

File No. 240204

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date March 20, 2024

Board of Supervisors Meeting Date _____

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Completed by: Brent Jalipa Date March 14, 2024

Completed by: Brent Jalipa Date _____

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

2

3 **Resolution approving a second amendment to the Disposition and Development**
4 **Agreement between the Port and FC Pier 70, LLC for the Pier 70 28-Acre Site Project;**
5 **authorizing the Executive Director of the Port to enter amendments or modifications to**
6 **the second amendment that do not materially increase the obligations or liabilities to**
7 **the City and are necessary to effectuate the purposes of the Resolution; and adopting**
8 **findings under the California Environmental Quality Act.**

9

10 WHEREAS, California Statutes of 1968, Chapter 1333 (as amended, the “Burton Act”)
11 and Charter Sections 4.114 and B3.581 empower the City and County of San Francisco
12 acting through the San Francisco Port Commission (the “Port”) with the authority and duty to
13 use, conduct, operate, maintain, manage, regulate and control the lands within Port
14 jurisdiction; and

15 WHEREAS, The Port owns approximately 28 acres at Pier 70, bounded generally by
16 Michigan Street on the west, 22nd Street on the south, San Francisco Bay on the east, and
17 20th street on the north (the “28-Acre Site”); and

18 WHEREAS, FC Pier 70, LLC, a Delaware limited liability company (the “Developer”)
19 and the Port entered into that certain Disposition and Development Agreement (the “Original
20 DDA”), a copy of which is on file with the Clerk of the Board of Supervisors in File No. 170986
21 and incorporated herein by reference, that provides the overall roadmap for development of
22 the 28-Acre Site; and

23 WHEREAS, The Original DDA was amended by that certain First Amendment to Pier
24 70 DDA (Self-Warranty) dated July 7, 2022 (as amended, the “DDA”), a copy of which is on

25

1 file with the Clerk of the Board of Supervisors in File No. 240204 and incorporated herein by
2 reference; and

3 WHEREAS, The DDA contemplates the Port initially leasing the 28-Acre Site to the
4 Developer for construction of horizontal improvements to be accepted by the Port or City, as
5 applicable and, ultimately, leasing and selling parcels in the 28-Acre Site to vertical
6 developers for development of a mixed-used project (the “Project”) that will include, at full
7 build-out: 1) 1,100 to 2,150 new residential units, at least 30% of which will be on-site housing
8 affordable to a range of low- to moderate-income households; 2) 1 million to 1.75 million gross
9 square feet of new commercial and office space, including space for small-scale
10 manufacturing, retail, and neighborhood services; 3) up to 240,000 gross square feet of retail,
11 arts and light industrial uses; and 4) 6.5 acres of new open space; and

12 WHEREAS, The Developer commenced construction of horizontal improvements for
13 Phase 1 of the Project in March of 2019 upon issuance of Street Improvement Permit 19IE-
14 00245 (as modified by Instructional Bulletins #1 through #13, the “Street Improvement
15 Permit”) by the Department of Public Works (“Public Works”); and

16 WHEREAS, The improvements constructed pursuant to the Street Improvement Permit
17 (collectively, the “Phase 1 Public Infrastructure”) include improvements located within portions
18 of 20th, 21st, 22nd, Louisiana, and Maryland Streets and the traffic signal conduit located
19 within a portion of Illinois Street; and

20 WHEREAS, The Phase 1 Public Infrastructure also includes San Francisco Public
21 Utilities Commission infrastructure (including electrical power substructure; stormwater,
22 sewer, domestic water, recycled water, and auxiliary water systems; and streetlights) and
23 specific Municipal Transportation Agency improvements (including signage and striping)
24 outside of the proposed City public right-of-ways, on and in Louisiana Street between 20th
25 and 21st Street (collectively, the “City Improvements on Port Street”); and

1 WHEREAS, Public Works inspected the Phase 1 Public Infrastructure and, beginning
2 in March 2022, Public Works issued a series of conditional Notices of Completion to the
3 Developer finding the Phase 1 Public Infrastructure was complete in accordance with the
4 Street Improvement Permit and ready for its intended use; and

5 WHEREAS, In January 2024, the Port conditionally approved the Developer's request
6 for a SOP Compliance Determination (as defined in the DDA), which established the
7 Developer's compliance with the outside date set forth in the DDA for the completion of
8 certain Phase 1 horizontal improvements and construction of those horizontal improvements
9 in accordance with applicable project and regulatory requirements; and

10 WHEREAS, Generally, Phase 1 Public Infrastructure built to City standards will be
11 owned and maintained by the City ("City Acceptance Items") and include the City
12 Improvements on Port Street; and

13 WHEREAS, Phase 1 Public Infrastructure not built to City standards generally will be
14 owned and maintained by the Port (the "Port Acceptance Items") and include: the one-block
15 segment of Louisiana Street between 20th Street and 21st Street, the frame of former Building
16 15 that spans 22nd Street, custom street and sidewalk paving materials, bicycle racks, street
17 furniture, trash cans, bollards, sidewalk landscaping and irrigation, retaining walls and portions
18 of utility laterals serving Port-owned buildings; and

19 WHEREAS, Per the DDA, the Developer is responsible for maintenance of Port
20 Acceptance Items until they are accepted by the Port; upon Port Commission acceptance,
21 services special taxes from the Pier 70 Leased Properties Community Facilities District
22 ("CFD") and Pier 70 Condo CFD are identified as the funding source for the ongoing
23 maintenance of these items; and

24 WHEREAS, The Pier 70 Leased Properties CFD and Pier 70 Condo CFD were formed
25 by the Board of Supervisors in 2020 by Resolution Nos. 011-20 and 009-20, respectively; and

1 WHEREAS, Due to delayed vertical development in Phase 1 of the Project, there are
2 currently no developed properties subject to services special taxes; and, as a result, there will
3 be a period when services special taxes are unavailable or insufficient to cover ongoing
4 maintenance costs of the Port Acceptance Items; and

5 WHEREAS, The Port and Developer desire to enter into a second amendment to the
6 DDA (the "Second DDA Amendment", a copy of which is on file with the Clerk of the Board of
7 Supervisors in File No. 240204 and incorporated herein by reference) to allow Developer to
8 perform and fund the ongoing maintenance of the Phase 1 Port Acceptance Items as a cost to
9 be reimbursed from public financing sources until such time as services special taxes become
10 sufficiently available; and

11 WHEREAS, Developer's payments will be considered Project costs earning a return
12 pursuant to the DDA but will only accrue a return until the earlier of: 1) one year after issuance
13 of a temporary certificate of occupancy for the first new vertical project or 2) June 30, 2028;
14 provided however, this date will be December 31, 2028, if Port has entered into a Parcel
15 Lease (as defined in the DDA) with a Vertical Developer Affiliate (as defined in the DDA) prior
16 to June 30, 2025; and

17 WHEREAS, Costs incurred after the date specified above will be eligible for
18 reimbursement but will not accrue a return; and

19 WHEREAS, The Second DDA Amendment is in the best interest of the Port and the
20 Project because: 1) the Port does not have to appropriate and expend Harbor Funds; 2) the
21 timeframe within which Developer will be entitled to a return on the maintenance costs is
22 limited; 3) a source of maintenance funding for the Port Acceptance Items is ensured; and 4)
23 the acceptance of Port Acceptance Items and City Acceptance Items can move forward,
24 which will make the improvements available to serve the Project, existing Port tenants and the
25 general public; and

1 WHEREAS, On January 23, 2024, by Resolution No. 24-04, the Port Commission
2 concluded that the Second DDA Amendment is in the best interest of the Port and approved
3 the Second DDA Amendment, and a copy of said Resolution is on file with the Clerk of the
4 Board in File No. 240204 and incorporated herein by reference; and

5 WHEREAS, On January 23, 2024, by Resolution No. 24-03, the Port Commission
6 approved the acceptance of the Port Acceptance Items subject to several conditions,
7 including entry into the Second DDA Amendment, and a copy of said Resolution is on file with
8 the Clerk of the Board in File No. 240204 and incorporated herein by reference; and

9 WHEREAS, The Board of Supervisors is considering acceptance of the City
10 Acceptance Items pursuant to an ordinance on file with the Clerk of the Board in File
11 No. 240087 and incorporated herein by reference; and

12 WHEREAS, In a letter dated January 25, 2024, the Planning Department determined
13 that the actions contemplated in this resolution comply with the California Environmental
14 Quality Act (California Public Resources Code Sections 21000 et seq.) and do not trigger the
15 need for subsequent environmental review (the “CEQA Determination”), and said
16 Determination is on file with the Clerk of the Board of Supervisors in File No. 240087 and is
17 incorporated herein by reference; now, therefore be it

18 RESOLVED, That the Board of Supervisors affirms the CEQA Determination; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors approves the Second DDA
20 Amendment; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port’s Executive
22 Director, or her designee, to execute the Second DDA Amendment in substantially the form
23 on file with the Clerk of the Board of Supervisors in File No. 240204; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors authorizes all officers,
25 employees, and agents of the Port and the City to take all steps that they deem necessary or

1 appropriate, to the extent permitted by applicable law, in order to implement the Second DDA
2 Amendment in accordance with this resolution, including preparation and attachment of
3 exhibits, execution of subsequent documents, or to otherwise effectuate the purpose and
4 intent of this resolution and the Second DDA Amendment; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
6 Director of the Port, or her designee, to enter into any amendments or modifications to the
7 Second DDA Amendment that the Executive Director determines, in consultation with the City
8 Attorney, are in the best interest of the Port, do not materially decrease the benefits to or
9 materially increase the obligations or liabilities of the Port, and are in compliance with all
10 applicable laws; and, be it

11 FURTHER RESOLVED, That within thirty (30) days of entering the Second DDA
12 Amendment, the Port shall provide copies of said document to the Clerk of the Board for
13 inclusion into the official file.

14
15 RECOMMENDED BY:

16
17 _____
18 */s/*
Elaine Forbes, Port Executive Director

Recording Requested by:

Port of San Francisco

When Recorded Mail to:

FC Pier 70, LLC
Brookfield Properties
685 Market Street, Suite 500
San Francisco, CA 94105
Attn: Tim Bacon

Exempt from recording fees under Government Code §27383

Assessor Parcel Number (APN): 4111-009; 4052-008; 4112-001; 4112-002; 4112-003; 4113-002; 4113-003; 4114-005; 4114-007; 4052-009; 4116-008; 4052-010; 4052-011; 4116-009; 4115-003; 4117-002; 4117-003; 4052-012; 4115-004; 3941-042; 4052-002; 4052-003; 4052-004; 4111-005; 4114-001; 4111-006; 4113-001; 4111-007; 4114-002; 4114-003; 4114-004; 4052-005; 4052-006; 4052-007; 4116-001; 4116-002; 4116-003; 4116-004; 4116-005; 4116-006; 4115-001; 4115-002; 4117-001; 4116-007

[Pier 70, Port of San Francisco]

SECOND AMENDMENT TO PIER 70 DDA
(Phase 1 FC Project Area Maintained Facilities; Self-Warranty; Schedule of Performance;
Fronting Property Owners)

This document is exempt from the \$75 Building Homes and Jobs Act Fee (per Government Code §27388.1(a)(2)(D)) because the document is a real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state.

SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

(Phase 1 FC Project Area Maintained Facilities; Self Warranty; Schedule of Performance)

This SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Second Amendment**”) is entered into between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the “**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”), and **FC PIER 70, LLC**, a Delaware limited liability company (“**Developer**”) (collectively, the “**Parties**”), as of _____, 2024.

RECITALS

A. Port and Developer entered into that certain Disposition and Development Agreement, dated as of May 2, 2018, recorded in the Official Records on May 25, 2018, as Instrument No. 2018-K619435-00, as amended by that certain First Amendment to Pier 70 DDA dated July 7, 2022 (Self-Warranty) and recorded in the Official Records as Document 2022-083565 (the “**First Amendment (Self-Warranty)**”), that certain First Memorandum of Technical Corrections, recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531-00 and that Second Memorandum of Technical Corrections, recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134-00, and as modified by that certain Technical Amendment #1 to DDA Exhibit B3 (Affordable Housing Plan) dated November 7, 2018 and that certain First Addendum to DDA Exhibit C1 (Financing Plan) dated February 8, 2019, (as the same may hereafter be amended, supplemented, modified and/or assigned from time to time, the “**DDA**”). As of the date of this Second Amendment, the DDA is recorded against the 28-Acre Site more particularly described in *Exhibit A* attached hereto. All capitalized terms not defined in this Second Amendment shall have the meaning ascribed to them in the DDA.

B. Section 4.6(d)(i) of the Financing Plan for the 28-Acre Site Project, attached as DDA Exhibit C1, recites that Port informed Developer that it would not enter into the DDA or Financing Plan without ensuring an ongoing funding source for Ongoing Maintenance Costs. In furtherance thereof, the Financing Plan establishes the Parties’ agreement on the use of Services Special Taxes to pay for Ongoing Maintenance Costs of the FC Project Area Maintained Facilities, which include Public ROWs in the FC Project Area.

