

**REQUEST FOR PROPOSALS**

**SEAWALL LOT 337 DEVELOPMENT OPPORTUNITY**

**CITY AND COUNTY OF SAN FRANCISCO  
GAVIN NEWSOM, MAYOR**

**SAN FRANCISCO PORT COMMISSION  
KIMBERLY BRANDON, PRESIDENT  
RODNEY FONG, VICE PRESIDENT  
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**MONIQUE MOYER  
EXECUTIVE DIRECTOR**

**MAY 27, 2008**

*Phil Williamson  
Port of San Francisco  
Pier 1, San Francisco, CA 94111*

## **Summary of Offering**

- Opportunity:** Propose, design, entitle, develop and operate a mixed use project under a development agreement and long-term lease at Seawall Lot 337, a 16 acre site located along the south side of China Basin Channel, east of Third Street, west of Piers 48 and 50, and north of Mission Rock Street. The Site includes the northern leg of Terry Francois Boulevard between Third Street and Pier 48, with an option to include Pier 48 in the project.
- Location:** San Francisco's Central Waterfront area, south of China Basin Channel/Mission Creek, within the Mission Bay area, with excellent views of the Bay, Bay Bridge, AT&T Ballpark and downtown San Francisco.
- Financial Requirements:** The developer will be required to make substantial improvements to the site and supporting infrastructure; pay base and percentage rent to the Port; and operate and maintain all buildings, structures and open space.
- Maximum Lease Term:** 75 year lease for SWL 337; Expected 10 year term for Pier 48, with provisions to negotiate longer term if necessary to meet amortization requirements.
- Selection Process:** The RFP proposals will be ranked by the Advisory Panel based on how well Respondent proposals meet the Development Objectives & Criteria and Submittal Requirements described in this RFP. Port staff and consultants will evaluate economic, financial, transportation and other submittal information. Port staff and Advisory Panel recommendation for the top ranked developer to be selected for exclusive negotiations will be forwarded to the Port Commission for its independent review and action.
- Presubmittal Meeting:** June 17, 2008 at 2 p.m. at Port's offices at Pier 1
- Proposal Due:** No later than 4:00 p.m., Wednesday, August 27, 2008  
Port of San Francisco  
Pier 1, San Francisco, CA 94111
- Deposit Required:** A refundable earnest money deposit of \$100,000 is required, refundable to the developer not selected for exclusive negotiations.
- Contact:** Phil Williamson, Port of San Francisco  
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## TABLE OF CONTENTS

	Page
<b>I. THE OFFERING; SITE DESCRIPTION</b> .....	1
A. Summary of Offering and Schedule.....	1
B. Site Description.....	3
C. Planning & Development Context.....	5
D. Physical Conditions.....	7
<b>II. DEVELOPMENT OBJECTIVES</b> .....	9
<b>III. KEY LEASE TERMS</b> .....	17
A. Use.....	17
B. Premises.....	17
C. "As-Is" Condition.....	17
D. Rent, Fees and Assessments.....	17
1. Rent.....	17
2. Community Facilities District.....	18
3. Infrastructure Financing District.....	18
E. Term.....	18
F. Assignment, Sublease, Refinancing and Transfer.....	18
G. Maintenance/Repairs/Security.....	18
H. Possessory Interest and Other Taxes.....	19
I. Security Deposit.....	19
J. Environmental Deposits.....	19
1. Environmental Oversight Deposit.....	19
2. Environmental Performance Deposit.....	19
K. Hazardous Materials.....	19
L. Insurance and Bond Requirements.....	19
M. City Requirements.....	20
N. Form of Exclusive Negotiations Agreement.....	21
O. Form of Lease.....	21
<b>IV. REGULATORY REVIEWS AND APPROVALS</b> .....	22
A. State Lands Commission, Port of San Francisco, and the Public Trust.....	23

B.	Port of San Francisco .....	24
C.	San Francisco Planning Department .....	26
D.	San Francisco Board of Supervisors .....	26
E.	BCDC .....	27
F.	U.S. Army Corps of Engineers.....	28
G.	Regional Water Quality Control Board.....	28
V.	<b>OTHER PROJECT REQUIREMENTS</b> .....	28
A.	Equal Opportunity .....	28
B.	Prevailing Wages.....	28
C.	Diesel Fuel Measures .....	28
D.	Hazardous Materials Rules and Regulations.....	28
E.	Liquor, Food Service and Business Licenses .....	29
F.	Conflicts of Interest.....	29
G.	Respondents' Obligations under the Campaign Reform Ordinance.....	29
H.	Other City Requirements.....	30
VI.	<b>RFP SCHEDULE AND SUBMITTAL REQUIREMENTS</b> .....	31
A.	Pre-Submittal Conference and Questions.....	31
B.	Submittal Format.....	32
C.	Development Concept Plan Submittal .....	33
1.	Concept .....	33
2.	Preliminary Conceptual Drawings.....	34
D.	Technical Submittal Requirements .....	35
1.	Narrative Description of the Development Program .....	35
2.	Economic Return to the Port.....	36
3.	Development Funding.....	36
4.	Financial Viability of the Proposal .....	37
5.	Statement of Qualifications.....	37
E.	Financial Capacity Submittal .....	39
F.	Other Submittal Requirements .....	40
1.	Earnest Money and Performance Deposits.....	40
2.	Financial Standing, Taxpayer Responsibility & Disclosure Questionnaire and Respondent Certificate .....	41

G.	Submittal Deadline .....	41
<b>VII.</b>	<b>EVALUATION OF PROPOSALS AND AWARD</b> .....	<b>41</b>
A.	Selection Process Generally .....	41
B.	Selection Criteria.....	42
1.	Evaluation Criteria.....	42
C.	SWL 337 Advisory Panel and Port Staff Scoring .....	45
D.	Port Commission Determination.....	45
E.	Exclusive Negotiations.....	45
F.	Approval of Transaction.....	46
<b>VIII.</b>	<b>OTHER TERMS AND CONDITIONS</b> .....	<b>46</b>
A.	Respondent's Duty to Investigate .....	46
B.	Conditional Nature of Offering .....	47
C.	Respondent Selection Does Not Guarantee Project Approval .....	47
D.	Objections.....	48
E.	Claims Against the Port.....	49
F.	Sunshine Ordinance.....	49
G.	Financial Obligations .....	49
H.	Proposals Become Port Property.....	49
I.	Nondiscrimination Policy.....	49
J.	Interpretation .....	50

**APPENDICES**

(All are posted on Port Website [www.sfport.com/swl337](http://www.sfport.com/swl337))

- Appendix A: SWL 337 Development Opportunity Site Plan
- Appendix B: SWL 337 Site Plan, including Terry Francois Boulevard
- Appendix C: Pier 48 Site Plan
- Appendix D: Senate Bill 815
- Appendix E: Summary of SWL 337 Community Planning Process
- Appendix F: Transportation Demand Management Plan Information & Submittal Requirements
- Appendix G: Wilbur Smith Associates Parking Survey
- Appendix H: San Francisco Giants Transportation Survey
- Appendix I: Financial Standing, Taxpayer Responsibility & Disclosure Questionnaire and Respondent Certificate
- Appendix J: Land Use and Development Program Form

**REQUEST FOR PROPOSALS**  
**SEAWALL LOT 337 DEVELOPMENT OPPORTUNITY**

**I. THE OFFERING; SITE DESCRIPTION**

**A. Summary of Offering and Schedule**

The City and County of San Francisco, a municipal corporation (the "City"), acting by and through its Port Commission (sometimes referred to as the "Port"), is pleased to issue this request for proposals (this "RFP") seeking proposals from pre-qualified respondents designated by the Port Commission (each, a "Respondent") to propose, design, entitle, develop and operate a public-oriented mixed use waterfront complex ("Mixed Use Project") under a development agreement and long term lease at the Seawall Lot 337 ("SWL 337") development opportunity site ("Site"). The Site is located along the south side of China Basin Channel in the Mission Bay area, bounded by Third Street on the west, Mission Rock Street on the south, and Terry Francois Street on the east, between Mission Rock Street and Pier 48. The northern leg of Terry Francois Boulevard between Third Street and Pier 48 is included within the Site, and this RFP offers the option to include Pier 48 in the Site, which is shown on **Appendix A**. The Port intends to award ground lease(s) (the "Lease(s)") for the Mixed Use Project for a term not to exceed 75 years for SWL 337, and for Pier 48 a lease term appropriate for the proposed uses and based on market conditions and improvements, expected to be 10 years, with provision for longer term to meet amortization requirements (see **page 18** for further details), for the development and operation of the Site to the qualified Respondent submitting the proposal deemed the best in achieving the Port's development objectives and criteria and the RFP submittal requirements, described below.

The key dates for this offering and anticipated schedule for the selection of a Respondent for exclusive negotiations are summarized below, and are subject to change at the sole discretion of the Port.

<b>RFP issued:</b>	May 27, 2008
<b>Pre-submittal conference and Site tour:</b>	June 17, 2008 at 2:00 p.m. Pacific Daylight Savings Time ("PDT"),
<b>Latest date for submission of written questions:</b>	Monday, August 4, 2008 at 5:00 p.m. PDT
<b>Proposal deadline:</b>	Wednesday, August 27, 2008, at 4:00 p.m. PDT
<b>Commission presentation:</b>	September 9, 2008
<b>Public Workshop for Respondent Presentations and Public Comment on Proposals</b>	September 15, 2008
<b>Interview(s):</b>	Week of September 22, 2008 (tentative)
<b>Port Commission consideration of selected Respondent:</b>	December 2008 (tentative)
<b>Exclusive negotiations begin:</b>	January 2009 (tentative)

This Site offers a prime location for increasing the public's enjoyment of the waterfront through the creation of a major shoreline public park/open space at the north end of SWL 337, which should be designed to interact with an urban mix of activities, and achieve the highest standards of sustainability. SWL 337 has the potential to generate substantial Port revenues to fund, maintain and improve the City's waterfront. Potential uses include offices, hotel, restaurants, retail, research and development, entertainment and event venues, and residential. The Port envisions at this site a major public place unlike any other in San Francisco, one that blends substantial shoreline public open space that invites visitors from the entire City and region, and also provides a vibrant addition to the Mission Bay and South Beach neighborhoods.

This RFP offering is the second phase of a two-part developer solicitation process, which was initiated as a Request for Qualifications and Development Concepts by the Port Commission in October 2007. At the direction of the Port Commission, the Port Executive Director established a SWL 337 Advisory Panel of community stakeholders, experts and City staff to review the RFQ development concepts. Together with Port staff, the Advisory Panel made a recommendation which was approved by the Port Commission (Resolution 08-25, approved April 22, 2008) to invite the following development teams to submit RFP proposals:

- a. Boston Properties/Kenwood Investments/Wilson Meany Sullivan
- b. Cordish Company/San Francisco Giants/Farallon Capital Management

Please refer to the Port's website, [www.sfport.com/swl337](http://www.sfport.com/swl337) to review a detailed archive of RFQ submittals, SWL 337 Advisory Panel members, Port staff reports and information related to this development solicitation process.

The RFQ Development Concept submittals underwent early, deep public review and comment by the Port Commission, SWL 337 Advisory Panel, and the general public, which yielded important information regarding community, Port and City issues and concerns that should serve to inform the refinement and improvement of development proposals submitted in response to this RFP.

As reflected in the comments and review by Port Commission, SWL 337 Advisory Panel, and general public during the RFQ phase, expectations for the design of new development at this Site are high. The review and public discussion of the RFQ development concepts greatly enhanced the public's ability to visualize possible development ideas for the Development Opportunity Site. The public comments and feedback should help inform development that realizes cutting edge, integrated approaches in architectural, landscaping and urban design to create a shoreline park and open space network throughout the Site, activated by a mix of private and public activities that create a vital urban experience, and which embodies an architectural character and identity that inspires the human spirit.

Similar to the process conducted for the RFQ phase, the RFP development proposals will undergo public presentations before the Port Commission and the general public. In addition, Respondents will be interviewed and proposals evaluated by the SWL 337 Advisory Panel, and Port staff, prior to producing a recommendation to the Port Commission regarding developer selection. The SWL 337 Advisory Panel and staff evaluations will be based on the SWL 337 Development Objectives and Criteria, and submittal requirements described in this RFP. This

RFP also specifies detailed information to be included in the development proposals, which must include the elements below:

- A detailed development program and site plan which specify the type, character and amount of floor area for all uses included in the proposal, including a breakdown of the proposed public open space network;
- A detailed financial proposal, substantiated by real estate market and development pro forma analyses, which define development costs, funding sources, revenue generation and net operating income, by use category;
- A detailed Transportation Demand Management Plan (TDMP) which requires respondents to demonstrate how the proposed development and site plan and project management program are designed to promote and prioritize pedestrian and bicycle access, and use of other alternative transportation modes. Proposed off-street parking developed at SWL 337 must include an aggressive shared parking management program, and documentation of how off-site parking resources were considered to meet demand. See Appendix F for detailed discussion and direction.

## **B. Site Description**

The Development Opportunity Site includes three components shown in the Site Plans in Appendix A, B, and C described below:

1. SWL 337;
2. Terry Francois Boulevard; and
3. Pier 48.

Neither Pier 48-1/2 nor Pier 50 is included in the Site. The Pier 48-1/2 wharf is in active use as a berthing area for harbor service vessels. Pier 50 continues to be an important maritime facility, providing berthing for military vessels and visiting vessels, and is the central location of the Port's maintenance operations and other tenanted light industrial businesses.

### 1. Seawall Lot 337

Seawall Lot 337 is an approximately 16 acre site, located south of Mission Creek/China Basin Channel, bordered by Third Street on the west, Mission Rock Street on the south, and Piers 48 and 50 on the east. SWL 337 is located within the Mission Bay area, although it is not within the Mission Bay South Redevelopment Project Area, which is located immediately west and south of SWL 337. SWL 337 is currently improved with China Basin Park at the north end, developed by the San Francisco Giants as part of the development of AT&T Ballpark, and an asphalt parking lot known as Giants Parking Lot A, under lease until 2009 to China Basin Ballpark Company for ballgame and non-ballgame parking, and special events. See **Appendix B** for a site map of SWL 337.

## 2. Terry Francois Boulevard

Terry Francois Boulevard is the current roadway which runs through the northern end of SWL 337 and adjacent to its east side. It is the only access route to Piers 48 and 50, and also is designated both as a part of the San Francisco Regional Bay Trail, and the San Francisco Blue Greenway. As such, Terry Francois Boulevard provides industrial and commercial access to the piers, recreational and public access along the shoreline, and will be a key route serving new development of the Mixed Use Project. Terry Francois Boulevard occupies 3.52 acres through its entire right-of-way, from Third Street to Mission Rock Street.

