

1 [Disposition and Development Agreement - FC Pier 70, LLC - Pier 70 Project]

2
3 **Resolution approving a Disposition and Development Agreement between the Port and**
4 **FC Pier 70, LLC, for 28 acres of real property located in the southeast portion of the**
5 **larger area known as Seawall Lot 349 or Pier 70; adopting findings under the California**
6 **Environmental Quality Act; adopting findings of consistency with the General Plan, and**
7 **the eight priority policies of Planning Code, Section 101.1(b); and adopting public trust**
8 **consistency findings.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections
15 or parts of tables.

16 WHEREAS, California Statutes of 1968, Chapter 1333 ("Burton Act") and Charter,
17 Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through
18 the San Francisco Port Commission ("Port"), with the power and duty to use, conduct,
19 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction;
20 and

21 WHEREAS, The Port owns approximately 72 acres along San Francisco's Central
22 Waterfront, roughly bounded by Mariposa Street, Illinois Street, 22nd Street, and the San
23 Francisco Bay known as Pier 70; and

24 WHEREAS, Pier 70 includes an approximately 28-acre area known as the "28-Acre
25 Site," bounded generally by Illinois Street on the west, 22nd Street on the south, 20th Street
on the north and San Francisco Bay on the east; and

1 WHEREAS, From 2007 to 2010, the Port conducted a community process that
2 evaluated the unique site conditions and opportunities at Pier 70 and built a public consensus
3 for Pier 70's future that nested within the policies established for the Eastern Neighborhoods-
4 Central Waterfront; and

5 WHEREAS, This process culminated in the Pier 70 Preferred Master Plan, which was
6 endorsed by the Port Commission in May 2010, and the proposed mixed-use development of
7 Pier 70 (the "Pier 70 Mixed Use Development Project"); and

8 WHEREAS, In April 2011, by Resolution No. 11-21, the Port Commission awarded to
9 Forest City Development California, Inc. ("Forest City"), through a competitive process, the
10 opportunity to negotiate for the development of the 28-Acre Site as a mixed-use development
11 and historic preservation project (the "28-Acre Site Project"); and

12 WHEREAS, In May 2013, by Resolution No. 13-20, the Port Commission endorsed the
13 Term Sheet for the 28-Acre Site Project; and

14 WHEREAS, Subsequently, in June 2013, by Resolution No. 201-13, the Board of
15 Supervisors found the 28-Acre Site Project fiscally feasible under Administrative Code,
16 Chapter 29 and endorsed the Term Sheet for the 28-Acre Site Project; and

17 WHEREAS, Port staff and FC Pier 70, LLC, an affiliate of Forest City ("Developer"),
18 have negotiated the terms of the Disposition and Development Agreement ("DDA"), a copy of
19 which is in Board File No. 170986 and incorporated in this resolution by reference, and related
20 transaction documents that are incorporated into the DDA and provide the overall road map
21 for development of the 28-Acre Site Project, including a Financing Plan, an Infrastructure
22 Plan, an Affordable Housing Plan, a Transportation Plan that includes a Transportation
23 Demand Management Program, a Workforce Development Plan, an arts program for the use
24 of the arts building on Parcel E4 (including replacement studio space for the artist community
25 in the Noonan building), and forms of an interim Master Lease, Vertical Disposition and

1 Development Agreement and Parcel Lease (including applicable lease terms for Historic
2 Buildings 2, 12 and 21); and

3 WHEREAS, Developer has engaged in an extensive community outreach process that
4 has included more than 120 community meetings since 2011, including workshops, focus
5 groups, art events, formal and informal presentations, open houses and site tours; and

6 WHEREAS, Additionally, in 2014, 73% of voters supported Proposition F, the ballot
7 measure supporting reuse of the area and increasing the height limits for the 28-Acre Site
8 Project, conditional upon Port Commission approval of a development plan for the 28-Acre
9 Site Project; and

10 WHEREAS, Developer is an affiliate of Forest City and Forest City Development
11 Enterprises, Inc., a publicly-traded company with exceptional access to capital, and Port
12 financial staff have reviewed and confirmed the financial capacity of Developer's parent in
13 amounts sufficient to satisfy its obligation to fund its obligations under the DDA; and