C. On November 23, 2022, the City’s Public Works Department issued a Notice of Completion for the Phase 1 Required Infrastructure that is identified in the Phase 1 PIA. The Phase 1 Required Infrastructure included certain Public ROWs located within the portions of the FC Project Area shown on the Plat Map of Property attached hereto as *Exhibit B* (the “**Phase 1 Public ROWs**”), which will be attached to the DDA as *Exhibit B14*. Developer irrevocably offered the Phase 1 Public ROWs to the City and/or the Port through that certain Amended and Restated Offer of Improvements recorded in the Official Records on January 25, 2024, as Document No. 2024009693 (the “**Amended and Restated Offer of Improvements**”).

D. The Phase 1 Public ROWs consist of (i) certain public right-of-way improvements that the City will accept for maintenance and liability purposes (subject to Public Works Code Section 706) that are more particularly described in the Amended and Restated Offer of Improvements, but expressly excluding Lot B as shown on Final Map No. 9585 recorded in the Official Records on October 23, 2020 as Document #2020035295 (the “**Phase 1 Final Map**”) (such improvements excluding Lot B, collectively, the “**Phase 1 City-Owned ROWs**”); (ii) certain public utility improvements the City will accept for maintenance and liability purposes lying within Lot B (portion of Louisiana Street) as shown on the Phase 1 Final Map; (iii) the public right-of-way improvements that the Port will accept for maintenance and liability purposes lying within Lot B (portion of Louisiana Street) as shown on the Phase 1 Final Map (such improvements, a “**Port-Only Street**” per the Acceptance MOA); and (iv) certain non-standard right-of-way and sidewalk improvements and elements that the Port will accept for maintenance and liability purposes, all as identified in the Acceptance MOA. Items (i) and (ii) in the preceding sentence are referred to herein collectively as the “**Phase 1 City-Owned ROW Facilities**”). Items (iii) and (iv) in the preceding sentence, and the standard sidewalk elements of the Phase 1 City-Owned ROWs that are subject to the fronting property owner maintenance and liability obligations of Public Works Code Section 706, are referred to herein collectively as the “**Phase 1 Non-City ROW Facilities**”. The Parties anticipate that the Port and City will enter into the Acceptance MOA at or around the same time as City and Port Acceptance (as defined in the Phase 1 PIA) of the Phase 1 Public ROWs.

E. The Phase 1 Non-City ROW Facilities are a component of the Phase 1 Public ROWs, which are Phase Improvements. Per Section 15.10(a) of the DDA, Developer is required to maintain Phase Improvements that will be under Port jurisdiction until Port Acceptance. After Port Acceptance, Section 15.10(c) of the DDA and Sections 1.3(a)(vii), 1.3(b)(v), and 4.6(a) of Financing Plan require that their Ongoing Maintenance Costs be paid by Services Special Taxes levied on Developed Property in the Pier 70 Leased Property CFD (per Financing Plan Section 1.3(a)(vii)) and Zone 2 of the Pier 70 Condo CFD (per Financing Plan Section 1.3(b)(v)). Under the Rate and Method of Apportionment of Special Tax for each of the Pier 70 Leased Property CFD and the Pier 70 Condo CFD, Services Special Taxes are levied only on Developed Property, which means that a Taxable Parcel will be levied Services Special Taxes beginning in the City Fiscal Year following the City Fiscal Year in which the first certificate of occupancy for the Vertical Improvements on the Taxable Parcel was issued.

F. Developer has completed the Phase 1 Public ROWs, including the Phase 1 Non-City ROW Facilities. However, because there is no Developed Property within the Pier 70 Leased Property CFD or Zone 2 of the Pier 70 Condo CFD currently subject to the Services Special Taxes as of the date of this Second Amendment, there will be a period of time where Services Special Taxes are unavailable or insufficient to cover the Ongoing Maintenance Costs for the Phase 1 Non-City ROW Facilities from and after Acceptance by the Port.

G. Although the DDA does not obligate Developer to cover the Ongoing Maintenance Costs of Public ROWs after Acceptance, the Developer agreed pursuant to Section 4.6(c)(i) of the Financing Plan to establish a supporting framework to replace or supplement the Services Special Taxes to assist in funding the Ongoing Maintenance Costs, if necessary.

H. The Parties anticipate that Services Special Taxes levied on future Developed Property will eventually cover these Ongoing Maintenance Costs, but until those funds are

available, Developer has agreed to fund the Ongoing Maintenance Costs for the Phase 1 Non-City ROW Facilities solely to the extent set forth herein, and further subject to the terms and conditions of this Second Amendment, including the treatment of Developer's costs as Horizontal Development Costs.

I. Port is entering into a Interdepartmental Master Encroachment Permit (the "IMEP") that sets forth the terms and conditions under which the Port's non-standard right-of-way and sidewalk improvements and elements may encroach within the Phase 1 City-Owned ROWs, including terms and conditions around Port's maintenance obligations. The Parties contemplate that Developer shall perform the Developer Phase 1 Maintenance Obligations (as defined herein) hereunder primarily pursuant to a provision of the IMEP that allows the Port to assign those maintenance obligations to Developer, and for the remaining Port-Only Street (as defined in the Acceptance MOA), under a license.

J. The Parties also desire to make adjustments to the agreements set forth in the First Amendment (Self-Warranty), on the further terms and conditions set forth herein.

J. The Parties also desire to make minor technical corrections to the Schedule of Performance, on the further terms and conditions set forth herein.

K. The Parties also desire to set forth their mutual understandings with respect to the maintenance of public sidewalks built to City standard and the treatment of Special Services Taxes in connection therewith.

L. The Parties are entering into this Second Amendment in accordance with the provisions of Section 1.4(a) of the DDA Appendix.

A G R E E M E N T

Now, therefore, for the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port and Developer hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.

2. **Effective Date.** This Second Amendment shall be effective upon the latest to occur of the following: (i) the effective date of a Port Commission resolution accepting any of the Phase 1 Non-City ROW Facilities; and (ii) the date that Port and Developer each duly execute and deliver this Second Amendment.

3. **Phase 1 FC Project Maintained Facilities Amendments.**

a. The following definitions are added to the Appendix:

"**Available Services Special Taxes**" is defined in DDA Section 15.10(d)(iii)(1).

"**Calendar Year**" is defined in DDA Section 15.10(d)(i)(3).

“**CY Quarter**” is defined in DDA Section 15.10(d)(iii)(2)(B).

“**Developer Phase 1 Maintenance Obligations**” is defined in DDA Section 15.10(d)(i)(2).

“**Developer Maintenance Cost Budget**” is defined in DDA Section 15.10(d)(ii)(1).

“**Developer’s Eligible ROW Maintenance Costs**” is defined in DDA Section 15.10(d)(iii)(1).

“**Fronting Property Owner**” means, with respect to any lot or portions of a lot immediately adjacent to any portion of the public right-of-way, any of the following: (i) any purchaser of a fee interest in a Development Parcel, (ii) any ground lessee of a Development Parcel under a ground lease with the Port having a term of at least 35 years, (iii) Port for parcels designated as open space on Final Transfer Map No. 9597, recorded on February 7, 2019 in Book HH of Survey Maps at Pages 89-98, inclusive in the Official Records of the City and County of San Francisco, or (iv) Port for any Development Parcels that have not been sold or ground leased for a term of at least 35 years.

“**IMEP**” is defined in DDA Section 15.10(d)(i)(2)(b)(ii).

“**Maintenance Return Termination Date**” is defined in DDA Section 15.10(d)(iv)(1).

“**Non-Taxable Parcel**” means an assessor’s parcel of real property or other real estate interest that is not a Taxable Parcel.

“**Phase 1 City-Owned ROWs**” means certain public right-of-way improvements that the City will accept for maintenance and liability purposes lying within Lot A and Lots C through F, as shown on the Phase 1 Final Map, and within a 14’ portion of future Maryland Street (Final Map 9597 Lot Z) immediately south of Lot F, subject to Public Works Code Section 706.

“**Phase 1 Final Map**” means Final Map No. 9585 recorded in the Official Records on October 23, 2020 as Document #2020035295.

“**Phase 1 Maintenance Term**” is defined in DDA Section 15.10(d)(i)(1).

“**Phase 1 Non-City ROW Facilities**” means (i) Standard Sidewalks within the Phase 1 City-Owned ROWs that will be accepted by the City, but for which the applicable Fronting Property Owner either retains responsibility for maintenance and liability under Public Works Code Section 706, or assigns responsibility to the Pier 70 Master Association; (ii) the Port-Only Street; and (iii) certain non-standard right-of-way and sidewalk improvements and elements that the Port will accept for maintenance and liability purposes, all as identified in the Acceptance MOA.

“**Phase 1 Non-City ROW Facilities Maintenance Standards**” is defined in DDA Section 15.10(d)(i)(2).

“**Phase 1 Port Maintenance Obligations**” is defined in DDA Section 15.10(d)(i)(3).

“**Phase 1 Public ROWs**” means certain Public ROWs included in the Phase 1 Required Infrastructure and located within the portions of the FC Project Area shown on the Plat Map of Property attached to the DDA as ***Exhibit B14***.

“**Pier 70 Master Association**” means the master property owner/lessee association formed in accordance with the Pier 70 Master Association Documents.

“**Pier 70 Master Association Documents**” means, collectively, the Pier 70 Declaration of Covenants and Restrictions and associated documents.

“**Port’s Eligible ROW Maintenance Costs**” is defined in DDA Section 15.10(d)(iii)(2)(A).

“**Port Maintenance Cost Budget**” is defined in Section 15.10(d)(ii)(3).

“**Port-Only Street**” is defined in the Acceptance MOA.

Port-Only Street Maintenance License is defined in DDA Section 15.10(d)(i)(2)(b)(i).

“**Port Performed Maintenance**” is defined in DDA Section 15.10(d)(iv).

“**Port’s Annual Statement**” is defined in DDA Section 15.10(d)(iii)(2)(B).

“**Port’s Quarterly Statement**” is defined in DDA Section 15.10(d)(iii)(2)(B).

“**Third-Party Maintenance**” is defined in DDA Section 15.10(d)(iv).

“**Standard Sidewalks**” is defined in DDA Section 15.10(d)(i)(2)(b)(iii).

b. Section 15.10 of the DDA is amended by adding the following Section 15.10(d) and (e) at the end of the section:

“(d) Phase 1 Non-City ROW Facilities Maintenance

(i) Maintenance Obligations of Accepted Phase 1 Non-City ROW Facilities.

(1) The “**Phase 1 Maintenance Term**” shall mean the period commencing upon the date that both of the following have occurred: (i) the City effectively accepts the Phase 1 City ROW Facilities (as evidenced by the effectiveness of the applicable Board of Supervisors acceptance Ordinance); and (ii) the Port Commission effectively accepts the Port-

Only Street and the non-standard right-of-way and sidewalk improvements and elements identified in the Acceptance MOA (as evidenced by the recordation of a Partial Release of Master Lease in accordance with Master Lease Section 1.1(b)); and ending upon the earliest to occur of: (i) the date that Services Special Taxes sufficient to fully cover the Ongoing Maintenance Costs of all Phase 1 Non-City ROW Facilities other than Standard Sidewalks fronting Taxable Parcels within Phase 1 are actually collected by the Pier 70 Leased Property CFD and Zone 2 of the Pier 70 Condo CFD and committed to those purposes; (ii) the two-year anniversary of the date that the Port issues an SOP Compliance Determination for Public ROWs within Phase 2; and (iii) the expiration or earlier termination of the DDA.

(2) Maintenance by Developer.

(a) Developer Phase 1 Maintenance Obligations. During the Phase 1 Maintenance Term, Developer shall be responsible for the maintenance of the Phase 1 Non-City ROW Facilities in good repair and condition (collectively, the “**Developer Phase 1 Maintenance Obligations**”) in accordance with the terms and conditions of the maintenance standards attached to the DDA as *Exhibit B15* (“**Phase 1 Non-City ROW Facilities Maintenance Standards**”).

(b) Instruments Governing Developer Performance.

(i) For sidewalks located within Port-Only Streets, Port and Developer will enter into a maintenance license governing Developer’s performance, substantially in the form attached to the DDA as *Exhibit B11*, which shall include the Phase 1 Non-City ROW Maintenance Standards as an exhibit (the “**Port-Only Street Maintenance License**”).

(ii) For all Phase 1 Non-City ROW Facilities other than Standard Sidewalks, Port shall assign its maintenance obligations under that certain Interdepartmental Master Encroachment Permit by and between Port and Public Works (the “**IMEP**”) to Developer for the Phase 1 Maintenance Term and Developer shall perform the Developer Phase 1 Maintenance Obligations for such areas pursuant thereto. Developer’s obligations thereunder shall terminate upon the expiration of the Phase 1 Maintenance Term unless the Parties have entered into new or replacement agreements with respect thereto.

(iii) For public sidewalk elements that are built to City-standard, are an official City-adopted sidewalk width and the maintenance of which would otherwise be the responsibility of the fronting property owner pursuant to Public Works Code Section 706 (“**Standard Sidewalks**”), Developer will assume maintenance obligations pursuant to a separate notice of assignment of the IMEP

pursuant to a Board of Supervisors ordinance whereunder Developer (or the Master Owners Association if it assumes the role of Maintenance Assignee under the IMEP (as defined in the IMEP) for some or all of the applicable Standard Sidewalks) will perform maintenance of the Standard Sidewalks within the Phase 1 Non-City ROW Facilities pursuant to Public Works Code 706 on behalf of all of the Fronting Property Owners within Phase 1, including the Port, for the Phase 1 Maintenance Term.