As directed in this RFP, the northern leg of Terry Francois Boulevard, from Third Street to Pier 48, is to be incorporated into a major public park/open space as part of this Mixed Use Project. This portion of Terry Francois Boulevard is approximately one acre in size. The remainder of Terry Francois Boulevard, between Pier 48 and Mission Rock Street, will continue to provide access to Pier 48 and 50, and may be proposed for pedestrian and/or landscaping improvement by the developer as part of the Mixed Use Project. Except for that portion of Terry Francois Boulevard that is closed and converted to public open space, Terry Francois Boulevard, Third Street and Mission Rock Street will remain under the control of the Port and City of San Francisco. The site map in **Appendix B** also shows these streets.

Respondents are advised that Third Street has recently been rebuilt by the City as part of the Mission Bay South Redevelopment Plan, and cannot be realigned. Mission Rock Street also is included in the Mission Bay South Redevelopment Plan, which calls for the street to be altered to follow an east-west alignment. Development proposals must incorporate this new alignment.

## 3. Pier 48

Pier 48 is a pile-supported 212,500 square foot facility, which supports two main pier sheds (Sheds A and B) and a connector shed at the east end (Shed C) of the pier, which together provide approximately 181,200 square feet of enclosed warehouse space. An open air “valley” between Sheds A and B is approximately 34,500 square feet in size. The deck and substructure for all of Pier 48, except the perimeter aprons along the north and south sides of the pier, is concrete; the aprons and supporting piles are constructed of wood. See **Appendix C** for a site map of Pier 48.

Pier 48 is designated as a contributing resource in the Port of San Francisco Embarcadero Waterfront National Register Historic District, on which the Port completed substantial capital repairs and improvements following a major fire in 1996. The Port expects that the significant capital public investments made at Pier 48 will provide a wonderful opportunity to create a year-round, protected area for publicly-oriented uses over the water, with spectacular public views which enhance the quality and benefits of new shoreline open space and public enjoyment of the Bay, including water-oriented recreational pursuits.

## C. Planning & Development Context

In 1997, when the Port Commission adopted the Waterfront Land Use Plan (“Waterfront Plan”), the Port’s official land use policy document, the City was actively developing a new Redevelopment Plan for Mission Bay. The previous Mission Bay plan and entitlements, which included designating and rezoning SWL 337 for open space, had been approved by the City in 1991 but were not realized. The City’s renewed Mission Bay planning efforts in the late 1990’s, which included creating a new UCSF campus, which excluded SWL 337 from the Redevelopment Plan boundaries, made significant changes to adjacent sites but left SWL 337 to be addressed as a separate effort. Accordingly, the Port’s Waterfront Plan called for further planning study of SWL 337 once the direction for Mission Bay was reestablished.

In contrast to the failed 1991 Mission Bay plan, development under the 1998 Mission Bay North and South Redevelopment Plans has been robust. The pace of construction of the UCSF campus facilities, residential, biotechnology lab and office space, and retail uses exceeded expectations, and completed and planned development establishes important context for the development of SWL 337 and rehabilitation of Pier 48.

The Site is extraordinary not only for its location and setting, but also due to its potential to generate badly needed public revenues to help support and maintain 7-1/2 miles of the City’s waterfront managed by the Port. SWL 337 is the most significant revenue-generating opportunity site in the Port’s real estate portfolio, which revenues are needed to preserve historic maritime resources and maintain and expand waterfront open space needs. The Port’s 10-Year Capital Plan estimates the cost of basic repair, public safety and maintenance improvements at \$1.9 billion (in 2008 dollars), of which approximately \$800 million could be covered by existing and potential revenues from Port property, including current revenue from SWL 337 and Pier 48. The City and Port thus seek new development of SWL 337 that shares in the economic revitalization of this area through a varied mix of uses, but which also delivers major new shoreline open space and public amenities.

### 1. Public Trust and Senate Bill 815

Like the majority of Port properties, SWL 337 was historically composed of tide and submerged lands owned by the State and subject to the public trust doctrine. Public trust lands are held on behalf of the people of the State for purposes of navigation, fisheries and commerce. Tide and submerged lands remain subject to the trust even after they have been filled, unless the trust is terminated by the Legislature. SWL 337 and other State sovereign lands were transferred in 1969 to the City pursuant to the Burton Act, subject to the trust and other requirements of the Act. The public trust generally prohibits certain land uses (e.g., general office, housing, many types of retail, commercial, and non-water-oriented recreational uses) in favor of maritime, open space, environmental restoration and visitor-oriented activities (including tourist retail and hotels).

The Port has recently identified certain lands, including SWL 337, which have been cut off from the water and are no longer needed, in whole or in part, for trust purposes. In response to the financial analysis completed for the Port’s Capital Plan, the Port has been working in partnership with staff of the California State Lands Commission (“State Lands”), which has oversight

responsibilities for public trust lands, to address the problem of the Port's lack of resources necessary to take care of the Port's public trust assets by providing mechanisms for the Port to achieve greater economic use of surplus trust lands.

Together, the Port, City, State Lands, and the State Attorney General's office developed a legislative proposal to amend the Burton Act, Senate Bill 815 ("SB 815"), sponsored by Senator Carole Migden, which was signed into law by Governor Arnold Schwarzenegger on October 13, 2007, and became effective on January 1, 2008. SB 815 (see **Appendix D**) provides for State Lands to approve the lifting until 2094 of public trust use restriction, pursuant to specified conditions, on specified Port seawall lots, including SWL 337.

The State Legislature has recognized that the San Francisco waterfront is a unique and special public trust resource, and in dire need of financial support to maintain and improve it for the benefit of California residents. Accordingly, one of the primary purposes of this legislation is to generate new sources of Port revenue which, under SB 815, must be invested in the repair and rehabilitation of Port historic resources that are listed or eligible for listing on the National Register of Historic Places, and creation of waterfront public open spaces as identified in adopted plans of the San Francisco Bay Conservation and Development Commission.

Among its provisions, SB 815 requires the Port to carry out a planning study for State Lands approval, which analyzes the land uses at SWL 337 and Piers 48 and 50, the extent of the need to retain public trust uses within SWL 337 and transportation needs of AT&T Park, and for BCDC to approve amendments to the Seaport Plan to remove port-priority designations from any portion of SWL 337 that will be subject to any non-trust lease. The Port conducted a public planning process between January and October 2007, to address many of these issues. Respondents should review **Appendix E** which reports the conclusions of the planning process, and other supporting documents.

Through SB 815, the Port and selected Respondent can take advantage of a new avenue to develop a much broader palette of uses at SWL 337 than previously allowed by State Lands, in conjunction with the trust uses that must remain on Piers 48 and 50. The above planning work included economic analysis of the revenue potential associated with this more robust menu of allowable uses. The revenue potential from SWL 337 was initially estimated to be \$10 to \$15 million per year, assuming a similar mix of uses and development density as constructed in the Mission Bay South Redevelopment Project Area.

In addition to the development flexibility afforded by SB 815, the Port is motivated to work with the selected respondent to propose a community facilities district to help finance infrastructure improvements necessary to support new development of the Site. Establishment of such a facilities district would require approval by the Board of Supervisors.

## 2. Transportation Needs

SWL 337 is the last major development site within the Mission Bay area, with a one-of-a-kind, spectacular waterfront setting. The public planning workshops conducted for SWL 337 prior to the RFQ defined the character and nature of development for SWL 337 which are reflected in the Development Objectives and Criteria in **Section II**. Among those qualities, the character of new

development at SWL 337 and Pier 48, if included, will need to embody the City's Transit-First and sustainability objectives, by creating a pedestrian-friendly environment that promotes walking, bicycling and use of public transit and other transportation mode alternatives to private automobile use. The street and circulation network also should presume the closure of the northern leg of Terry Francois Boulevard, which is specified in this RFP to be integrated into a major public open space as part of the development. Development proposals may include pedestrian and/or landscaping improvements along the remainder of Terry Francois Boulevard, running along the east side of SWL 337, but must maintain car and industrial truck access to Pier 50, and service access to Pier 48, if included in the Proposal.

This area is advantageously served by local and regional transit within a few blocks, including the T-Third Street light rail line, light rail along The Embarcadero, Caltrain commuter rail station, numerous bus lines, and ferry service (currently on baseball game days only). Almost all of SWL 337 is within a quarter mile (Muni's standard) of the T-Third stop at Third and Mission rock Streets, the closest stop to SWL 337.

The City recognizes that respondents may include a program for off-street parking in proposals. As reflected in the RFP Development Objectives and Criteria relating to Transportation ("Transportation Criteria"), any parking proposals will undergo intensive review, with the objective of maximizing shared parking among uses in the Mixed Use Project, as well as parking management systems that avail as many spaces as possible within newly developed parking facilities at the Site for shared use to serve ballgames and events at AT&T Park. The RFP Development Objectives also require preparation of a Transportation Demand Management Plan ("TDMP"), which will require any proposed parking to be created and managed in a manner consistent with the Port's and City's transit-first and sustainability, and smart growth policies. See **Appendix F** for a detailed discussion and direction for developing the TDMP.

In December 2007, the Port completed an area-wide parking supply and occupancy survey, and the San Francisco Giants conducted a survey of its fans to document current transportation patterns and choices. In addition, the Port has worked with staff of the San Francisco Municipal Transportation Agency, which has identified parking management strategies, and public transit strategies for this Mixed Use Project. These studies are included in **Appendices F, G and H** and are provided to help inform the parking and transportation options presented in Respondent proposals.

## **D. Physical Conditions**

### **1. SWL 337 Bay Fill**

SWL 337 was created by filling marshlands and tidal flats between 1877 and 1913. Sources of fill are not documented, but likely included construction debris and rubble from the 1906 earthquake as well as material cut from nearby hills and construction areas. A previous geotechnical study of subsurface conditions beneath portions of SWL 337 found that the subsurface consists of poorly compacted fill, ranging from rock, boulders and cobbles to gravelly, clayey, sand to a depth of approximately 42 feet below grade, underlain by bay mud (Geotechnical Engineering Assessment, Temporary Tank Farm and Treatment/Transfer Area,

H&H Ship Service Co., Wahler Associates, November 1, 1991). Groundwater was encountered at 6 to 10 feet below grade.

## 2. Soil Contamination and Hazardous Materials

Historically, Seawall Lot 337 (SWL 337) was open water which was filled beginning in the mid-1800's. SWL 337 has been used as a rail yard and backland area for adjacent piers, supporting freight rail operations, shipping, parking and truck maintenance. Historic uses included railroad tracks, rail-related support activities, parking, shipping and truck maintenance. Aerial photographs indicate the presence of several above ground storage tanks in this area between 1916 and 1967. H&H Ship Service Company operated a hazardous waste treatment facility, including a tank cleaning area and drum storage unit, vehicle parking and offices on approximately 14 acres in the northern portion of SWL 337 from 1950 to 1996.

In 1996, H&H Ship Service ceased operations, triggering a site investigation and remediation process under the order of the State Department of Toxic Substances Control (DTSC). In 1999, the Port, with DTSC oversight, completed a soil and groundwater investigation and human health risk assessment to evaluate the nature and risk posed by contaminants at the site. The assessment found that petroleum hydrocarbons, polynuclear aromatic hydrocarbons, metals and arsenic remain in the soil and groundwater beneath the site at concentrations below those that would pose a significant human health risk under certain reuse scenarios, including recreational use that does not involve direct contact with soil or use of groundwater (RCRA Closure Certification Report, Former H&H Ship Service Facility, Harding Lawson Associates, 2/4/99). Because the health risk assessment did not evaluate potential health impacts associated with residential land use, recreational or other use involving direct contact with soil, or use of groundwater, DTSC concluded that use of the site that resulted in such potential exposure to soil and/or groundwater would entail an unacceptable potential human health risk. DTSC further concluded that the contaminants at the site do not present an unacceptable threat to human safety or the environment, provided that the property is developed and occupied for uses other than those specifically prohibited.

SWL 337 is regulated by a deed restriction that prohibits use of the property as a residence, hospital, school or child care facility, for raising food, or recreational use involving direct contact with soil. The deed restriction prohibits use of groundwater and requires soil disturbed by future construction to be characterized and managed appropriately. Subsequent site investigation conducted as part of construction of Giants Parking Lot A also found contaminants in soil at concentrations that do not pose an unacceptable human health risk associated with construction and operation of the parking lot (Soil Analysis Report, Geomatrix Consultants, 6/99). While residential, and recreation uses involving direct contact with the soil are currently prohibited, future development of the property for uses currently prohibited by deed restriction, including residential, might be possible, depending on the outcome of additional risk assessment and DTSC consideration of a variance from the deed restriction.

### 3. Pier 48

Pier 48 was built of wood in 1930 and suffered extensive damage from a fire in 1996. Using proceeds from an insurance settlement, the Port invested approximately \$14.8 million to repair the building shell, perform seismic upgrades for continued industrial use, install electrical and fire sprinkling, and provide access and egress improvements to comply with code and Americans with Disabilities Act requirements. This work was completed in compliance with U.S. Secretary of Interior Standards for Historic Rehabilitation.

While Pier 48, along with SWL 337 is offered in this RFP opportunity in “as is” condition, portions of Pier 48 that were repaired following the fire are in good condition compared to other Port piers. Although portions of the Pier 48 wooden aprons are deteriorated, the aprons and berths in their current condition continue to meet an important function for maritime berthing of shallower-draft vessels (i.e., not cargo ships) that provide water-dependent harbor services.

Pier 48’s building materials, including but not limited to paint, roofing, caulking, insulation, and floor tile, contain lead and/or asbestos which will require further assessment, abatement, and compliance with all applicable regulations if disturbed. Shallow soil samples collected adjacent to the Pier 48 shed have been found to contain soluble lead at concentrations that would require soil to be managed as California-regulated hazardous waste if excavated. Data from sampling and analyzing specific materials are on file at the Port and available upon request. Any future soil excavation will be subject to Article 22A of the San Francisco Health Code, which requires characterization of soil prior to disturbance. Compliance with Article 22A would identify lead or other contaminants in soil that require special management.

### 4. Streets, Infrastructure and Utilities

Terry Francois Boulevard and Mission Rock Street currently suffer from deferred maintenance and lack curbs and gutters, grade-separated sidewalks, lighting and landscaping. Third Street has been newly rebuilt as part of the Mission Bay Redevelopment project. Under the Mission Bay South Redevelopment Plan, Mission Rock Street is to be altered to follow an east-west realignment, consistent with the development block map approved for Mission Bay.

## **II. DEVELOPMENT OBJECTIVES AND CRITERIA**

### **Context for Development Objectives and Criteria**

The SWL 337 pre-RFQ planning process included the creation of Development Objectives and Criteria to define the parameters for Respondent proposals. They were crafted specifically to provide Respondents latitude to create innovative development programs and designs that are sensitive to the site setting, inspire public enjoyment and connection with the shoreline and Bay environment, and incorporate features and technologies that achieve high standards of sustainability. The project must include public trust uses as required by SB 815, consistent with the public trust use study to be developed by the Port.

The Port has not pre-fixed development and design standards. Given the large size of SWL 337 and lack of existing developed features, there are innumerable ways in which new development

of this site along with Pier 48 could take shape. The two-phase development solicitation approach that has been conducted for this project was designed to give the City and general public an early look at a range of development programs and site designs submitted by four different development teams during the RFQ phase. This process allowed the Port Commission and staff, SWL 337 Advisory Panel, and general public to provide focused feedback which have led to refinements of the Development Objectives and Criteria, presented below, while still providing development flexibility.

