

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

**RESOLUTION NO. 17-43**

- WHEREAS, The Port owns approximately 72 acres along San Francisco's Central Waterfront, roughly bounded by Mariposa Street, Illinois Street, 22<sup>nd</sup> Street, and the San Francisco Bay known as Pier 70.
- WHEREAS, Beginning in 2006, the Port initiated an intensive planning process that has culminated in a project that would restore and redevelop an approximately 35-acre site located at Pier 70 bounded generally by Illinois Street on the west, 20th Street to the north, San Francisco Bay on the east and 22nd Street on the south in San Francisco's Central Waterfront Plan Area (the "Project Site"); and
- WHEREAS, The Project Site includes an approximately 28-acre area owned by the Port known as the "28-Acre Site," bounded generally by Michigan Street on the west, 22nd Street on the south, 20th Street on the north and San Francisco Bay on the east; and
- WHEREAS, From 2007 to 2010, the Port conducted a community process that evaluated the unique site conditions and opportunities at Pier 70 and built a public consensus for Pier 70's future that nested within the policies established for the Eastern Neighborhoods-Central Waterfront. This process culminated in the Pier 70 Master Plan, which was endorsed by the Port Commission in May 2010, and the proposed mixed-use development of the Project Site (the "Pier 70 Mixed-Use Project"); and
- WHEREAS, In April 2011, by Resolution No. 11-21, the Port Commission awarded to Forest City Development California, Inc. ("Forest City"), through a competitive process, the opportunity to negotiate for the development of the 28-Acre Site as a mixed-use development and historic preservation project (the "28-Acre Project"); and
- WHEREAS, In May 2013, by Resolution No. 13-20, the Port Commission endorsed the Term Sheet for the 28-Acre Project. Subsequently, in June 2013, by Resolution No. 201-13, the Board of Supervisors found the 28-Acre Project fiscally feasible under Administrative Code, Chapter 29 and endorsed the Term Sheet for the 28-Acre Project; and
- WHEREAS, Port staff and FC Pier 70, LLC, an affiliate of Forest City ("Developer"), have negotiated the terms of the Disposition and Development Agreement ("DDA") and related transaction documents that are

incorporated into the DDA and provide the overall road map for development of the 28-Acre Project, including a Financing Plan, an Infrastructure Plan, an Affordable Housing Plan, a Transportation Plan that includes a Transportation Demand Management Program, a Workforce Development Plan, an arts program for the use of the arts building on Parcel E4 (including replacement studio space for the artist community in the Noonan building), and forms of an interim Master Lease, Vertical Disposition and Development Agreement and Parcel Lease (including applicable lease terms for Historic Buildings 2, 12 and 21); and

WHEREAS, The Developer has engaged in an extensive community outreach process that has included more than 120 community meetings since 2011, including workshops, focus groups, art events, formal and informal presentations, open houses and site tours. Additionally, in 2014, 73% of voters supported Proposition F, the ballot measure supporting reuse of the area and increasing the height limits for the 28-Acre Project, conditional upon Port Commission approval of a development plan for the 28-Acre Project; and

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

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

WHEREAS, Concurrently with this resolution, the Port Commission has taken or intends to take a number of other actions in furtherance of the 28-Acre Project, including: (1) approving a trust exchange agreement ("Exchange Agreement") between the Port and the California State Lands Commission; (2) consenting to amendments to the Planning Code that create the Pier 70 Special Use District ("Pier 70 SUD") over the Project Site and related amendments to the zoning maps; (3) consenting to the Development Agreement as it relates to matters under Port jurisdiction; (4) approving the Design for Development, which provides more detailed land use controls of the Pier 70 SUD and conforming amendments to the Waterfront Land Use Plan; (5) approving and recommending that the Board of Supervisors approve a memorandum of understanding for interagency cooperation among the Port, the City, and other City agencies with respect to approvals related to the subdivision of the 28-Acre Site and construction of infrastructure and other public facilities; (6)

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

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

WHEREAS, The DDA governs: (1) Developer's obligations to complete horizontal development of the 28-Acre Project, including entitlements, site preparation, subdivision and construction work related to streets and sidewalks, public realm amenities (e.g., parks and open space), public utilities and shoreline improvements (together, "Horizontal Development"), all to create development parcels and support and protect buildings; and (2) Developer's option to purchase or ground lease the majority of developable lots in the 28-Acre Site for vertical development, all in accordance with all of the governing land use and entitlement documents, including the Development Agreement, Pier 70 SUD, and Design for Development; and

WHEREAS, The DDA also governs Developer's obligations to deliver various public benefits, including: (1) the rehabilitation of Historic Buildings 2, 12, and 21 in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties; (2) a new up to approximately 90,000-square-foot arts facility; (3) replacement space for current tenants of the Noonan Arts Building; (4) at least 50,000 square feet of

Production, Distribution and Repair space; (5) two on-site child care facilities; (6) 9 acres of new parks and open space; (7) on-site sea level rise protections; and (8) affordable housing as described below; and

WHEREAS, The DDA includes a Schedule of Performance that includes outside dates for the completion of public infrastructure, including streets, utilities and parks, and the development of Historic Buildings 12 and 21 and the Arts Building; and