(iv) From and after the expiration of the Phase 1 Maintenance Term, Developer shall have no obligation under this Agreement, the IMEP or otherwise to maintain the Standard Sidewalks on behalf of any fronting property owner of a Non-Taxable Parcel, except to the extent explicitly set forth in one or more subsequent agreements between the owner of the Non-Taxable Parcel and the Developer. Such agreement may take the form of the Non-Taxable Parcel fronting property owner opting into the Master Owners Association for such limited purposes. In the absence of such agreement, Developer's responsibility to maintain the Standard Sidewalks fronting Non-Taxable Parcels shall terminate with the expiration of the Phase 1 Maintenance Term. Port shall reasonably cooperate with Developer with respect to the execution and implementation of the IMEP, including providing written documentation to Public Works evidencing the termination of Developer's obligations hereunder upon the expiration of the Phase 1 Maintenance Term and/or such replacement or substitute agreements as may have been approved by the Parties.

- (3) Maintenance by Port. Notwithstanding Section 15.10(d)(i)(2), the Parties acknowledge that the Port reserves the right to perform ongoing maintenance of the Phase 1 Non-City ROW Facilities during the Phase 1 Maintenance Term through its employees or contractors or by a third-party entity (such as a non-profit public benefit corporation) contracting with the Port through a lease, management contract, license or other instrument approved by the Port (collectively, the "**Phase 1 Port Maintenance Obligations**") either (x) in Port's sole discretion subject to the limitations set forth herein or (y) in the event Developer fails to maintain in accordance with the Phase 1 Non-City ROW Facilities Maintenance Standards.

In the event Port elects to perform the Phase 1 Port Maintenance Obligations pursuant to (x) above, Port shall provide Developer with written notice on or before September 1 of any calendar year (January 1-December 31 referred to herein as a "**Calendar Year**") during the Phase 1 Maintenance Term, accompanied by the Port's projected Port Maintenance Cost Budget, and Developer shall be relieved of the Developer Phase 1 Maintenance Obligations commencing on January

1 of the applicable year in which Port has provided notice of its election. Notwithstanding the foregoing, if the Port timely delivers its election to undertake the Phase 1 Port Maintenance Obligations, but the final Port Maintenance Cost Budget for the upcoming calendar year prepared in accordance with Section 15.10(d)(ii)(3) would exceed 10% of the actual costs incurred by Developer to perform the Phase 1 Developer Maintenance Obligations for the immediately preceding calendar year, Port's election shall be null and void, and Developer shall continue to perform the Phase 1 Developer Maintenance Obligations for the upcoming Calendar Year.

If Developer fails to meet the Phase 1 Non-City ROW Facilities Maintenance Standards, such failure shall be subject to the notice and cure provisions applicable to "Other Obligations" set forth in Section 11.2(c) of the DDA (provided that the cure period shall be 60 days or if the default cannot be cured within 60 days, Developer shall take steps to cure the default within the cure period and diligently complete the cure within a reasonable time). If the failure remains uncured after the expiration of the applicable cure period, Port may elect to perform the Phase 1 Port Maintenance Obligations pursuant to (y) above.

(ii) Phase 1 Maintenance Cost Budgets.

- (1) During the Phase 1 Maintenance Term, Developer shall prepare an annual maintenance cost budget that sets forth Developer's anticipated costs associated with its performance of the Phase 1 Developer Maintenance Obligations (the "**Developer Maintenance Cost Budget**"). The Parties have mutually approved a Developer Maintenance Cost Budget for the remainder of 2024 which is included as part of **DDA Exhibit B15** (Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget).
- (2) As long as Developer has not been relieved of the Developer Phase 1 Maintenance Obligations pursuant to **Section 15.10(d)(i)(3)**, Developer shall provide Port with a draft Developer Maintenance Cost Budget for the upcoming Calendar Year starting with the date that is at least ninety (90) days prior to the start of Calendar Year 2025 and each Calendar Year thereafter during the Phase 1 Maintenance Term. Developer will coordinate closely with the Port and its own contractors to prepare the draft Developer Maintenance Cost Budget, based on the prior Calendar Year's scope and cost and anticipated changes for the forthcoming Calendar Year. Port shall review and comment on the proposed Developer Maintenance Cost Budget within fifteen (15) business days of receipt with respect to the reasonableness of the costs and scope. Developer shall use good faith efforts to reflect any Port comments received within such fifteen (15) business day period in the final Developer Maintenance Cost Budget for the applicable Calendar

Year, which may include, as appropriate, a reduction in the Phase 1 Non-City ROW Facilities Maintenance Standards if the Port objects. Developer shall report to Port if it reasonably anticipates actual Eligible ROW Maintenance Costs will exceed the Developer Maintenance Cost Budget by more than five percent (5%) in any given Calendar Year and the Parties shall work together cooperatively to identify potential cost savings (such as modifications to the Phase 1 Non-City ROW Facilities Maintenance Standards).

- (3) If Port has elected to perform the Phase 1 Port Maintenance Obligations by providing a written notice thereof in accordance with Section 15.10(d)(i)(3), then concurrently with its election notice, Port shall provide Developer with a draft budget that sets forth Port's anticipated costs associated with its performance of the Phase 1 Port Maintenance Obligations (the "**Port Maintenance Cost Budget**") for the upcoming Calendar Year. Port shall also submit to Developer a draft of the Port Maintenance Cost Budget on or before September 1 of each subsequent Calendar Year during the Phase 1 Maintenance Term in which Port has elected to perform the Phase 1 Port Maintenance Obligations. Port will coordinate closely with the Developer to prepare the draft Port Maintenance Cost Budget, based on the prior Calendar Year's scope and cost and anticipated changes for the forthcoming Calendar Year. Developer shall review and comment on the proposed Port Maintenance Cost Budget within fifteen (15) business days of receipt with respect to the reasonableness of the costs and scope, and Port shall use good faith efforts to reflect Developer's comments in the final Port Maintenance Cost Budget for the applicable Calendar Year.

If, during the course of any Calendar Year in which Port performs the Phase 1 Port Maintenance Obligations, the Port reasonably determines that its actual Port's costs to maintain the Phase 1 Non-City ROW Facilities for that Calendar Year will exceed the Port Maintenance Cost Budget, Port shall seek Developer's consent to amend the Port Maintenance Cost Budget to reflect the revised anticipated cost of maintenance for such Calendar Year, which consent shall not be unreasonably withheld, conditioned, or delayed. Port shall be bound by the Port Maintenance Cost Budget, as it may be amended. Any Port costs to maintain the Phase 1 Non-City ROW Facilities that exceed the Port Maintenance Cost Budget, as it may be amended shall not be eligible for reimbursement.

(4) Port Third-Party Contracts.

- (a) Port may perform the Phase 1 Port Maintenance Obligations through a third-party contract, provided however, that any third-party contract that will be paid by funds provided by Developer shall require that Developer be made a party thereto on

terms reasonably acceptable to Developer; and further provided that if Port is unable to add Developer as a party after commercially reasonable efforts, the third-party contract shall provide Developer with appropriate remedies to recoup any losses for third-party claims (including insurance proceeds, if applicable) within the scope of the third-party contractor's indemnity or the Port and Developer shall have made other arrangements, in either case, subject to the reasonable approval of both Developer and Port. Port will include in any such contract funded by Developer the OFAC and Anti-Bribery provisions attached hereto as Schedule 15.10(d). Notwithstanding anything to the contrary herein, Developer shall have no obligation to pay funds for any third-party contractor that is found to be in violation of the OFAC and Anti-Bribery provisions set forth in Schedule 15.10(d).

Port shall also include in all such third-party contracts: (i) the requirement for the contractor to include, as additional insureds, the "Developer, and its Affiliates and each of their respective Agents and direct and indirect lenders and investors and all of their respective heirs, legal representatives, successors and assigns;" and (ii) a requirement to include within the definition of "Indemnified Parties" (or such comparable term defining the parties benefitted by contractors indemnity) the Developer, and its Affiliates and each of their respective Agents and direct and indirect lenders and investors and all of their respective heirs, legal representatives, successors and assigns.

(iii) Maintenance Costs of Accepted Phase 1 Non-City ROW Facilities.

(1) Developer's Eligible ROW Maintenance Costs. Notwithstanding *Section 15.10(c)* above, in accordance with Section 4.6(c)(i) of the Financing Plan, during the Phase 1 Maintenance Term, Developer shall pay for all Phase 1 Developer Maintenance Obligations (all such costs, the "**Developer's Eligible ROW Maintenance Costs**") except as may otherwise be provided by Section 15.10(d)(iv)(2) below with respect to Special Services Taxes actually collected.

(2) Port's Eligible ROW Maintenance Costs; Developer Reimbursement.

(A) Notwithstanding Section 15.10(d)(iii)(1), if the Port has elected to perform the Phase 1 Port Maintenance Obligations in accordance with Section 15.10(d)(i)(3), the Port shall first apply Available Services Special Taxes toward the Phase 1 Port Maintenance Obligations. If Available Services Special Taxes are unavailable or insufficient to cover the Ongoing Maintenance Costs for accepted Phase 1 Non-City ROW Facilities, Port shall pay the Ongoing Maintenance Costs associated with

the Phase 1 Port Maintenance Obligations to the extent that such Ongoing Maintenance Costs exceed Available Services Special Taxes (the “**Port’s Eligible ROW Maintenance Costs**”), subject to reimbursement by Developer in accordance with Section 15.10(d)(iii)(2)(B) below.

(B) No later than thirty (30) days after the expiration of each quarter during any Calendar Year in which Port is performing the Phase 1 Port Maintenance Obligations (each, a “**CY Quarter**”), Port shall provide Developer with a detailed statement and supporting materials evidencing Port’s payment of Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter (each, “**Port’s Quarterly Statement**”). The Port’s Quarterly Statement shall include, at a minimum, with respect to the applicable CY Quarter, (1) detailed City/Port staff timekeeping records and rates and third-party invoices actually paid by Port for the performance of the Phase 1 Port Maintenance Obligations; (2) the amount of all Available Services Special Taxes received in the applicable Calendar Year Quarter; (3) a comparison of the actual Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter and the Calendar Year to date to the Port Maintenance Cost Budget for the same corresponding periods; and (4) the amount, if any, by which Port’s Eligible ROW Maintenance Costs for the applicable Calendar Year would exceed the Port Maintenance Cost Budget for the applicable Calendar Year. Without limiting the foregoing, the Port’s Quarterly Statement for the fourth CY Quarter shall also set forth all of the information required for each of Port’s Quarterly Statements but for the full Calendar Year (as to each, “**Port’s Annual Statement**”). Subject to the limitations of Section 15.10(d)(ii)(3) (with respect to costs that exceed the Port Maintenance Cost Budget), Developer shall reimburse Port for the Port’s Eligible ROW Maintenance Costs that exceed Available Services Special Taxes for the applicable CY Quarter within thirty (30) days of receipt of the Port’s Quarterly Statement. If the Parties disagree on the amount of Port’s Eligible ROW Maintenance Costs for the applicable CY Quarter, Developer may withhold the disputed amounts and the Parties will engage in a dispute resolution procedure under Section 10.4 (Binding Arbitration). To the extent that the dispute resolution procedure results in a decision favorable to the Port, Developer shall pay the applicable amount previously withheld within thirty (30) days after the binding arbitration decision is issued. If the Port’s Annual Statement shows an underpayment by Developer for the applicable Calendar Year, Developer shall pay Port the shortfall within thirty (30) days after written demand from Port. If the Port’s Annual Statement shows that Developer has overpaid the Port’s actual costs for the applicable Fiscal Year, Port shall credit the amount of such overpayment toward the subsequent years’ Port Maintenance Cost Budget, or, if Port elects not to perform the Port Maintenance Obligations for the following Calendar Year, Port shall refund Developer with the amount of such overpayment within thirty (30) days after the date of the applicable annual report. Notwithstanding the

foregoing, in no event shall Developer have any obligation to pay the Port for any costs incurred by Port to perform the Port Maintenance Obligations that exceed the Port Maintenance Cost Budget, as it may be amended with Developer consent, and any such amounts previously paid by Developer shall be deemed an overpayment by Developer and treated the same as any other overpayment hereunder.

(iv) Accounting and Developer Return.

(1) Any Developer's Eligible ROW Maintenance Costs incurred by Developer, or any Port's Eligible ROW Maintenance Costs paid by Developer to, or on behalf of Port, as applicable, shall be entered on the Developer Capital Schedule in the Phase and at the time in which such costs are incurred. Notwithstanding the foregoing or any other provision of the DDA or Financing Plan, Developer's Eligible ROW Maintenance Costs entered on the Developer Capital Schedule shall accrue a Developer Return until the date that is the earlier to occur of the following (herein, the "**Maintenance Return Termination Date**"): (i) December 31 of the City Fiscal Year following the fiscal year in which a Certificate of Occupancy is issued for the first Vertical Improvement to be developed on an Option Parcel; or (ii) June 30, 2028, provided however, the Maintenance Return Termination Date will be December 31st 2028 if Port has entered into a Parcel Lease with a Vertical Developer Affiliate prior to June 30, 2025. For purposes of clarity, all Developer's Eligible ROW Maintenance Costs and all Port's Eligible ROW Maintenance Costs paid by Developer shall be considered Soft Costs (and therefore Horizontal Development Costs) and shall be subject to repayment pursuant to the Financing Plan, whether such costs are incurred before or after the Maintenance Return Termination Date, and only the Developer Return associated with the Developer's Eligible ROW Maintenance Costs is limited by the Maintenance Return Termination Date. Developer Return associated with Developer's payment of Port's Eligible ROW Maintenance Costs pursuant to Port's election in Section 15.10(a)(i)(3)(x) shall not be limited by the Maintenance Return Termination Date.