The Development Objectives and Criteria invite new development that brings to China Basin architecture and urban design that inspires and delights, with a mix of uses that create a welcoming, lively urban and pedestrian-oriented character, integrated with a public open space plan befitting of this extraordinary waterfront setting.

The following SWL 337 Vision Statement is the synthesis of the objectives and criteria by which to evaluate development proposals for the Site. Respondents submitting RFP proposals must demonstrate how it satisfies each of the following objectives and criteria. RFP proposals that fail to satisfy each criterion may be deemed non-responsive.

### **SEAWALL LOT 337 VISION STATEMENT**

Create a vibrant and unique mixed-use urban neighborhood focused on a major new public open space at the water's edge. This new neighborhood should demonstrate the highest quality of design and architecture, and the best in sustainable development with a mix of public and economic uses that creates a public destination which enlivens the Central Waterfront, celebrates the San Francisco Bay shoreline, and energizes development at Mission Bay. Consistent with enabling state legislation, the development program for the site should generate significant revenues to fund the Port's historic preservation and waterfront open space needs, and maximize public trust uses.

### **OBJECTIVES & CRITERIA**

#### **Land Use**

1. Develop a diverse mix of uses at SWL 337 that reflects San Francisco's unique character and promotes a vital urban environment with lively interactions among workers, visitors and residents, and broad use and safe enjoyment of public spaces.

#### **Criteria:**

- a. Propose a development program that creates a public destination with major public open space and shoreline recreational, environmental, and cultural uses integrated with revenue producing uses that may include office, hotel, retail, restaurant, assembly and entertainment, and residential uses.
- b. Consistent with SB 815, demonstrate that first consideration was given to public trust-consistent uses in the development program.  
*In October 2007, Governor Schwarzenegger signed SB 815, sponsored by Senator Migden, which authorizes the Port to enter into a lease not to exceed 75 years that includes commercial and residential uses that typically cannot be constructed on lands granted by the State of California to the City and County of San Francisco pursuant to the Burton Act. SB 815 requires that the Port study public trust uses for*

*SWL 337 first. The legislation also requires that the California State Lands Commission approve the proposed lease for the site.*

Public trust uses include but are not limited to:

- maritime vessels (e.g. ferries, water taxis, recreational boating, temporary berthing)
- waterfront parks and open space which attract and promote public enjoyment of the Bay
- Recreational water uses
- Hotels
- Visitor-serving retail, restaurants and services that promote enjoyment of the waterfront, including businesses that serve water recreational uses (e.g. maritime supply chandleries, water recreation equipment rentals)
- Environmental restoration and natural habitat areas

- c. Demonstrate how the development program (including non-trust uses), in a total project context, achieves a character that promotes public trust objectives. [For more information on the Public Trust Doctrine: [www.slc.ca.gov/Policy Statements/Public\\_Trust\\_Home\\_Page.html](http://www.slc.ca.gov/Policy%20Statements/Public_Trust_Home_Page.html)]

2. For housing proposals, provide housing program details, including number and mix of units, market vs. below-market (and income and price range, and source of funding for below-market units), ownership vs. rental units, and analysis of the application of fair housing laws to any preferential residency proposals. If ownership housing is proposed, describe how it would be accommodated in a long-term ground lease, or any alternate strategy. Provide examples of where such alternate strategy has been successfully implemented.

- a. Design any proposed residential uses so that they do not conflict with the ongoing operational needs of Pier 50.  
*Pier 50 is an important long-term Port facility to support maritime activities And vessel berthing, as well as the Port's maintenance center.*

3. Propose a use program for Pier 48 that is publicly-oriented and water-related to the extent possible, and which complements and enhances the public use and enjoyment of the major new public open space at China Basin. The Pier 48 use program must be consistent with the public trust, and any improvements must comply with the Secretary of Interior Standards for Rehabilitation.

*Pier 48 is subject to public trust use restrictions as administered by the Port with oversight by the State Lands Commission. Respondents will be required to cooperate with the Port to obtain a finding of consistency with the public trust and the Burton Act from the State of California for any proposed new long-term uses on Pier 48.*

*Historic Pier 48 is included in the San Francisco Embarcadero Waterfront National Register Historic District. Pier 48 has become obsolete for cargo shipping needs, but continues to provide a useful facility for berthing of mid-to-shallow draft vessels. The two main structures, Sheds A and B, are linked by an open air deck ("valley") and connecting shed along the pier's eastern side. The facility was seismically improved and repaired following a fire in 1996.*

## **Open Space**

4. Develop an open space program that provides substantial visitor-serving public open space, and other neighborhood-oriented open spaces designed to serve the

recreational needs of any residential uses developed on the site and provide key components of the Bay Trail and Blue Greenway. These two types of open spaces are not mutually exclusive and may overlap, but must serve discreet needs.

Criteria:

- a. Create gathering places for area visitors, workers and residents with linkages to China Basin Park and activate open spaces with events and activities that enliven SWL 337. Describe what types of recreational uses are intended for the various public parks and open spaces included in the proposal.
  - b. Describe how parks and open spaces will be managed or programmed to promote safe and active use and enjoyment. Include a funding proposal to support these management and programming activities.
  - c. Increase opportunities for trust-consistent open space uses such as water-related recreation, wildlife habitat and nature education. Trust-consistent recreational activities are those that are either water-dependent or enhanced by their waterfront location.
  - d. Design usable and publicly accessible neighborhood-serving open spaces such as athletic fields, tot lots and play structures, which comply with the Recreation and Open Space Element of the San Francisco General Plan.
5. Expand China Basin Park, and create other public open space amenities that increase public enjoyment and views of San Francisco Bay, AT&T Ballpark, Mission Creek Channel, East Bay hills, Yerba Buena Island and the Bay Bridge, and create a unique and complementary addition to the network of parks and open space along the San Francisco waterfront and in Mission Bay.

Criteria:

- a. Minimum size for contiguous major open space: 5 acres
  - Located at northeast area of the site
  - Incorporates northern leg of Terry Francois Blvd (to be closed to auto traffic)
  - Must be visitor-serving and water-oriented to comply with public trust objectives, which considers factors including but not limited to
    - active and passive recreation for locals and visitors
    - creates direct relationship with and enjoyment of the Bay
    - promotes water recreational use
    - promotes environmental restoration and natural habitat
    - interacts with and enhances the attractiveness and public enjoyment of the development program overall, which also in turn increases enjoyment of the public open space
    - interfaces and takes advantage of proximity and adaptive reuse of Pier 48
- b. China Basin Park and other shoreline open space should connect with and enhance the Bay Trail and highlight the start of the Blue Greenway.
- c. China Basin Park and other project open space should incorporate landscaping and ecological design elements that provide habitat value for native wildlife.  
*Respondents may propose water-related (including water-contact activities) recreation, outdoor/indoor performance and entertainment venues (e.g. bandshell, amphitheater), cultural facilities and public art installations, and small eating establishments as part of a broader open space program. The designs should*

*recognize and address wind and weather conditions that affect how the public can use and enjoy new waterfront open space.*

*Respondents may wish to examine two publications by the San Francisco Bay Conservation and Development Commission as resources for design of shoreline open space: “Shoreline Spaces: Public Access Design Guidelines for the San Francisco Bay” (2005) and “Shoreline Plants: A Landscape Guide for the San Francisco Bay” (2007).*

6. Describe how proposed park and open spaces would be maintained and managed, including funding sources to support such operations.

## **Transportation**

7. Due to its location, adjacent uses and the development density envisioned, demonstrate careful consideration of transportation and parking needs that yield a proposed transportation program that maximizes utilization of rideshare, transit, pedestrian, and bicycle access to the site to minimize traffic demand and congestion from automobiles.

*The site is served by significant local and regional transit within several blocks’ walk. Transit access is provided by Muni N-Judah, and T-Third St. light rail lines along The Embarcadero, and Third Street respectively, Muni bus lines 10, 30, 45, and 47, Caltrain commuter rail south to the Peninsula, and game day ferry service to AT&T Ballpark. Future planned expansion includes extension of the T-line via the Central Subway (funded), the E-line to run from China Basin to Fisherman’s Wharf (proposed).*

Criteria:

- a. Describe the team’s experience and expertise in developing and implementing integrated transportation and parking management programs to reduce vehicle trips and parking demand in new development.
8. Promote the City’s transit-first policy and seek to establish as sustainable a transportation program as possible while accommodating the parking needs of AT&T Ballpark.

Criteria:

- a. Describe effective public transportation strategies, including pedestrian, bicycle, carshare and public transit modes, including water transit, to actively encourage use of alternative transportation modes to support new development on SWL 337.
- b. Plan the configuration of new development to maximize walkability to minimize the need to own or use automobiles.
- c. Require parking supply and costs to be unbundled from new development, to promote market-based demand pricing and utilization of parking.
- d. For parking facilities included in the development proposal, describe:
  - How it responds to anticipated parking demand from residential vs. non-residential uses during peak and off-peak demand times
  - Parking management program to maximize shared use (including use of any

available off-site parking facilities)

- Whether/how Ride/CarShare, bike storage and support facilities, and other improvements (including transit service improvements) to reduce automobile demand have been included.

- e. Require Transportation Demand Management proposal which includes a description of goals for use of public transit and alternative transportation modes, and strategies, incentives or other performance measures to the stated goals.
9. Provide a proposal that explains how proposed parking facilities maximize shared parking to also meet the parking need of SF Giants ballgame season at AT&T Ballpark.

*Since its opening in 2000, the San Francisco Giants have worked with the City to promote alternative transportation to and from ballpark games and events, and achieved among the highest percentage use of non-auto modes in Major League Baseball (45-50% for day games). The Giants indicate a desire to secure approximately 2,000 parking spaces for ballpark patrons. The Port recognizes that the ballpark will continue to have substantial requirements for parking at SWL 337.*

*In their proposals, Respondents must demonstrate how parking facilities can be used for multiple purposes, and how and to what extent shared ballpark parking, particularly for night and weekend day games, would be programmed. Parking programs must include consideration and/or inclusion of securing use of off-site parking facilities within 10 minute walking distance of AT&T Park to meet Giants ballgame parking need. The Port acknowledges that in order to finance parking facilities, funds from multiple sources, including participation from the San Francisco Giants, may be required. Respondents should demonstrate conceptually how parking facilities will be financed relative to other proposed uses.*

- a. Investigate and propose shared parking for the ballpark at nearby satellite parking facilities.  
*The Port encourages respondents to identify and propose shared parking opportunities dedicated to serve Giants games and events at satellite parking facilities in Mission Bay and in the southern South of Market area that can offset the loss of parking available to the Giants on SWL 337.*
- b. Describe the development team's experience in the design of space-efficient parking arrangements, including tandem parking facilities, valet parking operations, and mechanical parking stacking equipment.
- c. Design and locate parking facilities to minimize their aesthetic presence and impact on the surrounding area, particularly the waterfront and Third Street. Consider opportunities to make parking garages as environmentally sustainable as possible.
- d. Design parking facilities on SWL 337 so that they can be converted to other uses should public transit service, and successful marketing and education reduce the need for parking.
- e. Maintain truck access to Piers 48 and 50 via Terry Francois Boulevard from the south.

## Neighborhood Character, Historic Resources and City Form

10. Create a unique urban form for SWL 337 that incorporates architecture that is varied and timeless, and human-scaled, which complements the scale of new development along Third Street in Mission Bay, respects historic resources on the waterfront, including Pier 48 and Lefty O'Doul Bridge, and steps down heights of buildings towards the Bay.

### Criteria:

- a. Promote an inspiring urban form and architecture worthy of this unique waterfront location, within a flexible framework of proposed zoning and development controls.
  - b. Propose a density of new development sufficient to support the public amenities and infrastructure improvements proposed for SWL 337.
  - c. Provide a Bay Trail/public promenade that meets public open space and circulation needs of the site, and supports access by multiple transportation modes, including pedestrians and bicyclists.
  - d. Design new street and access corridors as public spaces that foster an intimate and pedestrian scale and social and economic interactions between diverse uses and users, as promoted in the San Francisco Better Streets Program.
  - e. Utilize street and public way improvements to promote access and view corridors to the waterfront and Bay.
  - f. Locate active uses at the street level, and adjacent to public gathering spaces created as part of new open spaces.
  - g. Design new development to provide an attractive and inviting street front along Third Street, and adjacent developments in Mission Bay.
11. Respondents may propose one to three taller, slender towers of 300 feet or more that create an inspiring architectural identity for SWL 337, and enables development density on-site while also supporting space needs to meet major waterfront open space, urban design, and the pedestrian realm objectives of this development.  
*This objective is permissive and does not require towers to be proposed, nor does this objective prescribe building height; towers may be proposed at heights below 300 feet as well. The overall urban form should be appropriate to the site and its surroundings, the waterfront and the Bay, Pier 48 and Lefty O'Doul Bridge waterfront historic resources, and the overall city form. Respondents are invited to propose alternative urban design approaches to achieve density of development for SWL 337 that is equivalent to that found in the Mission Bay Redevelopment Plan area.*
  12. Propose a development program that funds public amenities and infrastructure improvements.

## Economic

13. Respond to the Port's significant historic preservation and waterfront open space needs elsewhere on Port property, pursuant to SB 815, with a development program that can generate significant annual revenues to the Port.  
*SB 815 requires the Port to utilize increased rent from development of SWL 337 to fund historic preservation and waterfront open space mandated by the BCDC San Francisco Waterfront Special Area Plan. The Port expects to realize significant annual base rent and participation rent from development of the site.*
14. Respondents must propose a minimum rent for development on SWL 337 of no less than \$8 million per year.
  - Require reset to fair market value no later than Year 30, and every 10 years thereafter.
15. Require minimum rent for Pier 48 of no less than \$2.2 million per year.
  - Set maximum lease term for Pier 48 of 10 years, unless investment warrants longer term for amortization at appropriate financial return to the Port.
16. Require market information justification for use program (include any pre-tenanting commitments)
17. Require equally sharing of percentage rent for retail uses of a minimum of 6% of gross sales (after amortization of initial improvements & structures)

**[Note: See RFP Section III. describing key lease terms and other financial business term issues.]**

## Sustainability

18. Require new development and site improvements to incorporate and set an example for integrating green technologies and sustainable development practices.