14 WHEREAS, The parties wish to enter into the DDA substantially in the form in Board
15 File No. 170986; and

16 WHEREAS, Concurrently with this resolution, the Board of Supervisors has taken or
17 intends to take a number of other actions in furtherance of the 28-Acre Site Project, including:
18 (1) approving a trust exchange agreement between the City, acting through the Port
19 Commission, and the California State Lands Commission ("Exchange Agreement"); (2)
20 approving amendments to the Planning Code that create the Pier 70 Special Use District
21 ("Pier 70 SUD") over the 28-Acre Site and the adjacent Illinois Street Parcels and related
22 amendments to the zoning maps; (3) approving the Development Agreement between the
23 City and Developer; (4) approving the Design for Development, which provides more detailed
24 land use controls of the Pier 70 SUD; (5) approving a memorandum of understanding for
25 interagency cooperation among the Port and other City agencies with respect to approvals

1 related to the subdivision of the 28-Acre Site and construction of infrastructure and other
2 public facilities; (6) approving formation proceedings for sub-project areas to Project Area G of
3 City and County of San Francisco Infrastructure Financing District No. 2 and a memorandum
4 of understanding between the Port and the Assessor, the Treasurer-Tax Collector, and the
5 Controller regarding the assessment, collection, and allocation of ad valorem and special
6 taxes to the financing districts; and (7) approving the public offering and disposition of Parcel
7 K North that is adjacent to the 28-Acre Site; and

8 WHEREAS, Under the DDA and other transaction documents, at full build-out, the 28-
9 Acre Site Project will include: (1) 1,100 to 2,150 new residential units, including on-site
10 housing affordable to a range of low- to moderate-income households as described in the
11 Affordable Housing Plan; (2) between 1 million and 2 million gross square feet of new
12 commercial and office space; (3) rehabilitation of three significant contributing resources to
13 the Union Iron Works Historic District; (4) space for small-scale manufacturing, retail, and
14 neighborhood services; (5) transportation demand management on-site, a shuttle service, and
15 payment of impact fees to the Municipal Transportation Agency for improved transportation
16 connections through the neighborhood; (6) 9 acres of new open space, potentially including
17 active recreation on rooftops, a playground, a market square, a central commons, and
18 waterfront parks along the shoreline; (7) on-site strategies to protect against sea level rise;
19 and (8) replacement studio space for artists currently leasing space in the Noonan Building
20 and a new arts space; and

21 WHEREAS, The DDA governs: (1) Developer's obligations to complete horizontal
22 development of the 28-Acre Site Project, including entitlements, site preparation, subdivision
23 and construction work related to streets and sidewalks, public realm amenities (e.g., parks
24 and open space), public utilities and shoreline improvements (together, "Horizontal
25 Development"), all to create development parcels and support and protect buildings; and (2)

1 Developer's option to purchase or ground lease at fair market value the majority of
2 developable lots in the 28-Acre Site for vertical development, all in accordance with all of the
3 governing land use and entitlement documents, including the Development Agreement, Pier
4 70 SUD, and Design for Development; and

5 WHEREAS, The DDA also governs Developer's obligations to deliver various public
6 benefits, including: (1) the rehabilitation of Historic Buildings 2, 12, and 21 in accordance with
7 the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties; (2) a new
8 up to approximately 90,000-square-foot arts facility; (3) replacement space for current tenants
9 of the Noonan Arts Building, which may be incorporated in the arts facility; (4) at least 50,000
10 square feet of Production, Distribution and Repair space; (5) two on-site child care facilities or
11 in-lieu child-care fees; (6) 9 acres of new parks and open space; (7) on-site sea level rise
12 protections and funding for sea level rise improvements along the Port's Bay waterfront; and
13 (8) affordable housing as described below; and

14 WHEREAS, The DDA includes a Schedule of Performance that includes outside dates
15 for the completion of public infrastructure, including streets, utilities and parks, preparation of
16 affordable housing pads, and the development of Historic Buildings 12 and 21 and the Arts
17 Building; and

18 WHEREAS, The DDA provides the Port with remedies in the event that Developer
19 does not meet its obligations under the Schedule of Performance or other provisions of the
20 DDA, including specific performance and termination for material breach; and

21 WHEREAS, The DDA, which is premised on approval of the Pier 70 trust exchange
22 under the Exchange Agreement, (1) establishes processes to ensure that the Port receives
23 fair market value for the sale or lease of all option parcels as established by appraisal or
24 public offerings on the open market; (2) provides for three development parcels to be used for
25 100% affordable housing development through an agreement with the City that the Port will

1 lease the parcels at below-market rents and the City will apply impact fees payable by
2 developers of commercial parcels and market-rate housing to development of the affordable
3 housing sites; (3) provides for the use of nontrust revenue sources in the form of tax
4 increment and special tax revenues to the extent necessary to make the rehabilitation of three
5 historic buildings financially feasible; and (4) provides for the Port to be repaid, with interest,
6 from nontrust revenues for costs of constructing infrastructure and public facilities needed and
7 desired to support development at the 28-Acre Site; and