(2) Any Services Special Taxes that are collected by the Pier 70 Leased Property CFD or Zone 2 of Pier 70 Condo CFD shall be applied in the following order:

First, during the Phase 1 Maintenance Term, to Ongoing Maintenance Costs of the Phase 1 Non-City ROW Facilities (and further provided that so long as Developer retains the obligation to perform the Phase 1 Developer Maintenance Obligations, the proceeds of any Services Special Taxes actually collected shall be paid directly to Developer as they are collected to fund Developer's Ongoing Maintenance Costs incurred in the applicable City Fiscal Year), and after the expiration of the Phase 1

Maintenance Term, to pay Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs for the applicable City Fiscal Year;

Second, any Special Services Taxes remaining at the end of the applicable City Fiscal Year shall be paid directly to Developer within thirty (30) days to reimburse Developer for the outstanding amount of Developer's Capital Schedule for Developer's Eligible ROW Maintenance Costs and Developer Return thereon (subject to the limitations of Section 15.10(d)(iv)), until the Developer's Capital Schedule for such amounts (including Developer Return) is reduced to \$0 (such amounts, the "**Phase 1 SST Developer Reimbursement Amount**");

Third, to reimburse Port for any of the Port's Eligible ROW Maintenance Costs not previously reimbursed by Developer pursuant to Section 15.10(d)(iii)(2)(B) or from Special Services Special Taxes (such amounts, the "**Phase 1 SST Port Reimbursement Amount**").

Without limiting the foregoing, in any City Fiscal Year in which Services Special Taxes are collected (whether or not such Services Special Taxes are collected during or after the Phase 1 Maintenance Term and subject to the limitations set forth in Section 15.10(e) below), Port shall levy the Services Special Taxes against each Taxable Parcel, up to the Maximum Services Special Tax (as defined in the RMA for each CFD) in an amount necessary to fully meet both (i) the Services Special Tax Requirement (as defined in the RMA for each CFD) for Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs, and (ii) the repayment to Developer and Port of the outstanding balance of the Phase 1 SST Developer Reimbursement Amount and the Phase 1 SST Port Reimbursement Amount until both are fully repaid.

(v) Insurance and Indemnity during Phase 1 Maintenance Term.

(1) Insurance. Developer shall maintain insurance as required pursuant to the notice of assignment to the IMEP and the Port-Only Street Maintenance License.

(2) Indemnification. Developer's indemnification obligations during the Phase 1 Maintenance Term shall be set forth in the notice of assignment to the IMEP and the Port-Only Street Maintenance License.

(vi) Incorporation of IMEP requirements into Master CC&Rs. The Master CC&Rs will include provisions required by the IMEP, as further described in DDA Exhibit D7 (Outline of Master Association Conditions, Covenants, and Restrictions), as amended and restated.

(e) Standard Sidewalk Maintenance; Vertical DDA Amendment. Unless Port explicitly takes on the responsibility, pursuant to a master major encroachment permit, to maintain standard sidewalks fronting or adjacent to a Taxable Parcel, the maintenance of which sidewalks would otherwise be the responsibility of the fronting property owner pursuant to Public Works Code Section 706 (and with respect to Port-owned streets, as Public Works Code Section 706 is applied to Port streets by and through Port Commission Resolution No. 07-55) (“**Standard Sidewalks**”), Port will have no responsibility for maintaining or funding the maintenance of Standard Sidewalks. As long as Port has not assumed the responsibility for maintaining or funding the maintenance of Standard Sidewalks as provided in the previous sentence, Port agrees that it will not include the Ongoing Maintenance Costs of the maintenance of Standard Sidewalks (the “**Standard Sidewalk Maintenance Costs**”) in the Services Special Tax Requirement (as defined in the RMA for each CFD) for each CFD in connection with the annual levy of Services Special Taxes (as defined in the RMA for each CFD). Nothing in the preceding sentence is intended to nor shall it be construed to limit the Port’s authority to levy the Services Special Taxes against each Taxable Parcel, up to the Maximum Services Special Tax (as defined in the RMA for each CFD), if required to fully fund the Services Special Tax Requirement as long as the Services Special Tax Requirement does not include the Standard Sidewalk Maintenance Costs during the time when the Port has not assumed the responsibility for maintaining or funding the maintenance of Standard Sidewalks.

Port’s agreement under this subsection 15.10(e) shall survive the expiration or earlier termination of the DDA Term. To that end, the Parties agree to amend Section 3.3 of DDA Exhibit D2 (Form of Vertical DDA) to add the following subsection 3.3(d):

3.3(d) The Agreement to Comply with CFD Matters recorded against title to the Property referenced in Section 3.3(b) hereof shall include a covenant by Port to ratably reduce the Services Special Taxes levied against the Property by the amount of the Ongoing Maintenance Costs (as defined in the DDA) for maintenance of the standard public sidewalk elements fronting the Property identified on **Schedule 3.3(d)** attached hereto (the “**Standard Sidewalk Maintenance Costs**”)¹, the maintenance of which would otherwise be the responsibility of Vertical Developer pursuant to Public Works Code Section 706 (as such responsibility may be assigned to and assumed by the Horizontal Master Owners’ Association pursuant to the a Master Major Encroachment Permit approved by the Board of Supervisors pursuant to Public Works Code Section 786) [**add for Port-owned sidewalks only**: and as implemented by and through that certain Port Commission Resolution No. 07-55]; provided, however that Port will be authorized to levy the Services Special Taxes against the Property up to the Maximum Services Special Tax (as defined in the RMA for each CFD), if required to fully meet the Services Special Tax Requirement (as defined

¹ Schedule 3.3(d) will show the PW 706 public sidewalks fronting the Property to be maintained by Vertical Developer (as that obligation may have been assigned to the Master Owners’ Association under the IMEP or by separate agreement).

in the RMA for each CFD) for (i) Ongoing Maintenance Costs other than the Standard Sidewalk Maintenance Costs, (ii) Phase 1 SST Developer Reimbursement Amount (as defined in the DDA) to the extent not otherwise reimbursed by Project Payment Sources other than Services Special Taxes, or (iii) Phase 1 SST Port Reimbursement Amount (as defined in the DDA) to the extent not otherwise reimbursed by Project Payment Sources other than Services Special Taxes.

c. Section 15.8(e)(ii) of the DDA is amended and restated as follows:

(ii) release Developer from future obligations for liability or repair of the accepted Port Acceptance Item or Deferred Infrastructure, as applicable, except to the extent provided under Section 15.8(d) (Sub-Surface Improvements Below Port Acceptance Items), Section 15.10(d) (Phase 1 Non-City ROW Facilities Maintenance), Section 9.3 (General Indemnity), Section 9.4 (Environmental Indemnity), and applicable warranties.

d. **DDA Exhibits.** The DDA is hereby amended to add (i) a new Exhibit B14 (DDA Exhibit B14 “Phase 1 Public ROWs”) in the form attached to this Second Amendment as Exhibit B, (ii) a new DDA Exhibit B15 (DDA Exhibit B15 “Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget”) in the form attached to this Second Amendment as Exhibit C, and (iii) an amended and restated Exhibit D7 (DDA Exhibit D7 “Master Association Conditions, Covenants, and Restrictions”) in the form attached this Second Amendment as Exhibit D.

4. **Self-Warranty Amendments**

a. Definitions in Appendix.

i. The definition of “**Horizontal Development Costs**” in the Appendix is hereby amended by adding the following as new item (viii):

(viii) the Hard Costs and Soft Costs to correct, repair or replace defects to the Phase 1 Required Infrastructure Flores Work during the Phase 1 Flores Self-Warranty Period to the extent:

(X) such costs are not covered by the Flores Warranty;
(Y) in the event such costs are associated with a latent defect claim, such costs will not be considered Horizontal Development Costs to the extent Developer recovers such costs from Flores or another responsible party; and
(Z) the item needing correction, repair or replacement in the Required Infrastructure was built in accordance with approved Improvement Plans.”

ii. The following definitions are added to the Appendix:

“**J. Flores Contract**” means that certain contract by and between Horizontal Developer and Flores, dated May 4, 2023, a copy of which is on file with the Port’s Chief Harbor Engineer.

“**Phase 1 20th Street Lateral Repairs**” means the replacement of an existing sewer lateral and installation of a new lateral with a manhole along the centerline of 20th Street between Illinois Street and Michigan Street, as described in Exhibit B to the J. Flores Contract.

“**Phase 1 Flores Self-Warranty Period**” means the period commencing upon September 18, 2024, being the expiration of the Flores Warranty, and expiring upon the expiration of the Phase 1 Warranty Period.

“**Flores**” means J. Flores Construction Company, Inc., the subcontractor for the Phase 1 20th Lateral Repairs.

“**Flores Warranty**” means the Guarantee and Warranty provided by Flores pursuant to an agreement with Horizontal Developer, with a start date of September 18, 2023.

b. Self-Warranty. Section 15.9 of the DDA (as amended by the First Amendment (Self Warranty)) is further amended by adding the following language at the end of the section.

“In addition, Developer shall warrant the Phase 1 20th Street Lateral Repairs for the Phase 1 Flores Self-Warranty Period. During the Phase 1 Flores Self-Warranty Period, Developer will promptly notify the Port regarding any warranty claims that arise under the Phase 1 PIA with respect to the Phase 1 20th Street Lateral Repairs and will conduct and coordinate any correction, repair, or replacement of any defects thereto discovered during the Phase 1 Flores Self-Warranty Period. For the Port’s information, the parties shall cooperate in tracking Horizontal Development Costs incurred by Developer in connection with its correction, repair or replacement of defects to the Phase 1 20th Street Lateral Repairs during the Phase 1 Flores Self-Warranty Period.”

5. Schedule of Performance Amendments. DDA Exhibit B2 (Schedule of Performance) is hereby amended as follows (additions underlined):

Phase Schedule of Performance for Option Parcels, including Early Ground Lease Parcels	
Option Parcel	Outside Date

Execute Vertical DDA for Early Lease Parcel in Phase 1 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 1
Execute Vertical DDA for Early Lease Parcel in Phase 2 (DDA § 2.2(f))	Two years after Commencement of Phase Improvements for Phase 2
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 1 (DDA § 2.2(g))	Three years after the SOP Compliance Determination for all Phase Improvements within Phase 1 <u>other than Public Spaces.</u>
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 2 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 2 <u>other than Public Spaces.</u>
Outside Date for Execution of a Vertical DDA for all Option Parcels in a Phase 3 (DDA § 2.2(g))	Three years after SOP Compliance Determination for all Phase Improvements within Phase 3 <u>other than Public Spaces.</u>

7. **Recording.** Port and Developer will execute, acknowledge and record this Second Amendment such that the recorded DDA reflects, as to those portions of the 28-Acre Site that remain subject to the DDA, the matters set forth in this Second Amendment; provided, however, the parties agree and acknowledge that failure to record this Second Amendment will have no effect on the validity or effectiveness of this Second Amendment.

8. **Entire Agreement.** This Second Amendment and the DDA contain all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Second Amendment are superseded in their entirety by this Second Amendment. No prior drafts of this Second Amendment or changes between those drafts and the executed version of this Second Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Second Amendment.

8. **Agreement Unmodified; Amendments.** Except as expressly set forth in this Second Amendment, the Agreement shall remain unmodified and in full force and effect, and is hereby affirmed and ratified. No amendment to the Agreement nor this Second Amendment or any part thereof shall be valid unless it is in writing and signed by all of the parties thereto. In the event of any inconsistency between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall govern and control in all respects. All references to the Agreement shall be deemed references to the Agreement as amended hereby.

9. **Severability.** If any provision of this Second Amendment or the application thereof to any person, entity or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Second Amendment, or the application of such provision to persons, entities or

circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Second Amendment shall be valid and be enforceable to the fullest extent permitted by law.

10. **Counterparts.** For convenience, the signatures of the parties to this Second Amendment may be executed and acknowledged on separate pages which, when attached to this Second Amendment, shall constitute as one complete Second Amendment. This Second Amendment may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Second Amendment.

11. **Relationship of the Parties.** Port is not, and none of the provisions in this Second Amendment shall be deemed to render Port, a partner in Developer's business, or joint venturer or member in any joint enterprise with Developer. Neither party shall act as the agent of the other party in any respect hereunder. This Second Amendment is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

12. **California Law; Venue.** This Second Amendment and the DDA are governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and the City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Lease shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Lease has been brought in an inconvenient forum.

13. **Successors; No Third Party Beneficiaries.** The terms, covenants, agreements and conditions set forth in this Second Amendment shall bind and inure to the benefit of Port and Developer and, except as otherwise provided herein, their personal representatives and successors and assigns. This Second Amendment is made for the purpose of setting forth certain rights and obligations of Developer and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

Exhibit A: Legal Description for DDA

Exhibit B: DDA Exhibit B14, Phase 1 Public ROWs

Exhibit C: DDA Exhibit B15, Phase 1 Non-City ROW Facilities Maintenance Standards with Calendar Year 2024 Cost Budget

Exhibit D: DDA Exhibit D7, Master Association Conditions, Covenants, and Restrictions

[Signature Page Follows]

The parties enter into this Second Amendment as of the date first set forth above.