Criteria:

- a. Conduct a sustainability analysis to produce estimated scoring to achieve LEED Gold or equivalent standards for Neighborhood Development, Core and Shell Development and New Construction, with special address of on-site alternative energy generation and conservation systems, and reduction of vehicle emissions and vehicle miles traveled to demonstrate a reduction in carbon footprint impacts of new development.
- b. Comply with Regional Water Quality Control Board performance criteria for the reduction of stormwater pollution impacts associated with newly constructed facilities.  
*Respondents should incorporate renewable energy and energy-efficiency strategies, such as efficient thermal envelopes and efficient space and water heating to support new uses, where feasible. Respondents should also evaluate and propose site-appropriate ecological design strategies such as on-site erosion control, water reuse, water purification/pollution reduction, and natural-based stormwater management treatments such as rainwater harvesting and swales.*

### **III. KEY LEASE TERMS**

Upon successful completion of exclusive negotiations with the selected Respondent, the Port anticipates entering into Lease(s) for the Site. This section briefly describes key terms (the "Key Lease Terms") required by the Port. In their submittals, Respondents are required to indicate acceptance of the Key Lease Terms, and to make a lease proposal that is consistent with the Key Lease Terms. The actual terms of the Lease(s) will be negotiated with Port staff and are subject to final approval by the Port Commission, and, depending on the Lease terms, by the Board.

#### **A. Use**

Proposals must include a full description of proposed uses, consistent with the development objectives set forth in **Section II**.

#### **B. Premises**

As shown in **Appendices A, B and C**, the Site consists of approximately 16 acres of land located at Seawall Lot 337, portions of Terry Francois Boulevard, and approximately 180,000 square feet of enclosed shed space and approximately 34,500 square feet of open air valley space and perimeter apron space at Pier 48.

#### **C. "As-Is" Condition**

The Lease will require the selected Respondent to accept the Site, and any future premises negotiated by the parties, in its existing state and condition, "**As-Is**," with all faults. Neither the Port, nor any of its agents, contractors or employees (collectively, "Agents"), make any representation or warranty, express or implied, of any kind, with respect to the condition of the Site, the suitability or fitness of the Site or any appurtenances to the Site for the use or operation as proposed, the compliance of the Site with any laws, any matter affecting the use, value, occupancy or enjoyment of the Site, the accuracy of any reports or other information the Port may disclose pertaining to the condition of the Site, or with respect to any other matter pertaining to the Site. In submitting a response to this RFP, entering into exclusive negotiations, or entering into Lease(s) with the Port for the Site, all Respondents will be deemed to waive any right to recover from, and forever release, acquit and discharge, the Port, the City, and their Agents of and from any and all losses, whether direct or indirect, known or unknown, foreseen or unforeseen, connected in any way with: (i) the physical, geotechnical or environmental condition of the Site, including the condition of the substructure or the presence of any hazardous materials in, on, under, above or about the Site (including soils and groundwater conditions); and (ii) any laws applicable to the condition of the Site, including hazardous materials laws.

#### **D. Rent, Fees and Assessments**

##### **1. Minimum Rent**

a. SWL 337: Respondents shall propose an annual base rental rate. The Lease will require a minimum base rent of no less than \$8 Million, with annual percentage increases in a range of no less than 3 percent to 5 percent.

b. Pier 48: Respondents shall propose a minimum annual base rent for Pier 48 facilities. The Pier 48 lease will require a base annual rent of no less than \$2.2 Million, with annual percentage increases in a range of no less than 3 percent to 5 percent.

c. Base Rent Adjustments: Respondents shall propose periodic adjustments to base rent.

d. Base Rent Reset: The Lease will require a fair market value (FMV) adjustment of the base rent after the developer's initial investment has been amortized (no later than 30 years) and every ten years thereafter.

## 2. Participation Rent

Proposals shall include a minimum percentage rent payable to the Port based on a percentage of gross receipts for all uses. In order to maintain competitive parity with other waterfront tenants, retail and restaurant participation rent must reflect the structure of other such leases on the waterfront. The Port expects equal sharing of the Port's typical participation rent currently between 6% to 8% of gross sales, with some higher rates, after a reasonable period (not exceeding 30 years) for the Respondent to amortize retail development improvements.

## 3. Community Facilities District

The Port may request Board authorization to form one or more community facilities districts under the Mello-Roos Community Facilities Act of 1982 (Gov. Code §§ 53311 et seq.), under which a special tax may be assessed against property interests (including long term leasehold interests) in the district in order to provide funding for the construction or installation of authorized public improvements or for the operation and maintenance of authorized public improvements. If the Port proposes formation of a community facilities district that includes the Site, the selected Respondent will be required to cooperate with the Port in its efforts.

## 4. Infrastructure Financing District

The Port may request Board authorization to form one or more infrastructure financing districts under the Infrastructure Financing District Act (Gov. Code §§ 53395 et seq.), under which increases in property taxes assessed against property interests (including long term leasehold interests) in the district may be used to provide funding for the construction or installation of authorized public improvements as approved in the Port's 10 Year Capital Plan. If the Port proposes formation of an infrastructure financing district that includes the Site, the selected Respondent will be required to cooperate with the Port in its efforts.

### **E. Term.**

1. SWL 337: The Port will agree to a lease term appropriate for the proposed uses and based on market conditions, not to exceed 75 years in length.

2. Pier 48: The Port will agree to a lease term appropriate for the proposed uses and based on market conditions and improvement, expected to be 10 years in length<sup>1</sup>. Longer terms may be proposed if submittals justify a longer amortization based on shed and pier improvements and produce commensurate financial return to the Port. In no case shall the Pier 48 lease term exceed 66 years in length.

### **F. Assignment, Sublease, Financing and Transfer.**

The Lease will require the Port's prior approval of any assignment, sublease, financing or other transfer of any interest in the Lease. The Lease will provide that the Port will participate in the proceeds that the selected Respondent receives from an assignment, sublease, financing or other transfer of any interest in the Lease.

### **G. Maintenance/Repairs/Security**

During the term of the Lease, the selected Respondent will be responsible for all improvements, maintenance, repairs and operating expenses associated with the Site, including any non-exclusive areas such as access roads, parks and public open space, utilities and general buffer areas. The Port will have no maintenance obligations with respect to the Site.

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<sup>1</sup> As described below, Port staff has initiated discussions with staff of the California State Lands Commission regarding the feasibility of leasing historic structures for non-trust uses, subject to maximum *interim* lease terms of ten years. If such a policy is adopted, it could significantly reduce the entitlement risk associated with the adaptive reuse of Pier 48.

## **H. Possessory Interest and Other Taxes**

The selected Respondent will be required to pay possessory interest taxes on the assessed value of the leasehold interest. Respondents may contact the City Assessor's office for more information on how this tax will be calculated. The selected Respondent also will be required to pay other applicable city taxes, including sales and payroll taxes.

## **I. Security Deposit**

A security deposit will be required in an amount equal to no less than two months' base rent.

## **J. Environmental Deposits**

In addition to and separate from the security deposit, the Lease will require up to two forms of financial assurances to protect the Port from potential environmental liability arising out of the selected Respondent's use of the Site.

### **1. Environmental Oversight Deposit**

The Lease will require that the selected Respondent maintain with the Port an Environmental Oversight Deposit in the amount of \$10,000. The Port will be authorized to use, apply or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for administrative costs and expenses incurred while inspecting the premises and enforcing the selected Respondent's obligations under the Lease. Administrative expenses will include staff time for inspecting and monitoring the condition of the premises, corresponding with regulatory agencies, and otherwise enforcing and administering the environmental obligations under the Lease.

### **2. Environmental Performance Deposit**

The Lease also will require the selected Respondent to provide the Port with an Environmental Performance Deposit to secure any required cure of any defaults on the part of the selected Respondent and to compensate the Port for any damage it incurs as a result of the selected Respondent's failure to perform its obligations, environmental or otherwise. The need for, form and amount of the Environmental Performance Deposit will be determined by Port staff, based on staff's analysis of environmental liabilities and risk associated with the selected Respondent's proposed use of the Site. If the Port is requiring that the selected Respondent carry pollution legal liability coverage, the selected Respondent may request that the Port review the deductible required under that policy, relative to the value of the Environmental Performance Deposit. The selected Respondent also may present evidence of financial assurances required or provided by third parties that would protect the Port against these risks.

## **K. Hazardous Materials**

The Port made existing information about the Site's physical and environmental conditions available to Respondents during the RFQ phase of the selection process. Documents in the Port's possession and control are listed on the SWL 337 web page, and Port has no additional documents or information to disclose. The selected Respondent will be allowed to conduct environmental site assessments of the Site. Any subsurface investigation will require a permit to enter agreement in a form determined by the Port and an encroachment permit issued by the Port's Engineering Division. The selected Respondent will be responsible for the removal of any hazardous materials in, on or under the Site.

## **L. Insurance and Bond Requirements**

Throughout the term of the Lease, the selected Respondent will be required to maintain insurance typical for the approved project in amounts and with limits determined appropriate by the Port and with carriers acceptable to the Port in consultation with the City's Risk Manager. Insurance will include: comprehensive general liability; workers' compensation; property

insurance on the premises; automobile liability; personal property; business interruption; builder's risk; pollution legal liability; a policy endorsement in a form acceptable to Port; and any other insurance required by law. The Port and City must be named as additional insureds.

The selected Respondent or its contractor will be required to furnish the Port with a performance bond or other instrument issued by a responsible surety company licensed to do business in California and satisfactory to the Port at the Port's reasonable discretion, in consultation with the City's Risk Manager. The bond will guarantee the selected Respondent's successful completion of the improvements in a penal sum equal to the estimated cost of the improvements.

Depending on the financial capacity of the entity entering into the Lease with the Port, the Port may also require a guaranty from a parent company or other security guaranteeing the successful completion of the project.

### **M. City Requirements**

The Lease will require the selected Respondent, its subtenants, contractors and subcontractors to comply with all City requirements applicable to the selected Respondent and the project in effect at the time the Lease is executed (the "City Requirements"). The list below is for informational purposes only and is not meant to be comprehensive.

- Tobacco Product Advertising Prohibition (Admin. Code § 4.20)
- Non-Discrimination in Contracts and Property Contracts (Admin. Code Chapters 12B and 12C)
- Implementing the Macbride Principles - Northern Ireland (Admin. Code Chapter 12F)
- Health Care Accountability Ordinance (Admin. Code Chapter 12Q)
- Card Check Ordinance (Admin. Code §§ 23.50-23.56)
- Findings of Fiscal Responsibility and Feasibility (Admin. Code Chapter 29)
- First Source Hiring Ordinance (Admin. Code Chapter 83)
- Integrated Pest Management Program (Env. Code Chapter 3)
- Tropical Hardwood and Virgin Redwood Ban (Env. Code Chapter 8)
- Transportation of Aggregate Materials (Env. Code Chapter 10)
- Arsenic-Treated Wood (Env. Code Chapter 13)
- Construction and Demolition Debris Recovery Ordinance (Env. Code Chapter 14)
- Food Service Waste Reduction Ordinance (Env. Code Chapter 16)
- Contributions Limits – Contractors Doing Business with the City (Campaign & Gov. Conduct Code § 1.126)

The full text of all City ordinances may be accessed through the municipal codes link in the City's website ([www.sfgov.org](http://www.sfgov.org)), or by connecting to the following URL: ([www.municode.com/Resources/ClientCode\\_List.asp?cn=San%20Francisco&sid=5&cid=4201](http://www.municode.com/Resources/ClientCode_List.asp?cn=San%20Francisco&sid=5&cid=4201)).

As part of the submittals in response to this RFP, each Respondent must submit a written certificate in the form attached as part of **Appendix I**, confirming that it has reviewed, understands, and can comply with the City Requirements and other terms and conditions set forth in this RFP. The Port does not intend to waive any of the City's requirements.

**N. Form of Exclusive Negotiations Agreement.**

Upon Port Commission authorization of exclusive negotiations, Port staff and the selected Respondent will negotiate the terms of an exclusive negotiations agreement (the "ENA"). Typically, an ENA will contain time and performance benchmarks, including provisions for payment of liquidated damages and termination for non-performance, and provide for the Respondent to fund the Port's costs associated with project planning and review. The ENA period to reach a term sheet between the Respondent and Port will be limited to 270 days. After this period has expired, the Port will have the option to extend the ENA period or terminate the ENA and enter into negotiations with the second ranked Respondent.

The ENA will be consistent with the Port’s typical provisions for comparable projects. The Port reserves the right to modify the form of ENA to reflect: (1) terms negotiated between the selected Respondent and the Port; (2) any City or Port requirements adopted after the drafting of the Form of ENA; and (3) any other provisions desired by the Port Commission or negotiated by the parties.

**O. Form of Lease**

The selected Respondent will be required to enter into a Lease(s) to be negotiated by the Port and selected Respondent during the period of exclusive negotiations. The Lease(s) will be consistent with the Port’s standard leasing provisions for comparable projects, as set forth in its current form of Lease. The Port reserves the right to modify the form of Lease to reflect: (1) the business terms negotiated between the selected Respondent and the Port; (2) any City or Port requirements adopted after the drafting of the Form of Lease; and (3) any other provisions desired by the Port Commission or negotiated by the parties. The current standard form of Lease is available for viewing by accessing the Real Estate link on the Port’s website ([www.sfport.com](http://www.sfport.com)) or by connecting to the following URL: ([http://www.sfport.com/site/port\\_page.asp?id=31761](http://www.sfport.com/site/port_page.asp?id=31761)).

**Summary of Roles and Responsibilities in the Development Process**

<b>RESPONSIBILITY</b>	<b>PORT</b>	<b>DEVELOPER</b>
Due Diligence	Port will provide developer with plans and studies done to date; Port may conduct additional studies at its sole discretion	Developer has complete responsibility, and may not rely on site or development analysis work done by Port
Community Involvement	Port will schedule public meeting(s) for developer presentations of submittals and public exchange with community stakeholders and the general public	Developer is responsible for working with community groups, as appropriate, and to create and implement a community outreach plan
Financing	While the Port is not presently considering any financial contribution, it reserves the right to consider participation. Proposals, however, should assume no public financing.	Developer has complete responsibility to provide all funds necessary to plan, construct and operate the proposed development, including all development fees and exactions

<b>RESPONSIBILITY</b>	<b>PORT</b>	<b>DEVELOPER</b>
Construction	None	Developer has complete responsibility for all construction.
Sub-Leasing	Port shall have the right to review, including size or term criteria	Developer has complete responsibility
Operation and Management	None	Developer has complete responsibility for maintenance and management of all improvements, including public open space

#### **IV. REGULATORY REVIEWS AND APPROVALS**

The specific plans for the Mixed Use Project will require various permits and approvals, and the selected Respondent to this RFP is responsible for determining which permits and approvals will be required for the construction and operation proposed at the Site and for obtaining such permits and approvals. The following summary table and narrative information is intended to help respondents in this determination. It is not meant to be an exhaustive review of all permits that may be required. Respondents are strongly encouraged to further research the relevant regulations and discuss interpretations of the regulations with administering agencies in order to become thoroughly familiar with applicable permits and approvals associated with their RFP proposals.

