

DDA EXHIBIT A5

Provisions for Office Development on Port Land

I. Legal Framework. Per Planning Code section 321(a)(2)(A), office space under the jurisdiction of the San Francisco Port Commission shall count against the annual maximum limit. Per Planning Code section 324, the City of San Francisco has “limited legal authority to direct or control physical development, whether for office use or not, on land covered by approved redevelopment plans or under the jurisdiction of the Port Commission.” Therefore, an Office Development Authorization from the Planning Commission, as outlined in procedures specified in Planning Code sections 321 and 322, and approval from the Planning Department is not required for new office development under the jurisdiction of the San Francisco Port Commission. Upon issuance of a site or building permit for new office development, the Port of San Francisco shall notify the Planning Department and the new office development will count against the annual maximum limit. (Zoning Administrator’s Letter of Determination, dated June 13, 2017, to Charles Olson, Re: Pier 70 Historic Buildings.)

Section 5.4(d) of the Development Agreement for the Project provides that office development located on the 28-Acre Site will be counted against the annual maximum in Planning Code section 321(a)(1) on the issuance of the building permit for the office development (in each case, a “**Prop M Draw Down**”), based on the approved building drawings for the described project.

The City, the Port, and Developer have agreed to implement the process in this exhibit to meet Developer’s reasonably anticipated schedule for office development in the Project while allowing the City to balance its planning objectives for large office projects elsewhere in the City during the early years of the Project. Developer and Port will proceed in accordance with the requirements of **Section II** (Process for Office Development at the 28-Acre Site).

II. Process for Office Development at the 28-Acre Site.

A. Definitions.

“**Allocation Period**” means the period ending on October 17 each year.

“**City Delay Notice**” means a notice from Planning to the Port that the City has reasonably determined that delaying office development at the 28-Acre Site is necessary to allow the City to balance its planning objectives for Pending Projects elsewhere in the City under **Section II.D.2** (City-Initiated Delay).

“**Office Development Authorization**” means a Planning Commission approval of an application for a large office application.

“**Pending Projects**” means: (i) office development projects for which large office allocation applications (50,000 gsf or more) have been submitted to the Planning Department that

have not received Planning Commission approval by the end of the Allocation Period; plus (ii) additional office space that is located in structures owned or otherwise under the jurisdiction of the State of California, the federal government or any state, federal, or regional government agency, which are exempt from Prop M that has been fully approved and for which occupancy is reasonably anticipated to occur during the Allocation Period; plus (iii) new office development projects on Port land but not on the Pier 70 28-acre site for 50,000 gsf or more for which the Port and the applicable project sponsors of a vertical project have entered into conveyance agreements that would allow construction (*e.g.*, vertical disposition and development agreement, lease, or purchase and sale agreement), that have not received Port building permits by the end of the Allocation Period..

“**Prop M**” means Planning Code sections 320-325, approved by voters as the *Planning Initiative* in November 1986.

“**Prop M Constraint**” means that the total square footage available for Pending Projects exceeds the then-current total square footage available for large allocation projects at the end of an Allocation Period. The examples below are for illustrative purposes only.

Example #1

- On November 1, 2018, there were 1,500,000 gsf of current availability of large office allocation and Pending Projects of 750,000 gsf.
- Availability = 750,000 gsf; therefore, **no Prop M Constraint exists.**

Example #2

- On November 1, 2019, there was 1,300,000 gsf of current availability of large office allocation and Pending Projects of 3,800,000 gsf.
- Availability = (2,500,000); a **Prop M Constraint exists. [Parens are used to denote negatives]**

“**Prop M Draw Down**” means the amount of office space to be applied against the City’s annual maximum limit under Planning Code section 321(a)(1), based on the approved building drawings, which the Port will report to Planning when the Port issues a site or building permit for an office project in the 28-Acre Site.

“**VDDA Notice**” means the Port’s notice to Planning that the Port is prepared to enter into a Vertical DDA with a Vertical Developer that will have the right to develop an office project on its Option Parcel.

B. Notices. Developer and the Port will provide the Planning with notices at certain points during the development process that will allow Planning to assess anticipated large office allocation for the Project, as follows:

1. At Phase Submittal. In each Phase Submittal application, Developer will notify the Port if Developer intends to construct commercial office space that would result in a Prop M Draw Down and the anticipated total gsf of office development anticipated for each Option Parcel. The Port will communicate this information to Planning.