DEVELOPER:

FC PIER 70, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

PORT:

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation. operating by and through the **SAN
FRANCISCO PORT COMMISSION**

By: _____

Elaine Forbes, Executive Director

Approved as to Form: DAVID CHIU, City Attorney

By: _____

A. Mathai-Jackson, Deputy City Attorney

CERTIFICATE OF ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____ personally
(insert name and title of the officer)

appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

EXHIBIT A

LEGAL DESCRIPTION FOR DDA

All that certain real property situated in the City and County of San Francisco, State of California identified on Final Transfer Map No. 9597, recorded on February 7, 2019 in Book HH of Survey Maps at Pages 89-98, inclusive in the Official Records of the City and County of San Francisco as Lots 2-3 inclusive; Lots 5-10 inclusive; Lots 12-22 inclusive; Lots B through G, inclusive; Lot I; and Lots K through BB inclusive.

APNs: 4111-009; 4052-008; 4112-001; 4112-002; 4112-003; 4113-002; 4113-003; 4114-005; 4114-007; 4052-009; 4116-008; 4052-010; 4052-011; 4116-009; 4115-003; 4117-002; 4117-003; 4052-012; 4115-004; 3941-042; 4052-002; 4052-003; 4052-004; 4111-005; 4114-001; 4111-006; 4113-001; 4111-007; 4114-002; 4114-003; 4114-004; 4052-005; 4052-006; 4052-007; 4116-001; 4116-002; 4116-003; 4116-004; 4116-005; 4116-006; 4115-001; 4115-002; 4117-001; 4116-007.

EXCEPTING THEREFROM, ALL SUBSURFACE MINERAL DEPOSITS, INCLUDING OIL AND GAS DEPOSITS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS ON SAID LAND FOR EXPLORATION, DRILLING AND EXTRACTION OF SUCH. MINERAL, OIL AND GAS DEPOSITS, AS EXCEPTED AND RESERVED BY THE STATE OF CALIFORNIA IN THAT CERTAIN ACT OF THE LEGISLATURE (THE "BURTON ACT") SET FORTH IN CHAPTER 1333 OF THE STATUTES OF 1968 AND AMENDMENTS THERETO, AND UPON TERMS AND PROVISIONS SET FORTH THEREIN.

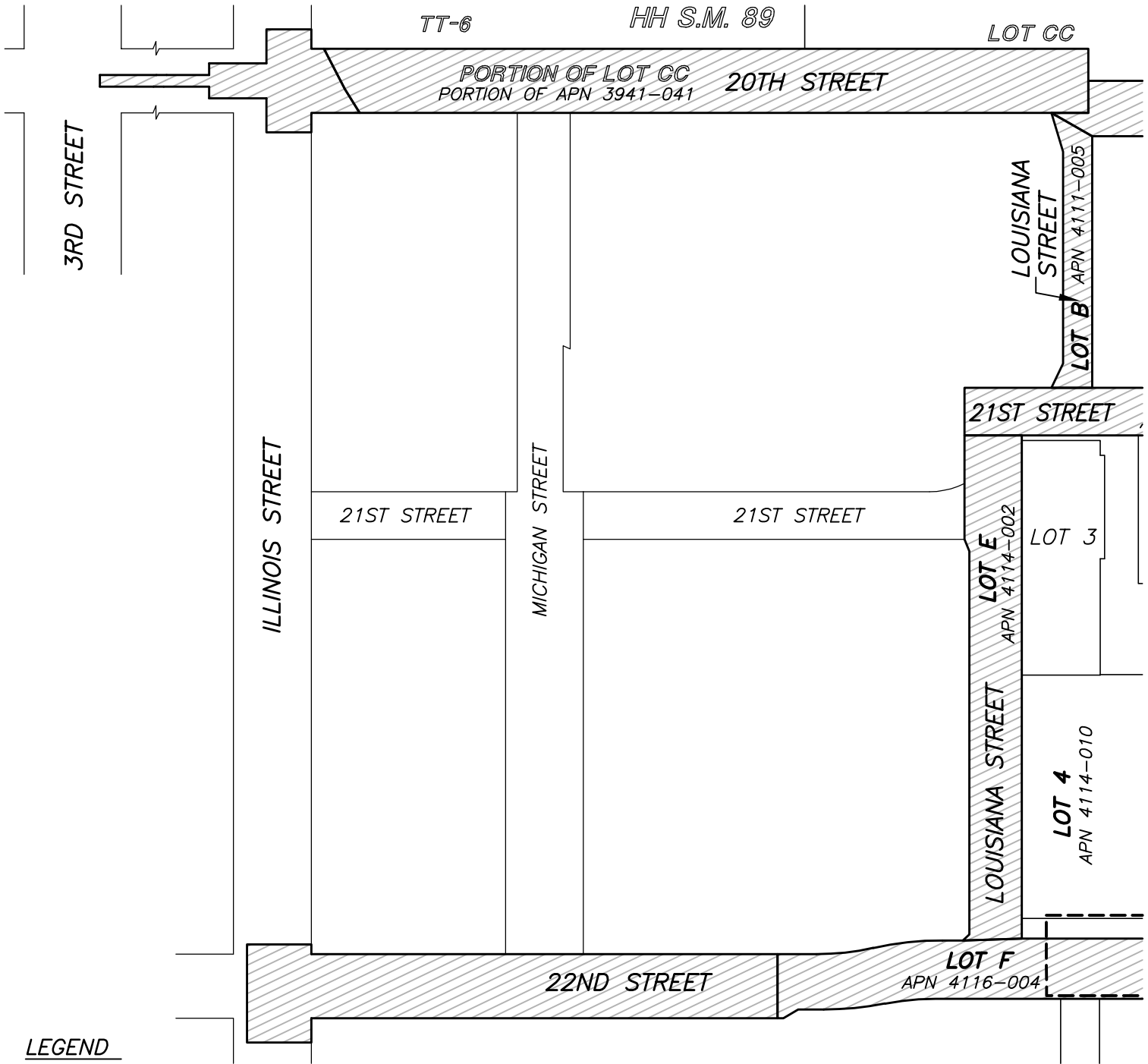
EXHIBIT B

DDA EXHIBIT B14

PHASE 1 PUBLIC ROWS


[attached]

PHASE 1 PUBLIC ROWS



SEE PAGE 2

LEGEND

 Phase I Public ROWs

LOT CC LOTS PER FINAL TRANSFER MAP 9597 RECORDED FEBRUARY 7, 2019 IN BOOK HH OF SURVEY MAPS, AT PAGES 89-98, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

LOT A LOTS PER FINAL MAP 9585, RECORDED OCTOBER 23, 2020 IN BOOK 1 OF FINAL MAPS, PAGES 94-103, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.



OFFER OF IMPROVEMENTS

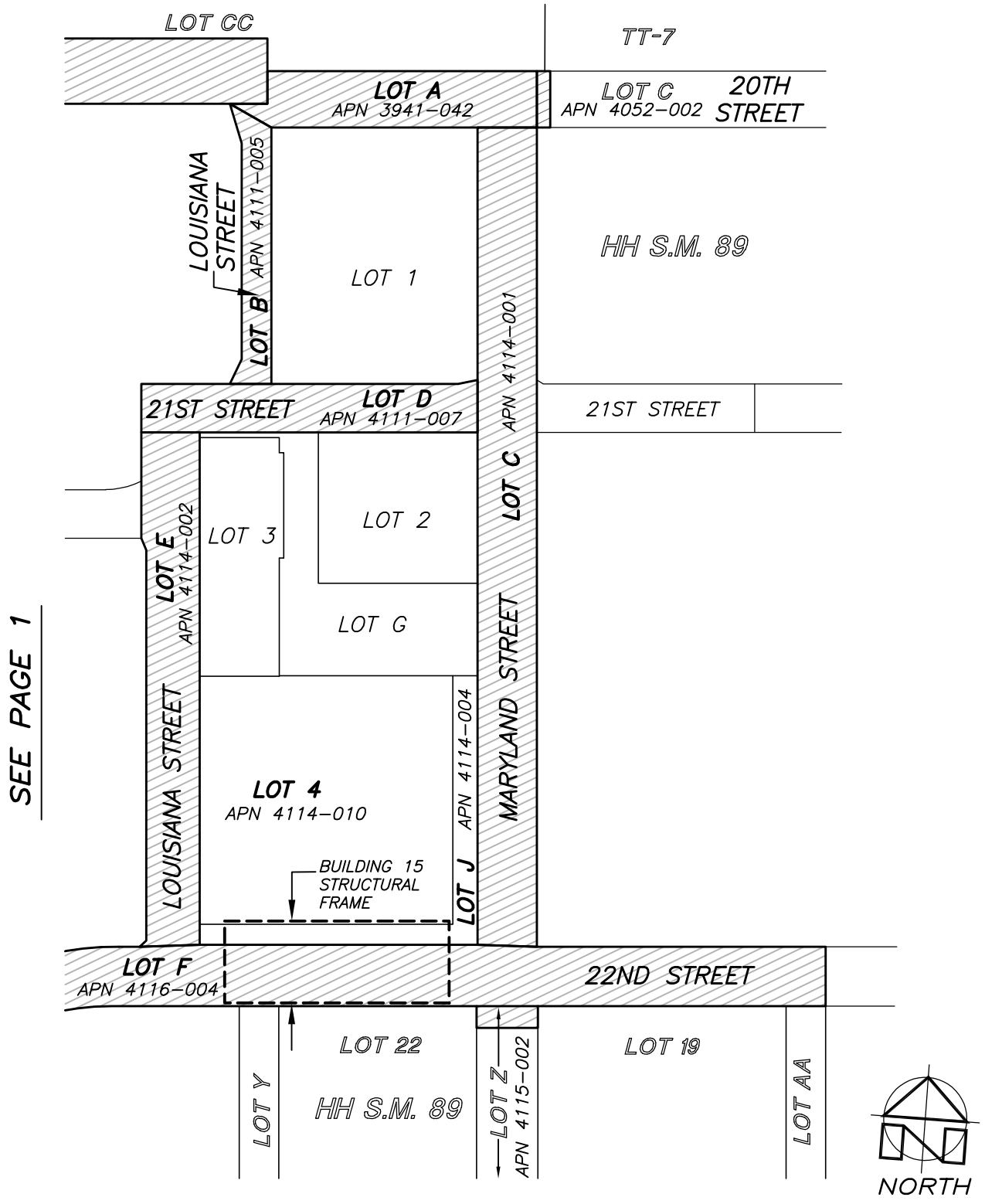
SAN FRANCISCO CALIFORNIA

BY BG CHKD. BG DATE 01-08-24 SCALE 1"=150'± PAGE 1 OF 2 JOB NO. S-9037

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

PHASE 1 PUBLIC ROWS



SEE PAGE 1

OFFER OF IMPROVEMENTS

SAN FRANCISCO CALIFORNIA

BY BG CHKD. BG DATE 01-08-24 SCALE 1"=150'± PAGE 2 OF 2 JOB NO. S-9037

MARTIN M. RON ASSOCIATES, INC.
LAND SURVEYORS

859 HARRISON STREET
SAN FRANCISCO, CA. 94107
(415) 543-4500

S-9037 PIER 70_OFFER OF IMPROVEMENTS.dwg

EXHIBIT C

DDA EXHIBIT B15

**PHASE 1 NON-CITY ROW FACILITIES MAINTENANCE STANDARDS WITH
CALENDAR YEAR 2024 COST BUDGET**

[to be inserted prior to execution]

EXHIBIT D

DDA EXHIBIT D7

MASTER ASSOCIATION CONDITIONS, COVENANTS, AND RESTRICTIONS

[to be inserted prior to execution]

SCHEDULE 15.10(d)
OFAC AND ANTI-BRIBERY PROVISIONS

1.1. *OFAC Compliance and Certification.*

(a) During the term of this [Contract], [Contractor] represents and certifies that [Contractor], or any of its partners, members, subsidiaries or affiliates, or any owner of a direct or indirect interest in [Contractor], nor any subcontractor or any other third party, nor any affiliate of such party: (i) is not a Sanctioned Party or listed on any Government Lists (defined below) or listed on any Government Lists (defined below); (ii) complies with all applicable Sanction Laws and shall not employ or do business with anyone who is a Sanctioned Party; (iii) maintains a bank account in the United States or Canada; (iv) is not a Person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Orders No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (defined below) or in any enabling legislation or other Presidential Executive Order in respect thereof; (v) has not been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (defined below); or (vi) is not currently under investigation by any governmental authority for alleged criminal activity.

(b) [Contractor] has complied and will continue to comply with all applicable trade restrictions and Sanction Laws and has not and will not employ or do business with anyone suspected of being connected with criminal or terrorist activities or who is the subject of any Sanction Law. [Contractor] represents that payments made to or from it in relation to the services provided would not result in a violation of any Sanction Law by [Contractor].

(c) For the purposes hereof, “Government Lists” means: (a) the Specially Designated Nationals and Blocked Persons Lists maintained by U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”); (b) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC; or (c) similar lists maintained by the U.S. Department of the Treasury, the U.S. Department of State, the U.S. Department of Commerce or any other governmental authority. For the purposes hereof, “Patriot Act Offense” means any violation of the Patriot Act or of the criminal Laws of the United States, or any of the several states relating to terrorism or the laundering of monetary instruments, including the Bank Secrecy Act and the Money Laundering Control Act of 1986. To the fullest extent permitted by Law, [Contractor] agrees to defend, indemnify and hold harmless Port from and against any and all claims, damages, losses, risks, liability and expenses (including reasonable Attorneys’ Fees and Costs) arising from or related to any breach of the foregoing certification. [Contractor] shall explicitly include the obligations in this Section 22.19 in any contracts, subcontracts or agreements formed between [Contractor] and any Person to the extent that those contracts relate to fulfilment of [Contractor]’s obligations under this Agreement.