<b>Regulatory Approvals Responsibility</b>	<b>PORT</b>	<b>DEVELOPER</b>
State Lands Commission Review, SB 815	Port will act as co-sponsor and initiate discussions with State Lands to address requirements and set parameters for complying with Senate Bill 815.	Developer has co-sponsor responsibility with the Port which includes providing all required analysis and information necessary to support compliance requirements of SB 815, at the direction of the Port, and any financial support to fund State Lands staff review
Environmental Review	Port will act as co-applicant and will coordinate and provide information to support Planning Department review process	Developer has complete responsibility for all environmental review requirements.
Zoning Map/Planning Code	Port will act as co-applicant and will coordinate and provide information to support Planning Department review and approvals	Developer has complete responsibility for securing all City approvals, permits and entitlements

<b>Regulatory Approvals Responsibility</b>	<b>PORT</b>	<b>DEVELOPER</b>
BCDC Seaport Plan/Special Area Plan Amendments	Port will act as co-applicant and co-sponsor, and engage BCDC with the developer to secure amendments	Developer has co-sponsor responsibility with the Port, which includes providing all required analysis and information necessary to support the amendments
BCDC Permit	Port will act as co-applicant	Developer has complete responsibility for securing permit and meeting all on-site and off-site conditions
Historic Preservation requirements for Pier 48	Port to provide information regarding Pier 48, and the Embarcadero National Historic District, and coordinate and provide information to State Historic Preservation Office, as appropriate	Developer has complete responsibility to ensure that any alterations or construction at Pier 48 comply with Secretary of the Interior Standards for Historic Rehabilitation and secure any required approvals from the State Historic Preservation Office and the National Park Service.
Port Building Permits (this includes Port building permits to comply with any applicable Green Building, LEED standards, and storm water management requirements)	In its regulatory capacity, Port will review and issue building permit applications consistent with lease and LDDA	Developer has complete responsibility to apply and secure building permit approvals from the Port Building Permit Division
All Other Permits		Developer has complete responsibility for securing all permits or entitlements

**A. State Lands Commission, Port of San Francisco, and the Public Trust**

The public trust is a form of public ownership of tide and submerged lands (“tidelands”). Historically, SWL 337 was composed of tidelands and therefore was owned by the State of California, subject to the public trust. In 1968, the State Legislature approved the Burton Act, which authorized the transfer of former tidelands property from the State to be held in trust by the City and County of San Francisco through the Port Commission, consistent with provisions in the Burton Act and public trust principles. The California State Lands Commission and the California Attorney General have oversight and enforcement authority over Port Commission development projects and, as reflected in recent San Francisco waterfront projects, are frequently asked to affirm a particular project’s consistency with the public trust.

According to the California State Lands Commission, uses of trust lands “are generally limited to those that are water dependent or related, and include commerce, fisheries and navigation, environmental preservation and recreation. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses,

that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public's enjoyment of trust lands, are also permitted.”

For respondents including a long term lease of Pier 48 in their proposed project, the use program for this facility will be required to be consistent with the public trust. State Lands has recognized preservation of historic maritime facilities that are listed or eligible for listing (such as Pier 48) on the National Register of Historic Places as a trust purpose. Accordingly, State Lands has been willing to allow some portion of historic structures to include non-trust uses, where those uses will generate revenue to finance pier repair and rehabilitation consistent with the Secretary of the Interior Standards for Historic Rehabilitation and will not interfere with the public's ability to access and enjoy the historic features of the structure. (Non-trust uses are typically prohibited in facilities constructed on trust property,.) As noted above, Pier 48 has undergone substantial repairs by the Port, including seismic retrofit, which should facilitate a rehabilitation program that incorporates improvements at Pier 48 that create venues over the water for the public to enjoy.

Port staff has initiated discussions with staff of the California State Lands Commission regarding the feasibility of combining non-trust and trust-consistent uses in historic structures such as Pier 48, subject to maximum *interim* lease terms of ten years. The public trust doctrine typically allows interim leasing of public trust facilities for non-trust purposes for periods of up to five years, if such facilities are not required for trust purposes. If the Port Commission and/or the California State Lands Commission adopts a policy authorizing interim leasing of historic structures for non-trust purposes for periods of up to ten years, such a policy could significantly reduce the entitlement risk associated with the adaptive reuse of Pier 48.

SWL 337 is also subject to the public trust, but, as set forth in more detail above, recent legislation gives the Port far more flexibility to use the site for non-trust uses. Non-trust leases of SWL 337 cannot have terms in excess of 75 years, must be for fair market value, and must be approved by the State Lands Commission. In addition, the net new revenues generated from these leases are required to be transferred to the Port's harbor fund for the preservation of National Register historic resources, or for construction and maintenance of waterfront plazas and open space required in the BCDC Special Area Plan.

## **B. Port of San Francisco**

### **1. Waterfront Land Use Plan**

The Waterfront Land Use Plan, including the Waterfront Design and Access Element (“Waterfront Plan”), adopted by the Port Commission in 1997, is the Port's official policy document to guide land use and development along the San Francisco waterfront under the Port's jurisdiction. The Waterfront Design and Access Element includes comprehensive policies and standards to establish a network of existing and new waterfront open spaces, view corridors, historic preservation and architectural excellence, with the grand objective of knitting together waterfront development with public access and amenities that invite public enjoyment and appreciation of the San Francisco Bay waterfront.

Site specific policies for SWL 337 in the Waterfront Plan call for further community planning to develop a long-term use program that coordinates with planning and development in Mission Bay. The public planning meetings and workshops conducted by the Port prior to issuance of this RFQ/P has addressed most of this requirement. As part of the entitlements for the Development Agreement and Lease with the selected developer, the Waterfront Land Use Plan will need to be updated to reflect the improvements specified for SWL 337 and, if applicable,

Pier 48. The development project, lease and LDDA must comply with the Waterfront Plan, as amended, and will be the responsibility of the developer.

## 2. Port Building Code

The Port, acting in its regulatory capacity, will issue the building permits for project construction, including site preparation, infrastructure and utility improvements, and architectural and signage design review and approvals. The developer must follow all the Port's specific building requirements. The Port follows its own Building Code, which is available on the Port web site. For Pier 48 (if included), developers may propose rehabilitation treatments that comply with the State Historic Building Code as an alternate to the Port Building Code, which would still be reviewed and approved by the Port. These improvements would be the developer's responsibility.

## 3. LEED™ and Green Building Provisions

Consistent with the objectives for this offering, the project should serve as a model of sustainable development. The Leadership in Energy and Environmental Design (LEED™) rating system is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings.

In addition, the City is considering adoption of a Green Building Ordinance, which is expected to be in force before the Mixed Use Project is entitled. In light of the high standards for sustainability set forth in the Objectives and Criteria for the Mixed Use Project in this RFP, the selected Respondent will be required to incorporate any green building and sustainability requirements in effect for City developments at the time the Port approves the transaction documents for the project. The Port will regulate compliance with green building or other applicable sustainability requirements through the review of Port building permit applications and the Waterfront Design Advisory Committee design review process.

## 4. Stormwater Controls/Water Resources Management

Consistent with the Port's efforts to increase sustainability practices and its efforts to reduce or avoid additional demand on the Southeast Water Pollution Treatment Facility, the selected Respondent must implement a stormwater management approach for the project in accordance with requirements set forth in the San Francisco Stormwater Design Guidelines Manual, as implemented through the Port's regulatory review through issuance of Port building permits. The Stormwater Design Guidelines Manual emphasizes the use of natural-based stormwater management practices such as bioswales, bioretention, rain gardens, green roofs and rainwater harvesting. Facility stormwater management should integrate with and enhance the public and common open spaces created in the project. The Port encourages integration of stormwater controls with other project elements promoting sustainability (e.g., use of rainwater harvesting/cisterns to promote water conservation). Water quality should be protected by avoiding the use of toxic materials on the Site during development and for future maintenance. Low impact landscaping incorporating native vegetation and future Integrated Pest Management strategies must be implemented to protect water quality. Discharge of stormwater to the San Francisco combined sewer system is prohibited. Compliance with these requirements will be the selected Respondent's responsibility.

## 5. Historic Preservation Standards

Any improvements proposed for Pier 48, if included in development proposals, must comply with Secretary of the Interior Standards for Historic Rehabilitation. If the developer proposes to take advantage of the Federal Historic Preservation Tax Credit program, the California Office of

State Historic Preservation and the National Park Service will review the project for consistency with the Standards. If no Federal tax credits are proposed, historic preservation will be conducted by Port historic preservation experts, with consultation with historic preservation experts at the San Francisco Planning Department, prior to issuance of the Port building permits that allow the specified construction for Pier 48. Compliance with these requirements will be the responsibility of the developer.

### **C. San Francisco Planning Department**

The San Francisco Planning Department maintains a traditional municipal planning role in establishing land use policies and administering the City's General Plan, Planning Code, and Zoning Map. Currently, SWL 337 has two zoning classifications. Approximately 10 acres of SWL 337 fronting on Third Street and China Basin are zoned MB-OS, where public open space and parkland is the exclusive or principle use, with provisions for incidental uses supportive of recreational use. Within the MB-OS zone, Planning Code Section 985 allows temporary uses to occupy the site for up to 10 years, consistent with specified conditions, including authorization by the Zoning Administrator. The remaining six acre portion of the site immediately opposite Piers 48 and 50 is zoned M-2, where industrial, maritime and commercial uses are permitted. (See SF Planning Code Sections 210.6, 215-227, and 916 for more details). These six acres also fall within the 40-X height and bulk district. The development proposal resulting from this RFP is anticipated to require a zoning reclassification of the site to correspond with the development proposal resulting from the RFP. Any amendment to the San Francisco General Plan, Planning Code or Zoning Map, as may be determined to be required by the Planning Department, must be approved by the San Francisco Planning Commission and Board of Supervisors and is the responsibility of the developer. The rezoning and any Planning Commission approvals may result in the requirement of development exactions and fees, which will be the responsibility of the developer.

#### **1. Environmental Review**

The selected Respondent will be required to submit an Environmental Evaluation application with the San Francisco Planning Department, and must comply with all applicable environmental review requirements pursuant to the California Environmental Quality Act (CEQA). The Planning Department also is the lead agency for environmental review for all public and private projects in San Francisco. The completion of CEQA review, including any CEQA administrative appeal processes, is required before the Port Commission, Board of Supervisors or other decision-makers can approve the Mixed Use Project and/or execute a lease.

### **D. San Francisco Board of Supervisors**

The Lease may be subject to: (1) Administrative Code Chapter 29, which requires the developer to obtain a Board of Supervisors determination that the project is fiscally feasible and responsible before filing its application for environmental review of the Mixed Use Project if the estimated cost of the Mixed Use Project exceeds \$25 million, and the developer estimates that \$1 million or more of the predevelopment, planning or construction costs of the project will be paid from public funds, excluding city staff costs but including concessions such as rent credits; and (2) Section 9.118(c) of the San Francisco City Charter, which requires approval by the Board of Supervisors for leases in excess of ten years or more, or anticipated revenues of one million dollars or more in total revenue. In addition, the Board of Supervisors is the decision body for any appeals of CEQA environmental document determinations made by the Planning Commission. Finally, zoning reclassifications require approval by the Board of Supervisors

following approval by the Planning Commission. The developer will be responsible for securing any of these approvals, if required.

#### **E. San Francisco Bay Conservation and Development Commission (“BCDC”)**

BCDC is a state agency with planning and permitting authority over San Francisco Bay and lands within 100 feet of the shoreline. Its primary mandates under the McAteer-Petris Act are to avoid or minimize filling of San Francisco Bay, and to promote maximum feasible public access to the shore.

BCDC’s comprehensive policies are contained in the San Francisco Bay Plan. In addition, BCDC has adopted other planning documents that focus on specific areas, two of which are applicable to the San Francisco waterfront: the BCDC San Francisco Waterfront Special Area Plan (Special Area Plan), and the Bay Area Seaport Plan which BCDC co-sponsors with the San Francisco Bay Area Metropolitan Transportation Commission (MTC). The Seaport Plan currently designates Pier 48 as a future site for neobulk (large, numerous products that are not shipped in containers) cargo shipping, and the eastern six acres of SWL 337 adjacent to Pier 48 and 50 as a “Port priority” to provide backland area for potential cargo operations. Development proposals for SWL 337 and, if included at the developer’s option, Pier 48, would require an amendment to the Seaport Plan, which also is a condition for allowing non-trust leases under SB 815. The Port and developer will be cosponsors to secure amendments to the Seaport Plan.

The BCDC Special Area Plan contains BCDC’s collective policies for the entire San Francisco Bay waterfront, including cross-references to the Seaport Plan. An amendment to the Seaport Plan may also trigger the need to amend the Special Area Plan. The Special Area Plan for this area south of China Basin Channel also include Replacement Fill policies, which trigger use restrictions limiting uses of pile-supported piers that undergo major repairs (including seismic retrofit) to water-dependent uses. In light of the fact that the Port has completed major repairs to support the cargo and maritime uses for which the site is currently dedicated, any development proposal that includes at its option Pier 48 would require consultation with BCDC to determine whether the Replacement Fill policies would be applicable.

Any development project at the Site must include shoreline improvements along China Basin Channel, which falls within BCDC’s permitting authority, and thus requires issuance of a BCDC permit for the Mixed Use Project. The Port will be a co-applicant for any BCDC plan amendments or permits; however, the selected developer will be solely responsible for obtaining approvals and for complying with all BCDC requirements and conditions.

Key documents are on BCDC’s website (<http://www.bcdc.ca.gov>), including, but are not limited to:

- California Government Code Sections 66600 et seq., as amended (the McAteer Petris Act) (<http://www.leginfo.ca.gov/calaw.html>)
- The San Francisco Bay Plan, as amended
- BCDC’s San Francisco Waterfront Special Area Plan, as amended
- BCDC’s Shoreline Spaces: Public Access Design Guidelines for the San Francisco Bay
- BCDC’s and MTC’s San Francisco Bay Area Seaport Plan, as amended

## **F. U.S. Army Corps of Engineers**

The San Francisco Bay and shoreline is within the jurisdiction of the Corps. To the extent that a project involves construction work in the water of the San Francisco Bay, such as placement of new pilings or dredging, review by the Corps may be required, which will be the responsibility of the developer. The primary purposes of the Corps' activities in this regard are to maintain the navigability of waters, to prevent the filling of wetlands and to protect and enhance water quality and biological resources.

## **G. Regional Water Quality Control Board ("RWQCB")**

The RWQCB is the state agency responsible for the implementation of both state and federal water quality control laws (Porter-Cologne Act and Clean Water Act). A permit from the agency would be required for any discharges to waters of the State, including dredged materials which, if applicable to the selected Respondent's proposal, will be the responsibility of the developer.

## **V. OTHER PROJECT REQUIREMENTS**

### **A. Equal Opportunity**

The Port Commission encourages the participation of disadvantaged local business enterprises in this RFP opportunity. The selected Respondent will be encouraged to consult with the City's Human Rights Commission to determine appropriate methods for promoting participation by disadvantaged business enterprises in this opportunity. The City's list of certified Local Business Enterprises may be accessed through the following URL:  
([http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm)).

### **B. Prevailing Wages**

The Port will require the selected Respondent to pay prevailing wages in the construction of the project in accordance with prevailing wage and labor standards adopted by the Board under San Francisco Administrative Code Section 6.22.