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

WHEREAS, The DDA, which is premised on approval of the Pier 70 trust exchange under the Exchange Agreement, (1) establishes processes to ensure that the Port receives fair market value for the sale or lease of all option parcels as established by appraisal or public offerings on the open market; (2) provides for three development parcels to be used for 100% affordable housing development through an agreement with the City that the Port will lease the parcels at below-market rents and the City will apply impact fees payable by developers of commercial parcels and market-rate housing to development of the affordable housing sites; (3) provides for the use of nontrust revenue sources in the form of tax increment and special tax revenues to the extent necessary to make the rehabilitation of two historic buildings financially feasible; and (4) provides for the Port to be repaid, with interest, from nontrust revenues for costs of constructing infrastructure and public facilities needed and desired to support development at the 28-Acre Site; and

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

WHEREAS, The Affordable Housing Plan includes measures to ensure that at least 30% of all residential units produced at the 28-Acre Site and the adjacent Parcel K South are affordable to low- and moderate-income

households, with the following components: (1) 150 or more inclusionary rental units, representing 20% of all on-site rental units and (2) 320 or more permanently affordable units in three buildings to be developed by local nonprofits in the 28-Acre Site and Parcel K South. The Port will enter into a memorandum of understanding with the Mayor's Office of Housing and Community Development for developer selection, rent-free leases, and development of the permanently affordable housing projects on the three sites; and

WHEREAS, The Infrastructure Plan includes the conceptual level planning elements of all the infrastructure systems necessary to serve the Pier 70 SUD and describes Developer's obligation to complete streets and infrastructure to support development of the 28-Acre Site. The Port's and City's third-party developers will retain certain infrastructure obligations related to the adjacent Illinois Street Parcels, including the 20th Street Plaza, Michigan Street, and Irish Hill Park; and

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

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

WHEREAS, The Master Lease is a form that sets forth the terms and conditions under which the Port will lease most of the 28-Acre Site to Developer when it is ready to begin constructing horizontal improvements, including parks, streets and utilities in accordance with the DDA. Individual development parcels will be removed from the Master Lease upon completion of the horizontal improvements serving each parcel as they are leased or sold to vertical developers; and

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

WHEREAS, The Parcel Lease is a form that sets forth the terms and conditions under which vertical developers will acquire rights to development parcels that are conveyed by ground lease rather than deed, and will be modified, as described in the staff memorandum accompanying this resolution, to address circumstances unique to (1) the Arts Building expected to be built on Parcel E4, including restrictions to allow arts uses and on rent) and (2) Historic Buildings 2, 12 and 21 (including Port review of construction plans and consistency with Secretary's Standards); 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 Project and in so doing, adopted approval findings under CEQA by Motion No. 19977, including a Statement of Overriding Considerations ( the "Pier 70 CEQA Findings"), and adopted a Mitigation Monitoring and Reporting Program ("MMRP"). A copy of the Planning Commission Motions, the Pier 70 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 Port Commission has reviewed the FEIR, the MMRP and the CEQA Findings, and finds that the approvals before the Port Commission are within the scope of the FEIR and that no substantial changes in the Pier 70 Mixed Use-Project or the circumstances surrounding the Pier 70 Mixed-Use Project have occurred and no new information that could not have been known previously showing new significant impacts or an increase in severity in impacts has been discovered since the FEIR was certified; now, therefore be it

RESOLVED, That the Port Commission adopts the Pier 70 CEQA Findings as its own and adopts the MMRP and imposes its requirements as a condition to this approval action; and be it further

RESOLVED, That the Port Commission hereby approves the DDA and finds that the 28-Acre Project is consistent with and furthers the purposes of the

common law public trust and the statutory trust under the Burton Act; and, be it further

RESOLVED, That the Port Commission approves the development plan described in the DDA as a Development Plan under Section 4 of the Union Iron Works Historic District Housing, Waterfront Parks, Jobs and Preservation Initiative (Proposition F, November 2014); and, be it further

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

RESOLVED, That to the extent that implementation of the DDA involves the execution and delivery of additional agreements, notices, consents and other instruments or documents by the Port, including, without limitation, instruments conveying or leasing development parcels to Developer or vertical developers (such as the Master Lease, Parcel Leases and Vertical Disposition and Development Agreements) (collectively, "Subsidiary Agreements"), the Executive Director, or her designee, as she may deem necessary or appropriate in consultation with the City Attorney, is authorized to execute all such Subsidiary Agreements so long as the transactions governed by such Subsidiary Agreements are contemplated in, and comply with the terms of, the DDA, and with respect to the Master Lease, Parcel Leases and Vertical Disposition and Development Agreements, are substantially in the form of the Master Lease, Parcel Lease and Vertical Disposition Agreement attached as Exhibits to the DDA; 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 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 as described in the 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 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; and, be it further

RESOLVED, That prior to Developer making any presentations to the Port Commission regarding a phase submittal and the Port Director or Commission, as applicable, taking any action on the phase submittal, Developer will make at least one presentation on the phase submittal to the Port's Central Waterfront Advisory Group (CWAG) or a successor Port advisory group that advises the Port on matters impacting the area of the Port that includes the 28-Acre Site; and, be it further

RESOLVED, That 5% of lease revenues paid to the Port under leases for the 28-Acre Site will be deposited in the Southern Waterfront Beautification Fund.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of September 26, 2017.***

---

Secretary