(d) The provisions of this Section 18 shall survive the final completion of the Project and the expiration or earlier termination of this Agreement.

(e) Terms used in this Section are defined as follows:

(i) “Sanctioned Party” means (i) any Person that is the target of any Sanction Laws, (ii) any Person that is directly or indirectly owned or controlled by any Person that is the target of any Sanction Laws or (iii) any Person that is located, organized or ordinarily resident in a country or territory that is the target of comprehensive sanctions (inclusive of Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine).

(ii) “Sanction Laws” means all laws, orders, ordinances, directions, rules, regulations and requirements of any governmental authority or of any public international

organization, or any agency, department, commission, board, bureau, instrumentality or political subdivision thereof, as may have jurisdiction over the parties, with respect to any type of economic, trade, financial, transactional or other type of sanction, ban or prohibition, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of State, the U.S. Department of Commerce, the United Nations Security Council, the European Union, the UK Government (including His Majesty's Treasury) and the Government of Canada.

1.2. *Anti-Bribery.* In consideration of entering into this Agreement, [Contractor] hereby acknowledges, certifies, warrants and undertakes to Port that:

(a) it has not offered, promised, given or agreed to give and shall not during the term of this Agreement offer, promise, give or agree to give to any Person any bribe on behalf of Port or otherwise with the object of obtaining a business advantage for the other Party or otherwise;

(b) it will not engage in any activity or practice which would constitute an offense under the United States Foreign Corrupt Practices Act of 1977;

(c) it has, and will maintain in place, its own policies and procedures to ensure compliance with the United States Foreign Corrupt Practices Act of 1977;

(d) it will ensure that any Person who performs services for or on its behalf in connection with this Agreement complies with the terms and conditions set forth in this Section 19;

(e) it has, and will maintain in place, effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement, which enable Port to timely identify [Contractor]'s financial and related records in connection with this Agreement;

(f) from time to time during the term of this Agreement, at the reasonable request of Port, [Contractor] will confirm in writing that it has complied with its undertakings under this Section 22.20;

(g) [Contractor] shall notify Port as soon as practicable of any breach of any of the undertakings contained in this Section 22.20 of which it becomes aware.

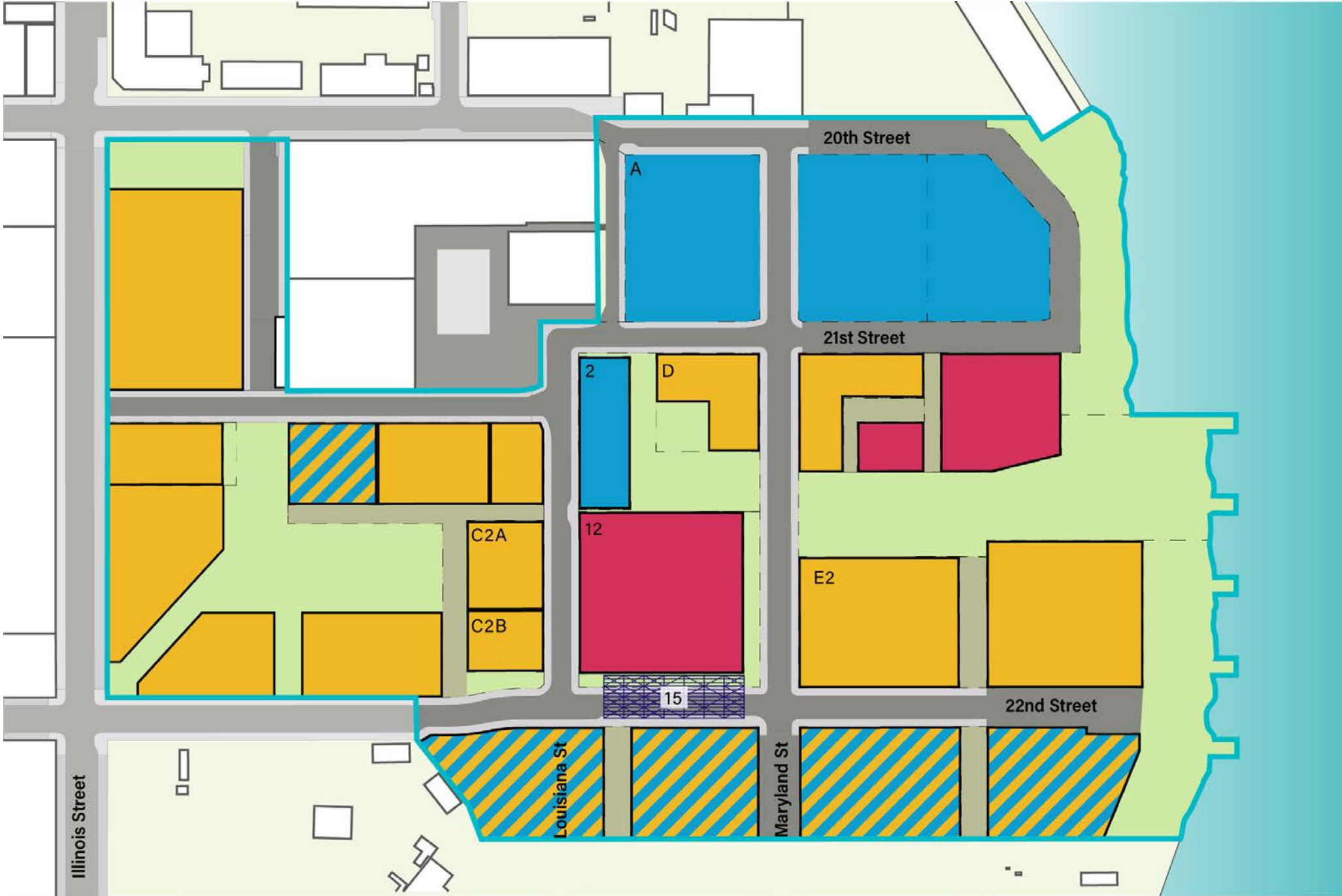
(h) it shall explicitly include the obligations in this Section 22.20 in any contracts formed between [Contractor] and any Person to the extent that those contracts relate to [Contractor]'s fulfilment of its obligations under this Agreement.

(i) The provisions of this Section 22.20 shall survive the expiration or earlier termination of this [Contract] with respect to actions arising during the term hereof.

AMENDMENT TO PIER 70 DISPOSITION AND DEVELOPMENT AGREEMENT

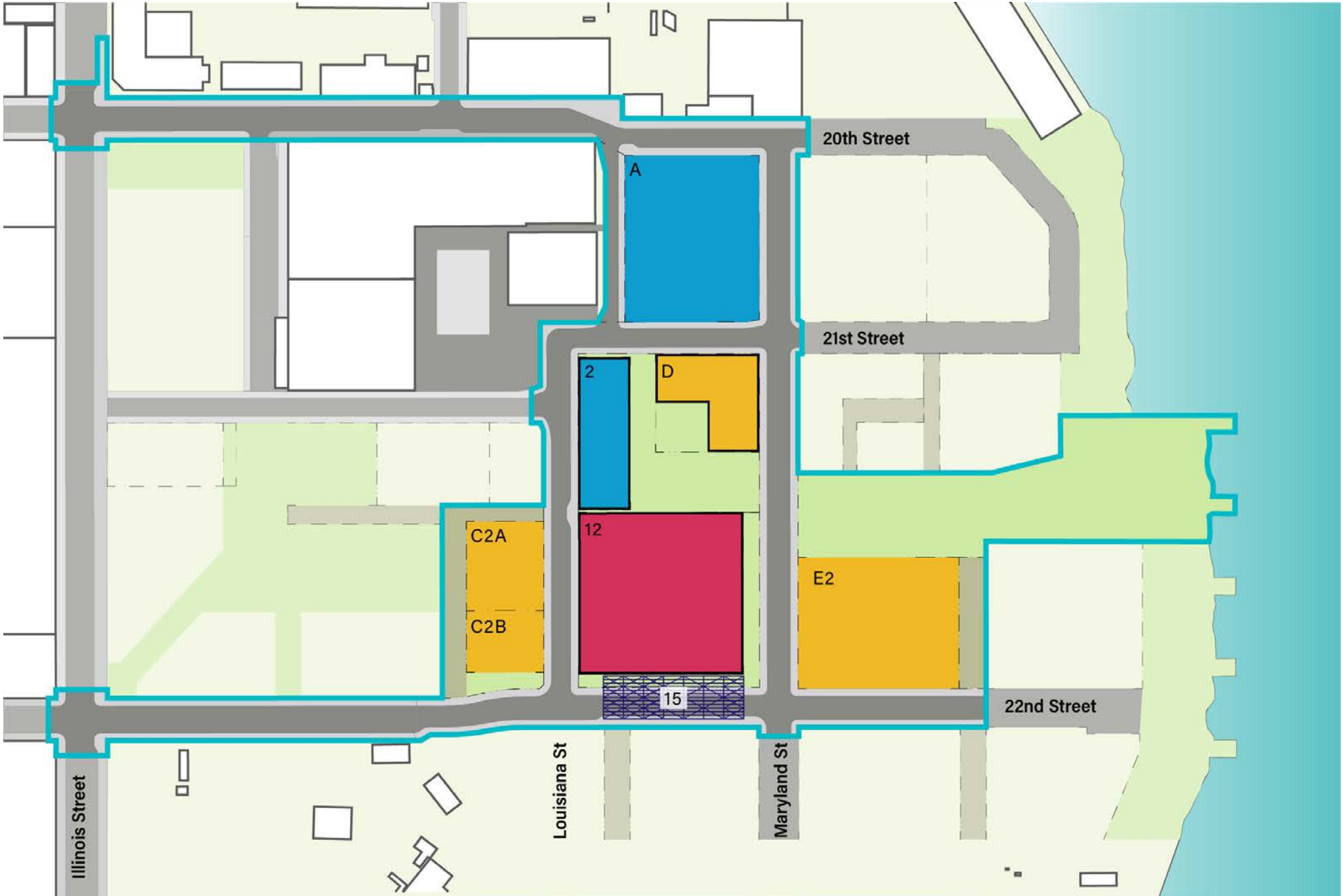
Budget and Finance Committee Presentation
File No. 240204
March 20, 2024

PIER 70 DISTRICT OVERVIEW



- 3,000 residential units
- 1.75 million gsf commercial
- 9 acres open space
- 500,000 gsf retail, arts, light industrial
- Special Use District boundary

PHASE 1 OVERVIEW



- 600 residential units
- 460,000 gsf commercial
- 3.4 acres open space
- 150,000 gsf retail, arts, light industrial
- Phase 1 boundary

PHASE 1 STATUS

- Mapping and horizontal improvements complete except for parks
- Historic Building 12 rehab complete; leasing underway
- Balance of vertical development slowed by market conditions
 - **Commercial Office:** Parcel A, Building 2
 - **Market-Rate Rental:** Parcel E2
 - **Market-Rate Condos:** Parcel D, Parcel C2B
 - **100% Affordable Rental:** Parcel C2A

DDA AMENDMENT

- DDA identifies services special taxes as funding source for maintaining Port-accepted infrastructure
- No special taxes available due to delay in vertical development
- Amendment addresses shortfall until special taxes sufficiently available:
 - Maintenance costs incurred by Port or Developer after acceptance are reimbursable project cost
 - Developer return on maintenance costs is capped
 - No impact to Port Harbor Fund
- Amendment also includes:
 - Expansion of Developer's warranty for certain Phase 1 improvements
 - Clean up changes to Schedule of Performance

Questions?



Doc # **2022083565**

Recording Requested by:

Port of San Francisco

When Recorded Mail to:

FC Pier 70, LLC
Brookfield Properties
685 Market Street, Suite 500
San Francisco, CA 94105
Attn: Swathi Bonda

**City and County of San Francisco
Joaquin Torres, Assessor – Recorder**

9/1/2022	9:49:54 AM	Fees	\$0.00
Pages 13	Title 461	Taxes	\$0.00
Customer 047	AM	Other	\$0.00
		SB2 Fees	\$0.00
		Paid	\$0.00

Exempt from recording fees under Government Code §27383

Assessor Parcel Number (APN): 4111-009; 4052-008; 4112-001; 4112-002; 4112-003; 4113-002; 4113-003; 4114-005; 4114-007; 4052-009; 4116-008; 4052-010; 4052-011; 4116-009; 4115-003; 4117-002; 4117-003; 4052-012; 4115-004; 3941-042; 4052-002; 4052-003; 4052-004; 4111-005; 4114-001; 4111-006; 4113-001; 4111-007; 4114-002; 4114-003; 4114-004; 4052-005; 4052-006; 4052-007; 4116-001; 4116-002; 4116-003; 4116-004; 4116-005; 4116-006; 4115-001; 4115-002; 4117-001; 4116-007

Address: Port Areas, Pier 70, San Francisco, CA

FIRST AMENDMENT TO PIER 70 DDA

(Please fill in Document Title(s) above this line)

This document is exempt from the \$75 Building Homes and Jobs Act Fee (per Government Code §27388.1(a)(2)(D) because the document is a real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state.

FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
(Self-Warranty)

This FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (this “**First Amendment**”) is made as of this 7th day of July, 2022, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“**City**”), operating by and through the **SAN FRANCISCO PORT COMMISSION** (“**Port**”) and **FC PIER 70, LLC**, a Delaware limited liability company (“**Developer**”). Each of the Port and the Developer is referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Port and Developer, entered into that certain Disposition and Development Agreement, dated as of May 2, 2018, recorded in the official real estate records of the City (the “**Official Records**”) as of May 25, 2018, as Instrument No. DOC-2018-K619435-00, as subsequently revised by that certain First Memorandum of Technical Corrections, recorded in the Official Records on September 12, 2019 as Document No. 2019-K830531-00, and that Second Memorandum of Technical Corrections, recorded in the Official Records on January 16, 2020 as Document No. 2020-K891134-00 (as revised, the “**DDA**”);

WHEREAS, all capitalized terms used but not otherwise defined herein shall have their meanings as set forth in the DDA; and

WHEREAS, the Parties now wish to amend the DDA to address the reimbursement of costs incurred in connection with warranty obligations arising under the Public Improvement Agreement (Pier 70 28-Acre Site Project) by and among the City, Port, and Developer, dated as of September 15, 2020, recorded Official Records as of October 23, 2020, as Instrument No. DOC-2020035281 (the “**Phase 1 PIA**”).

AGREEMENT

NOW, THEREFORE, for the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Port and Developer hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Pre-Acceptance Liability, Maintenance, and Repair**. The Parties acknowledge that Developer shall have all responsibility for liability, maintenance, and repair of the Phase 1 Required Infrastructure prior to Acceptance (as defined in the Phase 1 PIA) in accordance with Section 7(a) of the Phase 1 PIA.
3. **Amendment**.
 - a. **Definitions in Appendix**.

i. The definition of “**Horizontal Development Costs**” in the Appendix is hereby amended by amending and restating (v) and (vi) and adding the following as (vii):

(v) Associated Public Benefits;

(vi) costs associated with implementing the DDA, including any additional costs that the Parties have agreed shall be incurred by the Developer for the Project; and

(vii) the Hard Costs and Soft Costs to correct, repair or replace defects to the Phase 1 Required Infrastructure during the Phase 1 Self-Warranty Period to the extent:

(X) such costs are not covered by the Plant Warranty;

(Y) in the event such costs are associated with a latent defect claim, such costs will not be considered Horizontal Development Costs to the extent Developer recovers such costs from Plant or other responsible party; and

(Z) the item needing correction, repair or replacement in the Required Infrastructure was built in accordance with approved Improvement Plans.”

ii. The following definitions are added to the Appendix:

“**Phase 1 PIA**” means the Public Improvement Agreement (Pier 70 28-Acre Site Project) by and among the City, Port, and Developer, dated as of September 15, 2020, recorded Official Records as of October 23, 2020, as Instrument No. DOC-2020035281.

“**Phase 1 Required Infrastructure**” is the “Required Infrastructure” as defined in the Phase 1 PIA.

“**Phase 1 Self-Warranty Period**” means the period commencing upon the expiration of the Plant Warranty and expiring upon the expiration of the Phase 1 Warranty Period.

“**Phase 1 Warranty Period**” is the “Warranty Period” as defined in the Phase 1 PIA.

“**Plant**” means Plant Construction Company, L.P., the general contractor for the Phase I Horizontal Improvements.


“**Plant Warranty**” means the warranty provided by Plant Construction Company, L.P. commencing upon substantial completion of Phase 1 (which was on or about April 30, 2021) of the Required Infrastructure.

b. Self-Warranty. Section 15.9 of the DDA is amended by adding the following language at the end of the section.

“Developer shall warranty the Phase 1 Required Infrastructure for the Phase 1 Self-Warranty Period. During the Phase 1 Self-Warranty Period, Developer will promptly notify the Port regarding any warranty claims that arise under the Phase 1 PIA and will conduct and coordinate any correction, repair, or replacement of any defects to the Phase 1 Required Infrastructure discovered during the Phase 1 Self-Warranty Period. For the Port’s information, the parties shall cooperate in tracking Horizontal Development Costs incurred by Developer in connection with its correction, repair or replacement of defects to the Phase 1 Required Infrastructure during the Phase 1 Self-Warranty Period.”

c. Change in State Law. In order to reflect changes in state law, the indented paragraph in Section 9.6(b), for the purposes of the DDA, is hereby deleted in its entirety and replaced with the below.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASE PARTY. BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE WAIVERS AND RELEASES MADE ABOVE AND THE FACT THAT DEVELOPER WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE WAIVERS AND RELEASES AT THE TIME THIS LEASE WAS MADE, OR THAT DEVELOPER HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Developer’s Initials: 

d. Changes in City Laws. In order to reflect changes in City law, (i) Sections 8(c), 15, and 23 of Exhibit A7 of the DDA are hereby deleted in their entirety and replaced with the below, and (ii) Sections 25 and 26 of Exhibit A7 of the DDA are hereby incorporated in their entirety.

“8. *Tobacco Products and Alcoholic Beverages.*
(Admin. Code § 4.20; Health Code art. 19K)

(c) Prohibition Against Tobacco Product Sales, Manufacture, and Distribution. Developer acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the FC Project Area during the DDA Term and such prohibition must be included in all sublicenses or other agreements allowing use of the FC Project Area. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.”

“15. ***Bottled Drinking Water.***
(Env. Code ch. 24; Port Reso. No. 12-11)

Developer is subject to all applicable provisions of Environment Code Chapter 24 (which are hereby incorporated) prohibiting the sale or distribution of drinking water in specified containers at Events held on City Property with attendance of more than 100 people during the DDA Term, except as otherwise set forth in Environmental Code Chapter 24. Also, Developer must comply with the Port's Zero Waste Policy for Events and Activities (Port Reso. No. 12-11) for applicable Events at the FC Project Area during the DDA Term.”

“23. ***Contribution Limits-Contractors Doing Business with the City.***
(Campaign and Gov'tl Conduct Code§ 1.126)

(a) Application. Campaign and Governmental Conduct Code section 1.126 ("Section 1.126") applies only to agreements subject to approval by the Board of Supervisors, the Mayor, any other elected officer, or any board on which an elected officer serves. Section 1.126 prohibits a person who contracts with the City for the sale or lease of any land or building to or from the City from making any campaign contribution to: (i) the City elective officer, (ii) a candidate for the office held by such individual, or (iii) a committee controlled by such individual or candidate, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved.

(b) Acknowledgment. Through its execution of the DDA, Developer acknowledges the following.

(i) Developer is familiar with Section 1.126.

(ii) Section 1.126 applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more.

(iii) If applicable, the prohibition on contributions applies to: (1) Developer; (2) each member of Developer's board of directors, and Developer's principal officers, including its chairperson, chief executive officer, chief financial officer and chief operating officer; (3) any person with an ownership interest of more than ten percent (10%) in Developer; and (4) any subcontractor listed in the Developer's bid or contract.

(iv) Additionally, Developer acknowledges that if this Section 23 applies, Developer must inform each of the persons described in subsection (iii) of the prohibitions contained in Section 1.126.”

“25. ***Developer's Compliance with City Business and Tax Regulations Code.***
(Bus & Tax Reg. Code ch. 6)

Developer acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the Port to withhold payments the Port is required to make under this DDA to Developer, if Developer is delinquent in the payment of any amounts that it is required to pay the City under the San Francisco Business and Tax Regulations Code. If the Port withholds its required payments under this DDA as required to by the City Treasurer or Tax Collector, then Port will not be in breach or default under this DDA. If such amounts are withheld, the Port shall release any payments withheld under this Section 25 to Developer, without interest, late fees, penalties, or other charges, as soon as such release would not constitute a violation of Section 6.10-2 of the San Francisco Business and Tax Regulations Code. “

- e. FEMA Disclosure. Developer represents and warrants to Port that Developer has received and reviewed the FEMA disclosure notice attached as DDA *Schedule 6*.
4. Entire Agreement. This First Amendment, and the DDA, contain all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this First Amendment are superseded in their entirety by this First Amendment. No prior drafts of this First Amendment or changes between those drafts and the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this First Amendment.
5. Agreement Unmodified; Amendments. Except as expressly set forth in this First Amendment, the Agreement shall remain unmodified and in full force and effect, and is hereby affirmed and ratified. No amendment to the DDA nor this First Amendment or any part thereof shall be valid unless it is in writing and signed by all of the parties thereto. In the event of any inconsistency between the terms of the DDA and the terms of this First Amendment, the terms of this First Amendment shall govern and control in all respects. All references to the DDA shall be deemed references to the DDA as amended hereby.
6. Severability. If any provision of this First Amendment or the application thereof to any person, entity or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this First Amendment, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this First Amendment shall be valid and be enforceable to the fullest extent permitted by law.
7. Counterparts. For convenience, the signatures of the parties to this First Amendment may be executed and acknowledged on separate pages which, when attached to this First Amendment, shall constitute as one complete First Amendment. This First Amendment may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same First Amendment.
8. Relationship of the Parties. Port is not, and none of the provisions in this First Amendment shall be deemed to render Port, a partner in Developer’s business, or joint venturer or member

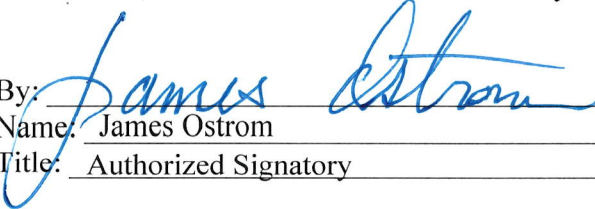
in any joint enterprise with Developer. Neither party shall act as the agent of the other party in any respect hereunder. This First Amendment is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

9. **California Law; Venue.** This First Amendment and the DDA are governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this First Amendment and/or the DDA shall be instituted in the Superior Court for the City and County of San Francisco, and each party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this First Amendment and/or the DDA has been brought in an inconvenient forum. The parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to Federal Court.
10. **Successors; No Third Party Beneficiaries.** The terms, covenants, agreements and conditions set forth in this First Amendment shall bind and inure to the benefit of Port and Developer and, except as otherwise provided herein, their personal representatives and successors and assigns. This First Amendment is made for the purpose of setting forth certain rights and obligations of Developer and the Port, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the last date set forth below.

Developer: **FC PIER 70, LLC**, a Delaware limited liability company

By: 
Name: James Ostrom
Title: Authorized Signatory
Date signed: 7/6/2022

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By: _____
Elaine Forbes,
Executive Director

Date signed: _____

Approved as to Form: **DAVID CHIU**, City Attorney

By: _____
A. Mathai-Jackson, Deputy City Attorney

First Amendment Prepared By: Christine Maher, Development Project Manager _____ (initial)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Francisco)

On July 6, 2022 before me, Julie Garduno, Notary Public,

personally appeared James Ostrom, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary  (Seal)



IN WITNESS WHEREOF, the Parties have executed and delivered this Amendment as of the last date set forth below.

Developer: **FC PIER 70, LLC**, a Delaware limited liability company


By: _____

Name: _____

Title: _____

Date signed: _____

Port: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, operating by and through the **SAN FRANCISCO PORT COMMISSION**

By:  _____

Elaine Forbes,
Executive Director

Date signed: 8/30/22

Approved as to Form: DAVID CHIU, City Attorney

By:  _____
A. Mathai-Jackson, Deputy City Attorney

First Amendment Prepared By: Christine Maher, Development Project Manager CM (initial)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF San Francisco

On August 30th, 2022 before me, Srira Zadmehran, Notary Public,

personally appeared Elaine Forbes, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Srira Zadmehran (Seal)
Notary



DDA SCHEDULE 6

04/12/2021

FEMA-National Flood Insurance Program Disclosure Notice

As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“Floodplain Management Program Ordinance”) and became effective on March 23, 2021.

Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

Additionally, the San Francisco Public Utilities Commission (“SFPUC”) has prepared the 100-Year Storm Flood Risk Map to show areas where flooding is highly likely to occur on City streets during a 100-year rain storm. More information about this map, including a searchable web map, is available at <https://www.sfwater.org/floodmaps>. The SFPUC 100-Year Storm Flood Risk Map only shows flood risk from storm runoff and, floodproofing measures are not required at this time.

The SFPUC map does not consider flood risk in San Francisco from other causes, such as inundation from the San Francisco Bay or the Pacific Ocean, which are shown on the FIRMs that FEMA has prepared for San Francisco. Conversely, the FIRMs do not show flooding from storm runoff in San Francisco, because our historical creeks and other inland waterbodies have been built over and are no longer open waterways. In most areas, the flood hazards identified by SFPUC and FEMA are separate. There are a few areas, however, near the shoreline where SFPUC’s Flood Risk Zones overlap with the FEMA-designated floodplains.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for

Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent.

City's Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter are available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:

<https://onesanfrancisco.orgisan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:

<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:

www.FloodSmart.gov.