### **C. Diesel Fuel Measures**

The selected Respondent must minimize exhaust emissions from operating equipment and trucks at the Site. At a minimum, the selected Respondent must maintain vehicles and equipment in good condition and well-tuned to minimize emissions, ensure that vehicles and equipment run only when necessary, and prohibit running engines when vehicles and equipment are not in use or when queuing. The selected Respondent must also make good faith efforts to use low-emission diesel fuel or alternative low-emission fuels for all petroleum hydrocarbon-powered equipment used on the Site, and to explore emerging new technologies for reducing diesel particulate matter, such as catalytic particulate traps, which currently are under study by the California Air Resources Board. "Good faith efforts" will include identifying sources of viable alternative low-emission fuels, retrofitting or purchasing new or late-model equipment to utilize alternative low-emission fuels to the extent reasonably feasible and practicable.

### **D. Hazardous Materials Rules and Regulations**

The selected Respondent will be responsible for ensuring compliance with all federal, state and local regulations governing the testing and disposal of any hazardous materials on the Site. This includes compliance with the City's Maher Ordinance (Health Code Article 22A and Public Works Code Article 20), which sets forth soils investigation and other requirements for any project that disturbs 50 or more cubic yards of material.

### **E. Liquor, Food Service and Business Licenses**

The selected Respondent will be solely responsible for obtaining any liquor license(s) from the California Department of Alcoholic Beverage Control, any other required licenses from the City's Department of Public Health and Treasurer/Tax Recorder, and any permits required for proposed uses, such as Place of Entertainment or Dance Hall Keeper permits from the San Francisco Police Department.

### **F. Conflicts of Interest**

The Port reserves the right to disqualify and deem non-responsive any Respondent on the basis of any actual or apparent conflict of interest that is disclosed by the proposal or other information submitted or available to the Port. The Port's determination of an actual or apparent conflict of interest will be made in its sole discretion.

The selected Respondent will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Section 1090 of the California Government Code. The selected Respondent will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of these provisions; and agree to notify the Port immediately if the Respondent becomes aware of any fact constituting a violation during the term of the Lease.

Individuals who will perform work for the Port on behalf of the selected Respondent might be deemed consultants under state and local conflict of interest laws. If so, these individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within 10 calendar days of the Port's selection of the selected Respondent.

### **G. Respondents' Obligations under the Campaign Reform Ordinance**

Respondents must comply with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code (the "Campaign Reform Ordinance"), which applies to contracts with the City (including the Port) valued at more than \$50,000 for the rendition of personal services, the furnishing of any material, supplies or equipment, the sale or lease of any land or building, or a grant, loan or loan guarantee that is subject to approval by a city elective officer, or the board on which that city elective officer serves. The Campaign Reform Ordinance prohibits contractors from making any contribution to any city elective officer, or any candidates for that office, or any committee controlled by the elected officer, or any board on which an appointee of the elected officer serves at any time between commencement of negotiations and the later of either: (1) the termination of negotiations for the contract; or (2) six months after the date the contract is approved. A person subject to the ordinance is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a solicitation, and requests to be placed on a mailing list do not constitute negotiations.

Violation of the Campaign Reform Ordinance may result in the criminal, civil, or administrative penalties. For further information, interested parties should contact the San Francisco Ethics Commission at (415) 581-2300.

#### **H. Other City Requirements**

The selected Respondent will be subject to, and responsible for, all taxes and assessments attributable to the leasehold interest in the Site, including possessory interest taxes on the assessed value of the leasehold interest and other applicable city sales, parking and payroll taxes.

## VI. RFP SCHEDULE AND SUBMITTAL REQUIREMENTS

<b>RFP issued:</b>	May 27, 2008
<b>Pre-submittal conference:</b>	June 17, 2008, at 2:00 p.m. Pacific Daylight Savings Time ("PDT"),
<b>Latest date for submission of written questions:</b>	August 4, 2008, at 5:00 p.m. PDT
<b>Proposal deadline:</b>	August 27, 2008, at 4:00 p.m. PDT
<b>Commission presentation(s):</b>	September 9, 2008
<b>Public Workshop for Respondent Presentations and Public Comment on Proposals</b>	September 15, 2008
<b>Interview(s):</b>	Week of September 22, 2008 (tentative)
<b>Port Commission consideration of selected Respondent:</b>	December 2008 (tentative)
<b>Exclusive negotiations begin:</b>	January 2009 (tentative)

### A. Pre-Submittal Conference and Questions

Interested parties are strongly encouraged to attend a pre-submittal conference on June 17, 2008 at 2:00 p.m. Pacific Daylight Savings Time ("PDT") at the Port's offices at Pier 1, San Francisco, California. Additional pre-submittal conference and tours of the premises may be conducted for the RFP Respondents. Port staff will address questions and provide any new information then available. Interested parties may address questions to Port staff at the pre-submittal conference. Questions may be answered orally at the conference and the tour. Port staff also will provide written responses to substantive and procedural questions raised at the pre-submittal conference and the tour, which may clarify oral responses previously given. Only written responses will be deemed final.

Any requests for information concerning, or for modification or clarification of, this RFP, other than those raised at the pre-submittal conference and the tour, must be submitted in writing before August 4, 2008 to: Phil Williamson, Port of San Francisco, Pier 1, San Francisco, California 94111, by delivery between 8:00 a.m. and 5:00 p.m. to the Port at its main reception area in Pier 1, or by email to phil.williamson@sfport.com, or to facsimile number (415) 732-0453. Except for inquiries at the pre-submittal conference and the tour, no oral inquiries, including voicemail messages, will be answered.

Written responses to all questions directed to Port staff at the pre-submittal conference and the tour or in writing by the specified date will be posted on the Port's web page for this RFP, and notice of the posting will be sent to all interested parties who register with the Port before the deadline specified above. Respondents are presumed to have received any and all information contained in this RFP, disseminated at the pre-submittal conference and tour, transmitted to registered parties and posted on the Port's web page for this RFP. Therefore, the Port strongly

recommends that interested parties register for this RFP and consult the website frequently to determine if new information relating to this RFP is available.

**B. Submittal Format**

In order to be complete, any proposal submitted to the Port must include 30 numbered sets of the information requested below, with the exception of proprietary financial information requested in Section F below. All other documents should be submitted in electronic form (Adobe Acrobat .pdf format) on a digital versatile disk (DVD) as well as by hard copy. In addition, Respondents must provide electronic copies of concept plans and graphics formatted to enable the Port to post them on the Port's website and print hard copies to distribute in public meetings. Files for posting shall not exceed 5 megabytes in size though respondents may submit a series of files under 5MB to comply with this requirement.

A Respondent's failure to provide complete responses to any of the categories of information requested in paragraphs D-G below will result in the Port determining the proposal to be non-responsive.

Proposals must be prepared and submitted in an organized and efficient manner, incorporating no-/ low -waste standards in the production of reports and submittals. Information must be printed on recycled paper, double-sided to the greatest extent possible, with a minimum amount of packaging materials. No page limitation is imposed, but brevity is appreciated. Page numbers are required and tab dividers would be appreciated. Proposals must be submitted in 8½ x 11 inch format (with the exception of separate design concept and other diagrams). By submitting responses to this RFP, Respondents duly authorize the Port to post the Design and Development Submittal on the Port's website, [www.sfport.com](http://www.sfport.com), which will be available for public review.

**Submittal Requirement Summary**

<b>Development &amp; Design Submittal Requirements</b>	Evaluated by SWL 337 Advisory Panel
<ol style="list-style-type: none"> <li>1. Provide 30 numbered sets</li> <li>2. Produce with no/low waste materials</li> <li>3. Will be posted to Port's Website</li> <li>4. Size Limit for Individual Files: 5 MB</li> </ol>	
Development Concept	Please provide in 8 ½ " x 11" format
<ol style="list-style-type: none"> <li>a. Land Use Program</li> <li>b. Phasing Plan</li> </ol>	
Conceptual Drawings & Maps	Other formats ok; may be submitted separately from main document
<ul style="list-style-type: none"> <li>• Site Plans</li> <li>• Sections</li> </ul>	

## Submittal Requirement Summary (con't)

### Technical Development Requirements

Evaluated by Port staff, consultants and SWL 337 Advisory Panel

Transportation Demand Management Plan

Please provide:

Technical Description of Development Program

- In 8-1/2 " x 11" format, produced with no/low waste materials

Economic Return to the Port

- 30 copies of TDMP and Technical Description of Development Program

Development Funding

- 10 copies of Development Funding, Economic Viability, and Qualifications information-

Economic Viability of Proposal (Pro Forma Analysis)

Statement of Qualification

### Financial Capacity

Reviewed by Port Staff only

### Other Submittal Requirements

Earnest Money Deposit

Required Forms and Disclosures

## C. Development & Design Submittal Requirements

Provide a narrative description presenting the concept, development program, and operational and management plan for the proposed project, which includes the following items.

1. Development Concept. The Development Concept Plan information and graphics must be formatted to enable the Port to post directly as a document on its website, available to the public.
  - a. Land Use Program: Describe the uses and type of land uses proposed, including quantification of units, rooms, building and land area. Include description of the proposed development program, including mix of uses, types of uses, and square footages, dwelling units, hotel rooms, open spaces acres, parking spaces and other appropriate quantities to describe the development program. Respondents shall fill in the land use program form attached in **Appendix J**.
  - b. Architectural and Urban Design Concept: A narrative description and discussion of the architectural and urban design approach to the Mixed Use Project, including architectural character, building densities, description of height and bulk of any proposed tower structures, street-level views and pedestrian character, and how site design incorporates smart transportation strategies and other design elements.
  - c. Development Site Plan: Conceptual description and materials which illustrate the location and general gross square footage of land uses and other major features of the Mixed Use Project, including character of parks and other public spaces, concepts for street design (including pedestrian circulation, vehicular access and any alternative transportation modes), and features or installations to meet sustainable design principles. Include a discussion of how the Development Concept would achieve the Development Objectives and Criteria stated in the RFP.

- d. Open Space Network: Narrative and graphic representations and/or illustrations that explain the layout, character and qualities of major shoreline open space; and how neighborhood open spaces are provided and distributed through the Site and relates and interacts with developed uses to make the project publicly oriented. Describe any proposed recreational programming within the open space network, and how it meets public trust and sustainable design principles. Describe how the proposed public access and open space improvements and amenities relate to and support adjacent or nearby uses proposed.
- e. Open Space Maintenance Program: A proposed budget and operations program, to be provided by the Respondent to maintain the major public park proposed at the north end of the Site, and network of other public open spaces throughout the rest of the Site throughout the proposed lease term of the Project. Include within the open space maintenance program any proposed assignments to other entities, if applicable, of operation and maintenance responsibility for certain elements of the open space network.
- f. Transportation Demand Management Plan (TDMP): Proposal which identifies how the Mixed Use Project is designed and programmed to meet City Transit-First and sustainability objectives, as required in the Development Objectives for this RFP; proposes the management and operations of any parking proposed for the Site to maximize shared use; and substantively demonstrates that off-site parking facilities within 10 minutes walking distance of AT&T Ballpark have been considered or secured on a long-term basis, to meet a portion of the parking demand of the Mixed Use Project. The shared parking program must include estimates of parking availability on nights and weekends to be available to serve Giants games and events, and associated operational cost estimates. Further information, direction and requirements for Respondents formulation of its TDMP are presented in **Appendix F**.

The TDMP proposals will be reviewed by the SWL 337 Advisory Panel, and Port staff with consultation with City staff from the Municipal Transportation Agency, as part of the evaluation of Respondents' RFP proposals

- g. Phasing Plan: Provide a timeline from Commission authorization of exclusive right to negotiate to beginning of operations. Include the projected phasing of all infrastructure, public amenities and development. Respondents shall fill in the land use program form attached in **Appendix J for each phase**.
- h. Describe the business plan for start-up and marketing.
  - i. Operations Plan: Describe the proposed operations plan.
  - ii. Description of the operational and management plan for the proposed project and how it would achieve the Development Objectives and Criteria stated in the RFP.
  - iii. Description of potential occupants and operations, including sub-tenancies, including concurrence of key sub-tenants as evidenced by signed and executed letters of intent.
  - iv. Describe the management and operational structure of the business, staffing and business hours. Describe community hiring plans and contracting opportunities that may arise from the operation.

## 2. Preliminary Conceptual Drawings & Maps

- a. Provide sketches, perspective views, sections and elevations, graphics and other graphic representations illustrating the character the development team envisions for the site, including architectural creativity and quality; urban design and three-dimensional representations, the quality of the public realm (e.g., streets and plazas), and the character of public open space and other public amenities. Include the following:

- b. A preliminary conceptual site plan prepared at a scale of not less than 1"=32' containing, as applicable, the following information:
  - i. Site and location of proposed uses;
  - ii. The location and sizes of all proposed buildings, structures and improvements;
  - iii. The maximum height of all buildings;
  - iv. The density and type of uses; and
  - v. Circulation system which shows how major uses relate to points of access to public rights-of-way to and within the Site, for walking, bicycling, public transit, motor vehicles and other modes of travel.
- c. Preliminary conceptual building elevations and sections.

#### **D. Technical Submittal Requirements**

The technical submittal includes the Respondent qualifications, technical development details and analysis of the economic viability of the proposal. The Port intends to distribute these documents for review to Port staff, consultants and Advisory Panel. These documents will not be posted on the Port's website or otherwise made public during the review process. However, these documents are subject to Sunshine Ordinance (Administrative Code Section 67.24(e)), and all responses and other communications from interested parties must be open to inspection by the public upon request immediately after a contract is awarded. Proprietary financial information submitted by a Respondent in response to this RFP will not be disclosed until and unless that Respondent is awarded the Lease.

##### **1. Technical Description of the Development Program**

The Developer shall submit technical descriptions to describe their project including the following:

- a. A detailed description of the proposed development including proposed improvements, assumptions about estimated development cost, financing plan (debt and equity listed by source), construction, and take-out financing, development team and project timeline including City required entitlements of regulatory approvals.
- b. A detailed description of how the proposed development and tenant mix will attain the goals and objectives of this RFP, supported by any applicable documentation.
- c. A description of the proposed commercial tenant mix including any expressions of interest that the Respondent has received and indication of prior relationships with identified tenants/tenant types. If residential is proposed, the Respondent must describe proactive measures that will be taken to mitigate or eliminate potential conflicts between the different uses of the development, particularly residential and commercial use compatibility. For any proposed housing preferences, the Respondent must provide a legal analysis of the application of fair housing laws to the proposed preference.
- d. A detailed development budget including a summary of all anticipated predevelopment costs. Indicate source(s) of working capital to undertake all predevelopment activities up to construction loan closing. Using standard estimating techniques, provide an overall (total) development budget, including all hard and soft costs from preconstruction through completion of marketing.

- e. A market study/justification that clearly supports conclusions regarding revenue assumptions and the viability of proposed tenancies. The Developer shall submit detailed market information for any specialized or non-standardized use (e.g. entertainment of special events venue, arts complex, etc.). With respect to residential uses; studies or justification that identify supported conclusions as to sizes of units, unit-mix, amenities, price structure, and absorption for optimizing market success on the Site.
- f. An estimated development schedule that includes all activities from predevelopment through completion and sale/rental of any residential units.