2. At Appraisal. When Developer triggers the appraisal process for an Option Parcel, it must provide the Port with a notice of the location and amount of any office development that would be developed on the parcel that would result in a Prop M Draw Down. The Port will communicate this information to Planning.

3. At Selection of Vertical Developer. The Port will deliver a VDDA Notice to Planning promptly after all Port conditions to entering into a Vertical DDA with the Vertical Developer for each Option Parcel on which large allocation office development is approved have been satisfied. If the City determines that a Prop M Constraint exists, then execution of the Vertical DDA will be subject to the “earliest date” for execution of the Vertical DDA set forth in **Prop M Schedule** below, and the City may exercise a City-initiated delay in accordance with **Section II.D.2** (City-Initiated Delay).

C. If No Constraint Exists. If no Prop M Constraint exists when Planning receives the VDDA Notice, then the **Prop M Schedule** will not apply.

D. If a Prop M Constraint Exists. If a Prop M Constraint exists when Planning receives the VDDA Notice, then the **Prop M Schedule** will apply.

1. **Prop M Schedule.** At any time that a Prop M Constraint exists, the Port and Developer must comply with the following schedule:

PROP M SCHEDULE OF OFFICE DEVELOPMENT*			
Phase	Max Office GSF Allowed in Phase	Earliest Date to Enter into Vertical DDA	Earliest Date to Draw Down Prop M Allocation
Bldg 12	60,000 GSF	No date restriction	No date restriction
Phase 1	465,000 GSF	December 31, 2017	December 21, 2018
Phase 2	750,000 GSF	July 31, 2019	December 21, 2021
Phase 3	750,000 GSF	July 31, 2021	December 21, 2023
Total	2,025,000 GSF		

*applicable only in years when there is a Prop M Constraint

2. **City-Initiated Delay.** As soon as reasonably practicable, but no later than the 45 days after receiving the VDDA Notice, Planning may provide a City Delay Notice advising the

Port that a Prop M Constraint exists and specifying the amount of delay requested, not to exceed 90 days. Promptly after receiving the notice, the Port will incorporate into the applicable Vertical DDA the alternate provision included as an appendix to the approved form of Vertical DDA that requires the Vertical Developer to delay the Prop M Draw Down date in accordance with the Prop M Schedule and the City Delay Notice. The inclusion of such provision will cause all timeframes in the Schedule of Performance and the outside date for close of escrow under the applicable Vertical DDA to be extended automatically by the amount of time requested in the City Delay Notice. If the City fails to provide the City Delay Notice within the 45-day period under this Subsection, the Vertical Developer and the Port may execute the Vertical DDA, , subject to the **Prop M Schedule** if a Prop M Constraint exists.

3. **Prop M Advance.** If a Prop M Constraint exists, but 1) Planning determines in its sole discretion that the office project on Port land would not be likely to conflict with other office projects on a similar timeframe, or 2) the Developer provides documentation satisfactory to the Port in its reasonable discretion that it has identified a commercial office tenant interested in leasing more than 250,000 gsf, and Planning determines such a tenant is beneficial to the City's economic goals; the Planning Department may advise that the Port may proceed under the provisions of Section I.D above (If No Constraint Exists). For example, if Planning determines that Pending Projects on non-Port land will not receive an Office Development Authorization for a year or more, Planning may recommend that the Port proceed with execution of the Vertical DDA and the related Prop M Draw Down.

4. **Effect of Unused Allocation.** After the dates in the **Prop M Schedule** applicable to a particular Phase, any unused office allocation for the Phase will be available for future office development in the Project. For example, if the Port has not entered into a Vertical DDA for office development in Phase 1 by July 31, 2019, all 465,000 gsf of office allocated to Phase 1 would be available in addition to the 750,000 gsf allocated to Phase 2.

In addition, if any Flex Parcel is developed for residential instead, the office gsf approved for the Flex Parcel may be used elsewhere within the 28-Acre Site, subject to restrictions in the SUD requiring additional approval for office development, and subject to the DDA procedures for revisions to Phase Submittals. For example, if in Phase 2, Parcels F and G were to be developed as residential, the Prop M allocation of 750,000 gsf would be available between July 31, 2019, and December 21, 2021 for office development in any phase elsewhere on the site.