8 WHEREAS, The Financing Plan provides that (1) Developer is responsible for funding
9 all entitlement costs and the costs of constructing Horizontal Development to the extent other
10 28-Acre Site Project sources are not available, subject to reimbursement; (2) Developer's
11 costs will be repaid with an 18% market rate of return from a number of potential sources,
12 including the sale or lease of parcels at fair market value, community facilities district and
13 infrastructure financing district proceeds, and, at the Port's discretion, Port capital; and (3)
14 after Developer's costs are repaid, land revenues will be split 55% to the Port and 45% to
15 Developer; and

16 WHEREAS, The Affordable Housing Plan includes measures to ensure that at least
17 30% of all residential units produced at the 28-Acre Site and the adjacent Parcel K South are
18 affordable to low- and moderate-income households, with the following components: (1) 150
19 or more inclusionary rental units, representing 20% of all on-site rental units; and (2) 320 or
20 more permanently affordable units in three buildings to be developed by local nonprofits in the
21 28-Acre Site and Parcel K South; and

22 WHEREAS, The Port will enter into a memorandum of understanding with the Mayor's
23 Office of Housing and Community Development for developer selection, rent-free leases, and
24 development of the permanently affordable housing projects on the three sites; and

25

1 WHEREAS, The Infrastructure Plan includes the conceptual level planning elements of
2 all the infrastructure systems necessary to serve the Pier 70 SUD and describes Developer’s
3 obligation to complete streets and infrastructure to support development of the 28-Acre Site;
4 and

5 WHEREAS, The Port’s and City’s third-party developers will retain certain infrastructure
6 obligations related to the adjacent Illinois Street Parcels, including the 20th Street Plaza,
7 Michigan Street, and Irish Hill Park; and

8 WHEREAS, The Transportation Plan requires, among other things, that (1) vertical
9 developers pay a transportation fee that the Municipal Transportation Agency will use and
10 allocate for transportation improvements in the area; and (2) Developer, building owners, and
11 tenants implement a Transportation Demand Management Program designed to reduce 28-
12 Acre Site Project-related one-way vehicular auto trips by 20%; and

13 WHEREAS, The Workforce Development Plan requires Developer and its contractors
14 and subcontractors, vertical developers, and tenants to comply with applicable workforce
15 provisions, including a 30% local hiring commitment, local business enterprise utilization,
16 participation in the City’s “First Source” hiring programs, and up to \$1,000,000 in funding to
17 support expansion of CityBuild and TechSF training for District 10 residents; and

18 WHEREAS, The Master Lease is a form that sets forth the terms and conditions under
19 which the Port will lease most of the 28-Acre Site to Developer when it is ready to begin
20 constructing horizontal improvements, including parks, streets and utilities in accordance with
21 the DDA; and

22 WHEREAS, Individual development parcels will be removed from the Master Lease
23 upon completion of the horizontal improvements serving each parcel as they are leased or
24 sold to vertical developers, and streets and parks will be removed from the Master Lease
25 upon acceptance by acquiring City agencies; and

1 WHEREAS, The Vertical Disposition and Development Agreement is a form that sets
2 forth (1) the conditions to a vertical developer’s acquisition of the lease or fee interest in each
3 development parcel within the 28-Acre Site; and (2) applicable Port and City requirements for
4 constructing the applicable development project; and

5 WHEREAS, The Parcel Lease is a form that sets forth the terms and conditions under
6 which vertical developers will acquire rights to development parcels that are conveyed by
7 ground lease rather than deed, and will be modified, as described in the DDA, to address
8 circumstances unique to (1) the Arts Building expected to be built on Parcel E4 (including
9 restrictions to allow arts uses and on rent) and (2) Historic Buildings 2, 12, and 21 (including
10 Port review of construction plans and consistency with Secretary’s Standards); and

11 WHEREAS, On August 24, 2017, the Planning Commission (1) reviewed and
12 considered the Final Environmental Impact Report for the Pier 70 Mixed Use Project (“FEIR”)
13 (Case No. 2014-001272ENV); (2) found the FEIR to be adequate, accurate and objective,
14 thus reflecting the independent analysis and judgment of the Planning Department and the
15 Planning Commission; and (3) by Motion No. 19976, certified the FEIR as accurate, complete
16 and in compliance with the California Environmental Quality Act (“CEQA”), the CEQA
17 Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

