQA); and be it further

RESOLVED, That the Port Commission, pursuant to Section 7.2 of the Amended ENA, hereby authorizes the Executive Director of the Port, or her designee, to waive or extend the times for performance of the Performance Benchmarks (as defined in the Amended ENA), including, without limitation, the right to condition such waiver or extension on additional Performance Benchmarks or other conditions required by the Port in its sole discretion, provided that such extension does not extend the term of the Amended ENA; and be it further

RESOLVED, That the Port Commission hereby authorizes and directs the Executive Director of the Port, or her designee, to take all such further actions, including execution of documents in consultation with the City Attorney, as are necessary to implement the intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of March 14, 2006.

Secretary