## 2. Economic Return to the Port

Provide a detailed presentation of the proposed lease terms, including the following:

- a. Guaranteed monthly Base Rent to be paid to the Port.
- b. Percentage and/or Participation Rent other rent structure for the Port's participation in gross income from the project.
- c. CPI and FMV periodic adjustments to Base Rent, including size and timing of adjustments.
- d. Periodic adjustments to percentage rental rates used for calculating Percentage Rent, including timing of adjustments and methodology for determination of adjustment.
- e. Rent to be paid to the Port monthly during construction.
- f. Length of lease term.
- g. Port participation in proceeds that developer receives from sale, transfer or refinancing of leasehold.
- h. Port's participation in any historic tax credit proceeds produced by the inclusion of Pier 48 in the Mixed Use Project.
- i. All other proposed lease terms so that the Port Commission fully understands the intent and basis of the proposal.

## 3. Development Funding

Provide description of all sources and uses of funds for construction of the improvements and permanent financing along with projected terms of such debt financing. Describe source(s) of equity, predevelopment and construction loans, and permanent financing necessary to undertake and complete the development and a list of underlying assumptions for the proposed development. Describe the financing plan, including all aspects of equity capital, acquisition and construction financing necessary to develop the Site.

- a. Provide a complete explanation of the financing arrangements, including how the proposed project will be funded and specifying the proportion of equity that is cash, the proportion of the equity that will be in the form of historic tax credits or other forms of tax credits or other investment vehicles, and the proportion of the funding that will be debt.
- b. Specifically identify the source(s) of all proposed project funding.
- c. Submit a written statement from each financing source that the equity and/or subordinate mortgage capital is available for funding the proposed project within the proposed development timeline and that the proposed project is consistent with the source's investment criteria for a project of this type and size.

#### 4. Financial Viability of the Proposal

Provide detailed development pro forma including gross square foot values by use, land and construction costs, all development, engineering fees, etc., estimates of development costs, revenues by type, capital expenditures and operating expenses of the proposed project, in the form of a pro forma statement of cash flows for each year during at least the first 20 years of the Lease. The analysis shall clearly state assumptions to a degree sufficient for the Port to judge the validity of the estimates. The development cost breakdown must be in current dollars. The pro forma must provide a complete cost-revenue analysis that demonstrates the financial feasibility of the proposed development.

- a. The Statement of Cash Flows should detail in the following order:
  - i. Development costs, including all planning, design, permitting, construction, general conditions, overhead, etc.
  - ii. Revenues setting forth each operating department's revenues concluding in a total revenue line.
  - iii. Expenses concluding in a net income available for rent to the Port and debt service, and other non-operating expenditures. Identify operating
  - iv. Rental payments to Port (Base Rent and Percentage Rent).
  - v. Reserves, including replacement reserves, re-tenanting reserves, infrastructure replacement, etc.
  - vi. Debt Service (principal and interest)
  - vii. Cash Flow after Rent to Port, Reserves and Debt Service
  - viii. Capital Reserves
  - ix. Net Cash Flow Before Taxes
  
- b. In addition to a Statement of Cash Flows for the project as a whole, Respondent shall provide statement of Cash Flows for the following use components of the Proposal:
  - i. Public trust-consistent uses at SWL 337
  - ii. Parking
  - iii. Housing (including all levels of below-market priced units)
  - iv. Retail, by type (e.g. regional/visitor, neighborhood, local-based businesses)
  - v. Entertainment uses and Special Events (unless it is part of Pier 48)
  - vi. Pier 48

#### 5. Statement of Qualifications

Though Respondents submitted qualifications as part of the RFQ and concept submittals, specific qualifications related to the development program submitted for this RFP are required to understand the Respondents RFP team's qualifications to implement their design and development proposal. Provide a narrative description of the Respondent and design team, including the following information in the form and order listed below. Respondent may resubmit or refer to the RFQ submittal for any part of the below requirements that Respondent believes was addresses fully in their previous submittal.

a. Respondent Identity

- i.** Identify and describe the development entity. Include the responsibilities, name, address, telephone and facsimile number of the principal developer and key team members, and any other information, including references, about the development entity that may be pertinent to this opportunity.
- ii.** Describe the intended role of each team member in the implementation of the project and the responsible entity in the organizational structure for day-to-day operations and ongoing property management
- iii.** Describe the Respondent's experience managing employees and labor during the construction and operation periods of comparable development. Provide any Project Labor Agreement relevant to the proposed project.
- iv.** Identify selected and prospective consultants, including licensed design professionals, and identify the lead person with each consultant.
- v.** Identify the legal entity with which the Port would contract, including any and all joint venture/limited partners and percentage interests and capital/equity committed to the entity. Provide federal tax identification number and date of incorporation/registration.
- vi.** Identify the person(s) in charge of negotiations, and key personnel who will be involved in decision making for the developer, including their relevant qualifications.
- vii.** Include résumés for all "key personnel" for the Respondent. Describe the roles and provide resumes describing the relevant experience and qualifications of all key personnel, identified above, who would implement the project. Identify the qualifications of all persons who will play a significant role in the operations, including their duties, years of experience, names of projects where they have worked and any other relevant information. Give the name, telephone number and address for at least 3 business references for the project manager and key members. The Port may, but is not obligated to, contact any or all of these references.
- viii.** Describe the key consultants and relevant experience, including financial, marketing, engineering, and environmental expertise.

b. Experience

- i.** Include all relevant experience of the development entity, including a list of developments in which the company or principal(s) has (have) been involved, indicating the date, size, cost, construction lender, location and the role of the Respondent in each development.
- ii.** Describe in greater detail the Respondent's involvement in similar developments to that proposed, including dates, locations, financing, size, total development cost, performance schedule including timeframe from purchase agreement to completion, marketing and sales performance, and contact references on successfully completed similar developments.
- iii.** Describe the Respondent's experience in other commercial or mixed-use developments in an urban setting, similar to the Site. Indicate unique

architectural and urban design features of the developments cited under this section.

- iv. List current projects in the design or development phase and capital commitment required of Respondent for each.
- v. Identify, describe, and provide photographs of at least 3 other similar ventures, including the financial and other types of participation of each member of the Respondent's team in each venture over time (include location, size, type of operation, project cost, sources of capital, success over time, current management/owner).
- vi. Describe at least 3 comparable sites owned, leased or operated by the Respondent. Describe each site's use, size, and type of operation, location (address); gross annual revenues received over time; years of operation; ownership interest; and any other relevant information. Provide photographs if available.

### **E. Financial Capacity Submittal Requirements**

Respondents should submit three copies of financial information in a separate sealed envelope, designated "Financial Materials" with the rest of the proposal materials. Each Respondent must clearly mark any of the financial materials that it in good faith believes to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, the Port Commission will attempt to maintain the confidentiality of marked financial materials, but potential Respondents are cautioned that, in accordance with the Sunshine Ordinance (Administrative Code Section 67.24(e)), responses and other communications from interested parties must be open to inspection by the public upon request immediately after a contract is awarded. Proprietary financial information submitted by a Respondent in response to this RFP will not be disclosed until and unless that Respondent is awarded the Lease. Respondent may resubmit or refer to the RFQ submittal for any part of the below requirements that Respondent believes was addresses fully in their previous submittal.

1. Provide evidence of access to equity capital and financing resources to carry out proposed project, supported by:
  - a. The most recent available credit report and financial statements for the past 4 years of each principal partner and joint venture participant, including statement of changes in financial position and statements of any parent organizations and any materially relevant subsidiary units, identifying any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and/or contingent liabilities. Provide audited financial statements for firms with such audited statements or compiled financial statements with third-party testaments to assets and liabilities disclosed in the statements.
  - b. Letter(s) from lending institutions (not more than 3 months old) that demonstrate the existence of liquid assets or suitable unencumbered lines of operating credit to carry out the predevelopment activities and the ability to raise the necessary construction financing for the proposed development, including an appropriate permanent loan (take-out) commitment.
  - c. Evidence of the Respondent's liquid assets, or some acceptable form of equity, equal to the equity requirements of the prospective construction lender, but not less than 20% of the estimated development cost of the project.

2. Provide evidence regarding the Respondent's ability to raise additional equity and sources for such additional equity.
  - a. Indicate the source(s) and amount of available equity (including working capital) specifically earmarked for the development in the proposal.
  - b. Describe the Respondent's current relationships with lenders and ability to obtain necessary financing for the development proposed including recent history (last 2-3 years) in obtaining financing commitments, detailing type of project, financing source, amounts committed, etc.; and
  - c. Source of equity and/or subordinate mortgage capital for funding the Project.
  - d. Explain financing of the entity and the project:
    - i. How the entity will be capitalized;
    - ii. Sources of financing for the initial physical improvements to be installed at the Site; and
    - iii. Sources of working capital to cover operating costs and to adequately maintain operations at a high level from the start-up period through seasonal variations in revenue production.

If Respondent is unable to submit the above requirements, the Respondent may submit a report from a third party accounting or financial advisory firm that verifies the financial capacity to secure all the capital needs of the Respondent's project. The Respondent must obtain the Port's pre-approval of the third party firm and the scope of their assignment. Submittal of a third party report does not relieve the Respondent from the requirement to make all of the required information available to Port staff.

## **F. Other Submittal Requirements**

### **1. Earnest Money and Performance Deposits**

Each Respondent must submit with its proposal an earnest money deposit in the amount of \$100,000, payable to the "Port of San Francisco" in the form of a cashier's or certified check inclusive of any prior deposit currently held by the Port from the RFQ phase of this project. Proposals submitted without the earnest money deposit will be deemed non-responsive. Earnest money deposits will be held until the Port Commission has authorized exclusive negotiations with a Respondent, after which the Port will deposit the earnest money deposit of the selected Respondent.

Earnest money deposits will be refunded, without interest, to each Respondent not selected for exclusive negotiations. The earnest money deposit of the Respondent selected for exclusive negotiations will be non-refundable, whether or not exclusive negotiations result in agreement. If the Port and selected Respondent enter into a lease disposition and development agreement for the Site, the earnest money deposit will be applied to the performance deposit.

A performance deposit equal to five percent (5%) of the anticipated development cost of the project will be required at the time of execution of the lease disposition and development agreement and Lease for the Site. The performance deposit will not be applied toward base rent or the security deposit required under the Lease. Instead, the Port will retain the performance deposit until completion of project improvements, and refund the performance deposit to the selected Respondent upon the issuance of the Port's certificate of completion for the development. The Port has no obligation to pay interest on any deposit held.

2. Financial Standing, Taxpayer Responsibility & Disclosure Questionnaire and Respondent Certificate

Each Respondent must provide answers to and sign under penalty of perjury the Financial Standing, Taxpayer Responsibility & Disclosure Questionnaire and Respondent Certificate attached as **Appendix I**.

**G. Submittal Deadline**

<b>Submittal Deadline:</b>	Wednesday, August 27, 2008, at 4:00 p.m. PDT
<b>Address for Submittals:</b>	Port of San Francisco, Pier 1 San Francisco, California 94111 Att'n: Phil Williamson

Submittals must be received by the Port and include a \$100,000 earnest money deposit and all other required materials, in a sealed envelope before 4:00 p.m. PDT on Wednesday, August 27, 2008. All responses must be addressed to the attention of Phil Williamson, Project Manager, and marked "Request for Proposals Seawall Lot 337 Development Opportunity." The Port observes business hours of 8:00 a.m. to 5:00 p.m..

A Respondent may revise a proposal on its own initiative at any time before the deadline for submission of proposals specified above. A revised proposal must be received before the proposal submittal deadline. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal submittal deadline for any Respondent.

**Late proposals, and proposals sent by facsimile or electronic mail, will not be accepted.**

**VII. EVALUATION OF PROPOSALS AND AWARD**

**A. Selection Process Generally**

The RFP submittals will be reviewed by the SWL 337 Advisory Panel, and Port staff, who will be assisted by consultants to determine whether they are complete and responsive to the requirements of this RFP. Only proposals that are complete, responsive and meet all requirements of this RFP will be evaluated during the selection process. The Port will deem a proposal non-responsive and ineligible for consideration for any of the following reasons:

- The proposal does not include all categories of information specified in **Section VI** of this RFP.
- The proposal does not respond to all of the development objectives.
- The proposal is submitted after the deadline of 4:00 p.m., August 27, 2008.
- The proposal is submitted without the earnest money deposit.
- The proposal is submitted with incomplete or missing forms or attachments.
- The proposal includes information that is false or misleading.
- The Respondent has violated the Campaign Reform Ordinance.
- The Respondent has violated the Conduct Code.
- The proposal is transmitted by facsimile or electronic mail.

The Port will send a letter to any Respondent whose proposal is deemed non-responsive. The letter will be dated and deposited for delivery by first-class mail on the same date and will indicate the reason(s) that the proposal is deemed non-responsive.

Respondents will be required to present proposals and development teams to the Port Commission at a duly noticed public Commission meeting. Each responsive proposal will be evaluated and ranked for presentation to the Port Commission. The Port Commission will consider selection of a Respondent with which to enter into exclusive negotiations at a duly noticed public meeting.

The Port Commission is the sole decision-maker regarding this selection, in its sole discretion, and the Port Commission reserves the right to reject any or all proposals or to terminate exclusive negotiations at any time. The Port Commission, acting in its proprietary capacity as landlord, has authority to approve an agreement to enter into exclusive negotiations with the selected Respondent and must approve the Lease and related documents for the lease of and any improvements to the Site.

## **B. Selection Criteria**

### **1. Evaluation Criteria**

Evaluation of submittals will be based on how well the proposal responds to the Development Objectives and Criteria (Section II above), and submittal requirements, where evaluation of the financial proposal will constitute 40% of the overall evaluation weighting, and the Design and Development Submittal will constitute 60% of the overall evaluation weighting.

#### **a. Design and Development Submittal: 60 Points**

The SWL 337 Advisory Panel will use the SWL 337 Development Objectives and Criteria as the basis for reviewing all Design and Development Submittal. The Development Objectives and Criteria ( as presented in Section II) will be given the following relative weightings:

- i. Land Use Objectives: 20%**
- ii. Open Space Objectives: 20%**
- iii. Transportation Objectives: 25%**
- iv. Neighborhood Character, Historic Resources and City Form Objectives: 25%**
- v. Sustainability Objectives: 10%**

#### **b. Financial Proposal — 40 Points**

Port staff will evaluate the financial proposal outlined in the Submittal Requirements **Section VI** above, including ground lease rent, participation/percentage rent, length of term, rent adjustments, maintenance and management responsibility, construction period rent, project schedule, financing plan and commitments, completion guarantee, and other criteria deemed appropriate by the Port.

