

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

RESOLUTION NO. 24-04

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and
- WHEREAS, On September 26, 2017, the Port Commission approved (1) Resolution No. 17-43 authorizing (i) the Executive Director to enter into (a) a Development Disposition Agreement (the “Original DDA”) between Port and FC Pier 70, LLC (“Developer”), an affiliate of Brookfield Properties, for a mixed-use development project on the 28-Acre Site (the “Project”) and (b) other Project-related documents, and (ii) Resolution No. 17-45 authorizing the creation of the Pier 70 Special Use District, including the 28-Acre Site, Parcel K North, Parcel K South and the Hoedown Yard; and
- WHEREAS, Port and Developer entered into the Original DDA, dated as of May 2, 2018, recorded in the Official Records on May 25, 2018, as Instrument No. 2018-K619435-00, which was amended by that certain First Amendment to Pier 70 DDA (Self-Warranty) dated July 7, 2022 and recorded in the Official Records as Document 2022-083565 (as amended, the “DDA”); and
- WHEREAS, Under the DDA, the Developer is required to construct public horizontal improvements serving the Project, including parks, streets, and utilities, which the Port or City, as applicable, will accept for ownership, maintenance and liability purposes; and
- WHEREAS, The Developer substantially commenced construction of horizontal improvements for Phase 1 of the Project in March of 2019 upon issuance of a Street Improvement Permit by the City. The horizontal scope of work under the Street Improvement Permit included the installation of utilities, including auxiliary water supply mains, low-pressure water mains, combined sewer mains, combined sewer storage, non-potable water mains, electricity and gas infrastructure, and surface improvements along 20th Street, Maryland Street, Louisiana Street, 21st Street, and 22nd Street; and
- WHEREAS, In November of 2022, Public Works granted a Notice of Completion to the Developer signaling the substantial completion of Phase 1 horizontal improvements constructed pursuant to the Street Improvement Permit; and
- WHEREAS, The DDA requires the Port’s Chief Harbor Engineer to make a determination that the horizontal improvements have been completed as designed within the timeframes specified in the Schedule of Performance (as defined in the DDA) (the “SOP Compliance Determination”); and

WHEREAS, The Developer's request for SOP Compliance Determination was submitted on July 1, 2023, and conditionally approved by the Acting Chief Harbor Engineer on January 3, 2024. The conditional SOP Compliance Determination establishes the Developer's compliance with the outside date set forth in the SOP for the completion of certain Phase 1 horizontal improvements and construction of those horizontal improvements in accordance with applicable project and regulatory requirements. It also signals certain of these improvements are ready for acceptance by the Port, and others by the City; and

WHEREAS, Acceptance of horizontal improvements is governed by (i) the Interagency Cooperation Agreement between the Port, San Francisco Public Works ("Public Works"), San Francisco Public Utilities Commission ("SFPUC"), and San Francisco Municipal Transportation Authority ("SFMTA") dated as of May 2, 2018, (ii) that certain jurisdiction and maintenance memorandum of understanding between the Port and other city departments that was approved by the Port Commission via Resolution No. 20-39 ("Interjurisdictional MOU"), (iii) the DDA, and (iv) the Public Improvement Agreement between Port, Public Works and Developer dated as of September 15, 2020; and

WHEREAS, Improvements built to City standards will be owned, maintained, and permitted by the City (Public Works, SFMTA, SFPUC, Department of Technology) whereas non-standard improvements will be owned by the Port ("Port Acceptance Items"). Port Acceptance Items include a one-block segment of Louisiana Street, the frame of former Building 15 that spans 22nd Street, special sidewalk pavers, bike racks, trash cans, bollards, and understory plantings. This framework is memorialized in the Interjurisdictional MOU; and

WHEREAS, Per the DDA, the Developer is responsible for maintenance of Port Acceptance Items until they are accepted by the Port Commission pursuant to Resolution No. 24-03; upon Port Commission acceptance, services special taxes from the Pier 70 Leased Property Community Facilities District ("CFD") and Pier 70 Condo CFD are identified as the funding source for the ongoing maintenance of these items; and

WHEREAS, The Pier 70 Leased Property CFD and Pier 70 Condo CFD were formed by the Board of Supervisors in 2020 by Resolution Nos. 011-20 and 009-20, respectively. However, due to delayed vertical development in Phase 1 of the Project, there are currently no developed properties subject to services special taxes. As a result, there will be a period when services special taxes are unavailable or insufficient to cover ongoing maintenance costs of the Port Acceptance Items; and

WHEREAS, Developer and Port are proposing to enter into a second amendment to the DDA (the “DDA Amendment”) to allow Developer to perform and fund the ongoing maintenance of the Phase 1 Port Acceptance Items until such time as services special taxes become sufficiently available. Developer’s payments will be considered Project costs earning an 18% return pursuant to the DDA but will only accrue a return until the earlier of: (1) one year after issuance of a temporary certificate of occupancy for the first new vertical project or (2) June 30, 2028, provided however this date will be December 31st 2028 if Port has entered into a Parcel Lease (as defined in the DDA) with a Vertical Developer Affiliate (as defined in the DDA) prior to June 30, 2025. Costs incurred after that date will be eligible for reimbursement but will not accrue a return; and

WHEREAS, The parties wish to enter into the DDA Amendment substantially in the form on file with the Commission Secretary and incorporated in this resolution by reference; and

WHEREAS, The DDA Amendment is consistent with the Pier 70 Mixed Use District Final Environmental Impact Report (“FEIR”) (2014-001272ENV) and does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR; now, therefore be it

RESOLVED, That the Commission approves the DDA Amendment to allow the Developer to maintain the Port Acceptance Items as a Project cost in the absence of services special taxes; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director of the Port, or her designee, to execute the DDA Amendment, upon Board of Supervisors’ approval, and recommends to the Board of Supervisors approval of the DDA Amendment; and, be it further

RESOLVED, That the Port Commission authorizes and urges all officers, employees, and agents of the Port and the City to take all steps that they deem necessary or appropriate, to the extent permitted by applicable law, in order to implement the DDA Amendment in accordance with this resolution, including preparation and attachment of exhibits, execution of subsequent documents, or to otherwise effectuate the purpose and intent of this resolution and the DDA Amendment as described in the staff memorandum accompanying this resolution; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director of the Port, or her designee, to enter into any amendments or modifications to the DDA Amendment that the Executive Director determines, in consultation with the City Attorney, are in the best interest of the Port, do not materially decrease the benefits to or materially increase the obligations or liabilities of the Port, and are in compliance with all applicable laws.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 23, 2024.

DocuSigned by:

Jenica Liu

Secretary

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