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

RESOLUTION NO. 24-03

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 the Executive Director to enter into (a) a Disposition and Development Agreement (as amended, the “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”), (b) Master Lease No. L-16390, dated as of May 2, 2018, between Port and Developer (as amended, the “Master Lease”), and (c) other Project-related documents, including an inter-departmental agreement called the Interagency Cooperation Agreement (“ICA”) between the Port, San Francisco Public Works (“Public Works”), San Francisco Public Utilities Commission (“SFPUC”), and San Francisco Municipal Transportation Authority (“SFMTA”), which governs how City departments will cooperate on project implementation, and (2) 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 (the “Pier 70 SUD”); and

WHEREAS, On October 31, 2017, the San Francisco Board of Supervisors approved the Project, the Pier 70 SUD, the Development Agreement by and between Developer and the City, dated as of May 2, 2018, and the ICA; and

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

WHEREAS, At the same hearing, the Planning Commission approved the Pier 70 Mixed-Use District Project and in so doing, adopted approval findings under CEQA by Motion No. 19977, including a Statement of Overriding Considerations (the “CEQA Findings”), and adopted a Mitigation Monitoring and Reporting Program (“MMRP”). A copy of the Planning Commission Motions, the CEQA Findings, and the MMRP are on file with

the Port Commission Secretary and may be found in the records of the Planning Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution by reference as if fully set forth herein; and

WHEREAS, The DDA contemplates development within the Pier 70 SUD to include up to 3,000 units of housing, 1.75 million gross square feet of office space, 500,000 gross square feet of retail, arts, and light industrial space, nine acres of parks and open space, new and upgraded streets and other public ways, and extensive bicycle, pedestrian, and facilities; and

WHEREAS, Under the DDA, the Developer is required to construct public Horizontal Improvements (as defined in the DDA) 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 serving Phase 1 of the Project in March of 2019 upon issuance of Street Improvement Permit 19IE-00245 (as modified by Instructional Bulletins #1 through #13, the “Street Improvement Permit”) by the City. The horizontal scope of work under the Street Improvement Permit included 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, The Port, Public Works and Developer entered into a Public Improvement Agreement dated as of September 15, 2020 (the “PIA”) governing the construction of the Horizontal Improvements as part of the final subdivision map process for Phase 1 of the Project; and

WHEREAS, In November of 2022, Public Works granted a Notice of Completion to the Developer signaling that construction of Phase 1 Horizontal Improvements approved under the Street Improvement Permit was substantially complete and the Horizontal Improvements were ready for acceptance; 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. In issuing the Conditional SOP Compliance Determination the Acting Chief Harbor Engineer determined (1) the Port Acceptance Items exclusive of Port Encroachments (defined below) to be complete and construction of those Horizontal Improvements

to be in accordance with applicable project and regulatory requirements, (2) that the Port Acceptance Items exclusive of Port Encroachments are ready for their intended use, and (3) the Developer's compliance with the outside date set forth in the SOP for the completion of certain Phase 1 Horizontal Improvements. It also signals certain of these improvements are ready for acceptance by the Port, and others by the City; and

WHEREAS, Acceptance of improvements is governed by (i) the ICA, (ii) the jurisdictional memorandum of understanding between the Port, SFPUC, Public Works, SFMTA, and San Francisco Fire Department approved by the Port Commission via Resolution No. 20-39 (the "Interjurisdictional MOU"), (iii) the DDA, and (iv) the PIA; and

WHEREAS, Horizontal Improvements built to City standards will be owned, maintained, and permitted by the City (Public Works, SFMTA, SFPUC, Department of Technology) ("City Acceptance Items"). City Acceptance Items also include the power system, streetlights, and light poles in and on Louisiana Street between 20th and 21st Streets. 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 and in-street paving, bike racks, trash cans, bollards, understory plantings, retaining walls and portions of utility laterals serving Port-owned buildings. Once the acceptance process is complete, the Port will release the Port Acceptance Items and City Acceptance from the Master Lease premises. This framework is memorialized in the Interjurisdictional MOU and DDA, and further detailed in the staff report accompanying this resolution; and

WHEREAS, Per the DDA, the Developer is responsible for maintenance of Port Acceptance Items until they are accepted by the Port Commission; 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. 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; and

WHEREAS, 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. Subject to Port Commission approval pursuant to Port Commission Resolution No. 24-04 and Board of Supervisor's approval, Developer and Port anticipate entering 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; and

WHEREAS, The Port and Public Works are negotiating a Master Major Encroachment Permit (“Port Encroachment MMEP”), to be approved by the Port Commission and Board of Supervisors, pursuant to which Port will accept maintenance and liability responsibility of the Port Acceptance Items in City rights-of-ways (the “Port Encroachments”), subject to assignment during the Phase 1 Maintenance Term (as defined in the DDA Amendment) of maintenance responsibility and liability to Developer; and

WHEREAS, Pursuant to the PIA, the Developer provided an irrevocable offer of improvements for both Port Acceptance Items and City Acceptance Items to the Port and City (the “Offer of Improvements”). The Developer will also provide a quit claim deed, subject to the Conditional Assignment of Warranties (defined below) to the Port for Port Acceptance Items located outside of City rights-of-way on Port jurisdictional property; and

WHEREAS, Public Works has prepared a Public Works Order (the “Public Works Order”), confirming that Public Works: (1) inspected the Port Encroachments and the City Acceptance Items, and the City Engineer, by issuing a series of Conditional Notices of Completion, determined them to be complete in substantial conformity with the approved plans, specifications, and applicable City regulations governing the applicable infrastructure improvements; and (2) determined that the City Acceptance Items and the Port Encroachments are ready for their intended use; and

WHEREAS, Pursuant to the PIA, the Developer conditionally assigned all warranties and guarantees to the City and Port, as applicable, related to the construction of Horizontal Improvements pursuant to that certain Conditional Assignment of Warranties and Guarantees dated May 9, 2022 (the “Conditional Assignment of Warranties”). With respect to any warranties and guarantees that by their term expired prior to acceptance of the Port and City Acceptance Items, the Developer has assumed performance of those warranties pursuant to the DDA (the “Self-Warranties”). A copy of the Conditional Assignment of Warranties, the Self-Warranties, and the draft Public Works Order are on file with the Commission Secretary and are incorporated herein by reference; and

WHEREAS, Port acceptance of the Port Acceptance Items is consistent with the FEIR 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, The Port Commission has reviewed and considered the FEIR, the CEQA Findings, and the record as a whole, and finds that the FEIR is adequate for its use for the action taken by this resolution, and incorporates the CEQA Findings into this resolution; and, be it further

- RESOLVED, The Port Commission further finds that since the FEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require revisions to the FEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR; and be it further
- RESOLVED, That the acceptance, operation, and maintenance of the Port Acceptance Items would not lead to additional or substantially more severe environmental impacts beyond those shown in the FEIR; and, be it further
- RESOLVED, That the Port Commission finds that the Port Acceptance Items described in the accompanying staff memorandum are functional and constructed in conformity with the Project Requirements and Regulatory Requirements, each as defined in the DDA; and, be it further
- RESOLVED, That the Port Commission accepts the Offer of Improvements for the Port Acceptance Items; and, be it further
- RESOLVED, That the Port Commission, subject to (i) the Acquisition Agreement by and between Port and the Developer, dated for reference purposes as of May 2, 2018 (the "Acquisition Agreement"), (ii) the DDA, (iii) the Conditional Assignment of Warranties, (iv) the Self-Warranties, (v) execution of the Public Works Order, (vi) approval of the DDA Amendment by the Board of Supervisors, (vii) entry into the DDA Amendment, (viii) entry into the Port Encroachment MMEP or an interim license with the Developer in the event the MMEP is delayed, and (ix) entry into a license with Developer for private utilities in the portion of Louisiana Street to be accepted by the Port, (w) accepts the Port and City Acceptance Items, (x) dedicates the applicable Port and City Acceptance Items for public use, (y) designates the Port and City Acceptance Items on all City and Port public rights-of-way for street and roadway purposes, and (z) accepts the Port Acceptance Items for maintenance and liability purposes; and, be it further
- RESOLVED, That the Port Commission acknowledges and accepts the Conditional Assignment of Warranties related to the construction of the Port Acceptance Items, substantially in the form on file with the Commission Secretary and incorporated herein by reference; and, be it further
- RESOLVED, That the Port Commission recommends that the Board of Supervisors accept ownership of the City Acceptance Items, (ii) dedicate such City Acceptance Items to public use, (iii) designate the City Acceptance Items in the City public right-of-way for street and roadway purposes; and (iv) accept City Acceptance Items for maintenance and liability purposes, including the power supply, streetlights, and light poles in Louisiana Street

(a Port Street) subject to the Conditional Assignment of Warranties and Self-Warranties; and, be it further

RESOLVED, That the Port Commission authorizes Port Director to negotiate the Port Encroachment MMEP with Public Works and recommends that the Board of Supervisors delegate authority to the Port Director and the Public Works Director to (1) negotiate and enter into the Port Encroachment MMEP, including its exhibits and (2) annex improvements in future phases into the Port Encroachment MMEP; and, be it further

RESOLVED, That the Commission delegates the Port Director or her designee the authority to accept any Port Acceptance Items identified as deferred infrastructure in Public Works Director's Order No. 205012 (Conditionally Approving Certain Requests for Exceptions to the Subdivision Code and 2015 Subdivision Regulations, Including Conditionally Approving Deferral of Materials to be Submitted); and, be it further

RESOLVED, That the Commission authorizes and directs the Port Director, or her designee, to record a signed, acknowledged Partial Release from the Master Lease releasing the Port Acceptance Items and City Acceptance Items from the Master Lease, upon acceptance of the City Acceptance Items by the Board of Supervisors and contingent upon approval by the Board of Supervisors, in their sole discretion, of the DDA Amendment; and, be it further

RESOLVED, That the Port Commission authorizes the Executive Director, in consultation with the City Attorney, to take any and all actions (including (1) amending the Conditional Assignment of Warranties, (2) entering into and/or amending the Port Encroachment MMEP, (3) entering into additional master major encroachment permits, (4) accepting exhibits to the Port Encroachment MMEP, (5) accepting deferred infrastructure, and (6) executing and recording a signed, acknowledged Partial Release from the Master Lease releasing Port Acceptance Items and City Acceptance Items from the Master Lease upon acceptance by the City of the City Acceptance Items) which may be necessary or advisable to effectuate the purpose and intent of this resolution, are in the best interests of the Commission, and that do not materially increase the obligations or liabilities of the Port or materially reduce the rights of the Port, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of the documents.

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


Secretary

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**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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San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 240204

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Christine Maher	415-274-0614
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PRT Port	christine.maher@sfport.com

5. CONTRACTOR	
NAME OF CONTRACTOR FC Pier 70, LLC	TELEPHONE NUMBER (415) 593-4222
STREET ADDRESS (including City, State and Zip Code) 685 Market Street, 5th Floor, San Francisco, CA 94105	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 240204
DESCRIPTION OF AMOUNT OF CONTRACT N/A - No contract amount being approved		
NATURE OF THE CONTRACT (Please describe) Second Amendment to Disposition and Development Agreement between Port and FC Pier 70, LLC. Allows the ongoing maintenance costs of infrastructure accepted by the Port to be treated as costs of the Pier 70 project, subject to reimbursement by CFD special taxes once available.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Patel	Ketan	Other Principal Officer
2	Costanzo	Frank	Other Principal Officer
3	Obert	Charles	Other Principal Officer
4	Benjamin	Doug	Other Principal Officer
5			
6			
7			
8			
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
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From: [Trejo, Sara \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [True, Judson \(DPW\)](#); [MALAMUT, JOHN \(CAT\)](#); [GOODMAN, HEATHER \(CAT\)](#); [Walton, Shamann \(BOS\)](#); [Gee, Natalie \(BOS\)](#)
Subject: Mayor -- Resolution -- Pier 70 DDA Second Amendment
Date: Tuesday, March 5, 2024 3:37:05 PM
Attachments: [Reso XXX-24 Pier 70 DDA Second Amendment 3.4.24.docx](#)
[Pier 70 DDA - First Amendment - Self-Warranty.PDF](#)
[Pier 70 DDA - Draft Second Amendment to DDA 3.4.24.pdf](#)
[Port Commission Resolution 24-03.pdf](#)
[Port Commission Resolution 24-04.pdf](#)
[Re Recommendation to Board re Pier 70 Second Amendment to DDA.msg](#)

Hello Clerks,

Attached is a Resolution approving a second amendment to the Disposition and Development Agreement between the Port and FC Pier 70, LLC for the Pier 70 28-Acre Site Project; authorizing the Executive Director of the Port to enter amendments or modifications to the second amendment that do not materially increase the obligations or liabilities to the City and are necessary to effectuate the purposes of the Resolution; and adopting findings under the California Environmental Quality Act.

In addition to the Resolution, I've attached the following for inclusion in the Board File:

- First Amendment to Pier 70 DDA;
- Second Amendment to the Pier 70 DDA;
- Port Commission Resolution No. 24-03 (Acceptance); and
- Port Commission Resolution No. 24-04 (DDA Amendment).

I've also attached, for the Clerk's reference, the Port's e-recommendation of the resolution.

The balance of the items referenced in the resolution can be found in other board files as follows:

- Pier 70 DDA – in Board File 170986
- BOS Acceptance Ordinance – in Board File 240087
- CEQA Determination – in Board File 240087

Please note, Supervisor Walton is a cosponsor of this item.

Best regards,

Sara Trejo

Legislative Aide

Office of the Mayor

City and County of San Francisco

415.554.6141 | sara.trejo@sfgov.org