##### **i. Lease Terms**

- (a) Guaranteed minimum base rent**

- (b) Other base rent terms including construction period rent & periodic adjustments
  - (c) Participation rent structure and estimates
  - (d) Port participation in proceeds that developer receives from sale, transfer or refinancing of leasehold
  - (e) Project Development and Financing Plan
  - (f) Construction and development costs for the proposed project
  - (g) Financing Plan including sources of debt and equity
  - (h) Validity of cash flow analysis including all development costs & timing, open space maintenance costs, project revenues, reserves, debt services, and operating expenses.
- ii.** Project Schedule & Completion Guarantee
- iii.** Other factors affecting the financial proposal will be evaluated, including but not limited to understanding and demonstrated ability and flexibility necessary to obtain key approvals and community and user support in a complex regulatory environment.
- iv.** Other factors considered will include:
- (i) Entitlement Risk
  - (j) Market Risk
  - (k) Financing Risk
  - (l) Operating Risk

	<b>Evaluation and Selection Criteria Summary</b>	<b>Percent Scoring (100 Total Pts)</b>
	<p>Quality of the Design and Development Submittal, which will include following considerations:</p> <ul style="list-style-type: none"> <li>▪ response to RFP development objectives</li> <li>▪ character and quality of the development (e.g. street network, location of buildings and open space, connectivity to the surrounding area, massing and treatment of buildings, quality of open space, clarity in sustainability proposals</li> <li>▪ quality of Transportation Demand Management Plan</li> <li>▪ evaluation of development program against public trust principles</li> </ul>	60%
	<p>Strength of Financial Proposal based on proposed economic return to the Port, based on base rent and percentage rent or other forms of participation proposed by the Respondent</p>	40%
	<p>Financial capacity of the Respondent and economic viability of proposal, based on relevant factors such as:</p> <ul style="list-style-type: none"> <li>▪ ability to raise and commit funds for the project and continuing operations and maintenance</li> <li>▪ adequacy of projected revenues to support the investment</li> <li>▪ reasonableness of the cash flow analysis</li> <li>▪ proposed capital investment for improvements</li> </ul>	Supports the evaluation of economic return
	<p>Experience, organization and reputation of the Respondent's team on complex projects, based on relevant factors such as:</p> <ul style="list-style-type: none"> <li>▪ history of on-time and on-budget projects</li> <li>▪ economic success of similar ventures</li> <li>▪ design excellence of completed projects</li> <li>▪ clear lines of authority and responsibilities</li> <li>▪ Team &amp; key personnel qualifications</li> <li>▪ availability of key team members</li> <li>▪ ability to work with Port and community</li> <li>▪ litigation and compliance record</li> <li>▪ ability to comply with City Requirements</li> </ul>	Supports the evaluation of development concept and economic return

### **C. Seawall Lot 337 Advisory Panel and Port Staff Scoring**

Following the Port's receipt of submittals in response to this RFP, the Port will implement the following evaluation process of timely, complete and responsive submittals from Respondents. The submittals will be reviewed and evaluated by the SWL 337 Advisory Panel previously appointed by the Port Executive Director. The Port reserves the right to make changes to the Advisory Panel. The SWL 337 Advisory Panel will review the submittals with staff and technical assistance provided by Port staff and its consultants.

The SWL 337 Advisory Panel will provide an independent assessment of Design and Development Submittals, based on the SWL 337 Development Objectives and Criteria presented in Section II. Port staff and consultants will contact references and industry sources and investigate previous projects and current commitments. In addition, financial proposals and Transportation Demand Management Plans submitted for this RFP will be thoroughly analyzed by Port staff with the assistance of independent consultants and City staff with technical expertise. This information will be made available to the Advisory Panel for consideration in its deliberations. The Advisory Panel will conduct interviews with the Respondents, with the participation of Port staff, transportation experts and, as determined by the Port, other consultants. The Advisory Panel will score and rank Design and Development submittals according to the evaluation criteria described herein, taking into consideration all available information including Respondent presentations and interviews. Port staff will score the financial proposals according to the evaluation criteria. The combined scoring from the Advisory Panel and Port staff will result in the recommendation of Developer Selection.

The Port reserves the right to request clarification or additional information from individual Respondents and to request that some or all Respondents make presentations to Port staff, the Port Commission, community groups and/or others. The Port further reserves the right to make an award without further clarification of proposals received.

### **D. Port Commission Determination**

Based on the combined scoring of the SWL 337 Advisory Panel and Port Staff, Port staff will recommend a Respondent to the Port Commission for developer selection for the SWL 337 Mixed Use Project. The staff report may include information obtained during reference checks and other background information. Port staff will provide an electronic copy of the staff report containing the recommendations to all Respondents contemporaneously with publication of the Port Commission agenda.

The Port Commission, in its sole discretion, will determine whether to authorize exclusive negotiations, and if so, select the Respondent with which Port staff will negotiate exclusively. The selection of a Respondent will not imply the Port's acceptance of all terms of the selected Respondent's proposal, which will be subject to further negotiations and approvals before the Port may be legally bound.

### **E. Exclusive Negotiations**

Upon Port Commission authorization of exclusive negotiations, Port staff and the selected Respondent will negotiate the terms of an Exclusive Negotiations Agreement ("ENA"). Typically, an ENA will contain time and performance benchmarks, including provisions for payment of liquidated damages and termination for non-performance, and provide for the Respondent to fund the Port's costs associated with project planning and review.

The period of exclusive negotiations may be extended solely at the Port's discretion for an extension period as determined by the Port Commission provided that the selected Respondent has met certain benchmarks. The fee for extending the period for exclusive negotiations will be

\$100,000, payable in advance of any extension period. If a satisfactory lease disposition and development agreement cannot be negotiated before the ENA, including any extensions, expires, the Port, in its sole discretion, may terminate negotiations with the selected Respondent and begin exclusive negotiations with the next highest ranked Respondent, conditioned on the Port's receipt of a new earnest money deposit from that Respondent.

During the period of exclusive negotiations, the following events are anticipated:

- A Lease and related documents for the lease and development of the Site in a final form approved by the City Attorney's Office will be negotiated incorporating specific terms, including the Port's and selected Respondent's respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule.
- The selected Respondent will complete its due diligence review of the Site, finalize financial projections and complete preliminary site plans, including elevations and renderings for the Site.
- The selected Respondent will secure financial commitments for the proposed project from lenders and/or equity sources and preliminary sublease commitments from proposed anchor tenants.
- The selected Respondent, with the Port's cooperation, will complete the project approval processes and any required environmental review.

#### **F. Approval of Transaction**

Upon completion of any required environmental review and negotiations by Port staff, the Port Commission may, but is not required to, approve the Lease, the lease disposition and development agreement and any related documents. As noted above: (1) if the estimated cost of the Mixed Use Project exceeds \$25 million, and the developer estimates that \$1 million or more of the predevelopment, planning or construction costs of the Mixed Use Project will be paid from public funds, excluding city staff costs but including concessions such as rent credits, then the developer must obtain a determination from the Board of Supervisors that the project is fiscally feasible and responsible before filing its application for environmental review of the Mixed Use Project; and (2) if the Lease contains a term of 10 or more years or would generate anticipated revenues to the Port of \$1 million or more, the Lease will be subject to approval by the Board in its sole and absolute discretion.

### **VIII. OTHER TERMS AND CONDITIONS**

#### **A. Respondent's Duty to Investigate**

1. It will be the sole responsibility of the selected Respondent to investigate and determine conditions of the Site, including existing and planned utility connections, and the suitability of the conditions for any proposed improvements.

2. The information presented in this RFP and in any report or other information provided by the Port is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that the information contained in this RFP or other documents is accurate and complete. The Port and its advisors provide no representations, assurances or warranties pertaining to the accuracy of the information.

3. Respondents are responsible for reviewing all portions of this RFP and any other information provided by the Port in relation to this RFP. Respondents are to notify the Port in writing of any ambiguity, discrepancy, omission or other error in this RFP promptly

after discovery, but in no event later than 15 business days before the deadline to submit proposals. Modifications and clarifications will be made by addenda as provided below.

### **B. Conditional Nature of Offering**

1. The issuance of this RFP does not constitute an agreement by the Port that the Port Commission will actually enter into any contract. The Port expressly reserves the right at any time to:

- Waive any technical defect or informality in any response, proposal or proposal procedure that does not affect or alter its substantive provisions;
- Reject any or all proposals;
- Suspend any and all aspects of the process indicated in this RFP;
- Amend this RFP;
- Terminate this RFP and issue a new request for proposals;
- Request some or all Respondents to revise submittals;
- Select a tenant by any other means;
- Offer new leasing opportunities in the area at any time;
- Extend deadlines for accepting proposals, or accept amendments to proposals after expiration of deadlines;
- Determine that no project will be pursued; or
- During negotiation, expand or contract the scope of the leasing opportunity, including adding or subtracting areas to or from the Site, or change the concept from that initially proposed in order to respond to new information, community or environmental issues, or opportunities to improve the financial return to the Port from the project or enhance public or maritime amenities.

2. Failure by the Port to object to an error, omission or deviation in any proposal will in no way modify this RFP or excuse Respondents from full compliance with the requirements of this RFP or the Lease.

3. The Port may modify, clarify and change this RFP by issuing one or more written addenda. Addenda will be posted on the Port's website, and notice of the posting will be sent by electronic mail to the address stated in the registration form of each registered Respondent. The Port will make reasonable efforts to notify interested parties in a timely manner of modifications to this RFP, but each Respondent assumes the risk of submitting its proposal on time and receiving all addenda and information issued by the Port. Therefore, the Port strongly encourages interested parties to check the Port's website page for this RFP frequently.

### **C. Respondent Selection Does Not Guarantee Project Approval**

1. The Port Commission's selection of a Respondent and authorization to commence exclusive negotiations may not be construed as an approval of the proposed uses.

2. The Port will not enter into any lease for the Site until environmental review is complete. If the project is found to cause significant adverse impacts, the Port retains absolute discretion to require additional environmental analysis, and to: (1) modify the project to mitigate significant adverse environmental impacts; (2) select feasible alternatives that avoid significant adverse impacts of the proposed project; (3) require the implementation of specific measures to mitigate the significant adverse environmental impacts of the project, as identified upon environmental evaluation in compliance with applicable environmental law; (4) reject the project as proposed if the economic and social benefits do not outweigh otherwise unavoidable significant adverse impacts of the project; or (5) approve the project upon a finding that the economic and social benefits of the project outweigh otherwise unavoidable significant adverse impacts.

3. In awarding this opportunity and finalizing any lease, the Port may modify, refine and otherwise clarify the permitted uses to reflect the selected proposal, provided that the changes do not change the overall substance of the proposal.

4. The selected Respondent will be responsible for obtaining all government approvals required for the development of the Site and paying all permit and processing fees related to the development. Approvals for the project are likely to be required from governmental agencies other than the Port. The selected Respondent will be responsible for all development exactions and fees that are required as conditions of approvals by governmental agencies. In issuing this RFP, the Port makes no representations or warranties about which government approvals will be required, or that the necessary governmental approvals to allow the development of the Site will be obtained.

5. The Port is issuing this RFP in its capacity as a landowner with a proprietary interest in the selected proposal and not as a regulatory agency of the City. The Port's status as an agency of the City will in no way limit the obligation of the selected Respondent to obtain approvals from City departments, boards or commissions with jurisdiction over the project.

#### **D. Objections**

##### **1. RFP Terms**

Should any interested party object on any ground to any provision or legal requirement set forth in this RFP, that party must provide written notice to the Port setting forth with specificity the grounds for the objection no more than 14 calendar days after the RFP is issued. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.

##### **2. Notice of Non-Responsiveness**

Should a Respondent object on any ground to a determination that its proposal is non-responsive to this RFP, that party must provide written notice to the Port setting forth with specificity the grounds for the objection no more than 7 calendar days after the date of the letter notifying the Respondent of the Port's determination of non-responsiveness. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.

##### **3. Selection of Respondent for Exclusive Negotiations**

Should any interested party object on any ground to the Port Commission's authorization to proceed with exclusive negotiations with a selected Respondent, that party must provide written notice to the Port setting forth with specificity the grounds for the objection no more than 7 calendar days after the date of the Port Commission hearing at which exclusive negotiations are authorized. If a respondent files a timely objection, the Commission's authorization to enter into exclusive negotiations with the selected Respondent will not be binding until the Commission denies the protest. A Commission decision to grant the protest will void its prior authorization. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.

#### 4. Delivery of Objections

Objections must be submitted in writing, addressed to the person identified on the cover sheet of this RFP and delivered to the Port receptionist during business days between the hours of 8:00 a.m. and 5:00 p.m. in the Port's main reception area in Pier 1 by the dates due in order to be considered. If an objection is mailed, the objector bears the risk of nondelivery by the deadlines specified above. Objections should be transmitted by a means that will provide written confirmation of the date the Port received the objections.

#### **E. Claims Against the Port**

No Respondent will obtain by its response to this RFP, and separately by its response waives, any claim against the Port by reason of any or all of the following: any aspect of this RFP, any part of the selection process, any informalities or defects in the selection process, the rejection of any or all proposals, the acceptance of any proposal, entering into exclusive negotiations, conditioning exclusive negotiations, terminating exclusive negotiations, approval or disapproval of plans or drawings, entering into any transaction documents, the failure to enter into a lease or lease disposition and development agreement, any statements, representations, acts, or omissions of the Port, the exercise of any discretion set forth in or concerning any of the above, and any other matters arising out of all or any of the above.

#### **F. Sunshine Ordinance**

All communications about this RFP are subject to the San Francisco Sunshine Ordinance. Neither the Port nor the City will be responsible under any circumstances for any damages or losses incurred by a Respondent or any other person or entity because of the Port's release of information in response to a public disclosure request. In accordance with Section 67.24(e)(1) of the San Francisco Administrative Code:

Contracts, contractors' bids, responses to requests for proposals and all other records of communications between [the Port] and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this ordinance requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information covered by this provision will be made available to the public upon request.

#### **G. Financial Obligations**

1. The Port accepts no financial responsibility for any costs incurred by a Respondent in responding to this RFP.
2. The Port will not pay a finder's or broker's fee in connection with this RFP. Respondents will be solely responsible for the payment of all fees to any real estate broker(s) with whom the Respondent has contracted.

#### **H. Proposals Become Port Property**

All proposals submitted will become the property of the Port and may be used by the Port in any way deemed appropriate.

#### **I. Nondiscrimination Policy**

The Port of San Francisco does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Wendy Proctor, ADA Coordinator, Port of San Francisco, Pier 1, San Francisco, CA 94111, has been designated to coordinate and carry out the Port's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (42 U.S.C. §§ 1201 et seq.) (the

"ADA"). Information concerning the provisions of, and the rights provided under, the ADA are available from the ADA Coordinator.

#### **J. Interpretation**

For the purposes of this RFP, the terms "include," "included" and "including" will be deemed to be followed by the words "without limitation" or "but not limited to," and, where required by the context, the singular includes the plural and vice versa, and the feminine gender includes the masculine and vice versa. Section and paragraph headings used in this RFP are for reference only and are not to be used to interpret the provisions of this RFP.