

**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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