18 WHEREAS, At the same hearing, the Planning Commission approved the Pier 70
19 Mixed Use Project and in so doing, adopted approval findings under CEQA by Motion No.
20 19977, including a Statement of Overriding Considerations (the “Pier 70 CEQA Findings”),
21 and adopted a Mitigation Monitoring and Reporting Program (“MMRP”), and

22 WHEREAS, A copy of the Planning Commission Motions, the Pier 70 CEQA Findings,
23 and the MMRP are in Board File No. 170930 and may be found in the records of the Planning
24 Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution
25 by reference as if fully set forth herein; and

1 WHEREAS, At the same hearing, the Planning Commission, by Resolution No. 19978,
2 adopted findings that the actions contemplated in this resolution are consistent, on balance,
3 with the City’s General Plan and the eight priority policies of Planning Code, Section 101.1(b)
4 (“Pier 70 General Plan Consistency Findings”); and

5 WHEREAS, A copy of the Pier 70 General Plan Consistency Findings are in Board File
6 No. 170864 and incorporated in this resolution by reference; and

7 WHEREAS, On September 26, 2017, by Resolution 17-43, the Port Commission
8 approved the DDA, finding that the 28-Acre Site Project would be consistent with and further
9 the purposes of the common law public trust and the statutory trust under the Burton Act
10 (“Public Trust Findings”); recommended to the Board of Supervisors approval of the DDA;
11 approved the DDA as the Development Plan under Section 4 of the Union Iron Works Historic
12 District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November
13 2014); and authorized the Executive Director of the Port, or her designee, to execute the
14 DDA, subject to Board of Supervisors’ approval of the DDA; and

15 WHEREAS, A copy of Port Commission Resolution 17-43 is in Board File No. 170986
16 and incorporated in this resolution by reference; and

17 WHEREAS, The Board of Supervisors has reviewed the FEIR, the MMRP and the
18 CEQA Findings, and finds that the approvals before the Board of Supervisors are within the
19 scope of the FEIR and that no substantial changes in the Pier 70 Mixed Use Project or the
20 circumstances surrounding the Pier 70 Mixed Use Project have occurred and no new
21 information that could not have been known previously showing new significant impacts or an
22 increase in severity in impacts has been discovered since the FEIR was certified; now,
23 therefore, be it

24 RESOLVED, That the Board of Supervisors adopts the Pier 70 General Plan
25 Consistency Findings as its own; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors adopts the Pier 70 CEQA
2 Findings as its own and adopts the MMRP and imposes its requirements as a condition to this
3 approval action; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors hereby approves the DDA,
5 adopts the Port Commission’s Public Trust Findings as its own, and approves the
6 development plan described in the DDA as a Development Plan under Section 4 of the Union
7 Iron Works District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F,
8 November 2014); and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port’s Executive
10 Director, or her designee, to execute the DDA in substantially the form in Board File No.
11 170986; and, be it

12 FURTHER RESOLVED, That to the extent that implementation of the DDA involves the
13 execution and delivery of additional agreements, notices, consents and other instruments or
14 documents by the Port subject to Board of Supervisors’ approval under Charter, Section
15 9.118, including, without limitation, instruments conveying or leasing development parcels to
16 vertical developers (such as the Master Lease, Parcel Leases and Vertical Disposition and
17 Development Agreements) (collectively, “Subsidiary Agreements”), the Port and the Executive
18 Director, as they may deem necessary or appropriate, in consultation with the City Attorney,
19 are hereby authorized to enter into all such Subsidiary Agreements so long as the
20 transactions governed by such Subsidiary Agreements are contemplated in, and comply with
21 the terms of, the DDA, and with respect to the Master Lease, Parcel Leases and Vertical
22 Disposition and Development Agreements, are substantially in the form of the Master Lease,
23 Parcel Lease and Vertical Disposition Agreement attached as Exhibits to the DDA in Board
24 File No. 170986; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes all officers,
2 employees, and agents of the Port and the City to take all steps that they deem necessary or
3 appropriate, to the extent permitted by applicable law, in order to implement the DDA in
4 accordance with this resolution, including preparation and attachment of exhibits, execution of
5 subsequent documents, or to otherwise effectuate the purpose and intent of this resolution
6 and the DDA; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
8 Director of the Port, or her designee, to enter into any amendments or modifications to the
9 DDA or any of the Subsidiary Agreements that the Executive Director determines, in
10 consultation with the City Attorney, are in the best interest of the Port, do not materially
11 decrease the benefits to or materially increase the obligations or liabilities of the Port, and are
12 in compliance with all applicable laws, such determination to be conclusively evidenced by the
13 execution and delivery by such person or persons of any such documents.

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