



To: Supervisor Cohen, Chair, Budget and Finance Committee
Supervisor Norman Yee, Budget and Finance Committee
Supervisor Katy Tang, Budget and Finance Committee

From: Brad Benson, Port Director of Special Projects
Christine Maher, Port Development Project Manager
Sarah Dennis Phillips, Office of Economic & Workforce Development

Date: October 19, 2017

Re: Substitute Supporting Documents for Board Files 170986 and 170988 (Pier 70 Project)

Please find attached substitute supporting documents for Board File 170986 (Disposition and Development Agreement) and Board File 170988 (Interagency Cooperation Agreement). Key changes to each attachment in the packets are summarized in the tables beginning on Page 2 of this memorandum. Any supporting documents not referenced on this memo remain unchanged from the original Board packet.

**KEY CHANGES TO BOARD FILE 170986
(DISPOSITION AND DEVELOPMENT AGREEMENT)**

DOCUMENT/ SECTION	SUMMARY OF CHANGES
<i>Disposition and Development Agreement</i>	
1.1(d)(ii), Parcels C1C and C2B	Parcels C1C and C2B are Option Parcels; Port retains the right to determine whether they are developed for commercial or residential
3.2(c)(ii), Public Presentation	Developer must present each Phase Submittal to the Central Waterfront Advisory Group in a public presentation at least 30 days before submitting it to the Port. If a CWAG presentation cannot be scheduled 30 days or more before the date Developer intends to submit the Phase Submittal for Port review, Developer may present at the next scheduled CWAG meeting or to host an informational presentation, providing a minimum of two weeks' notice by publication, posting, mailing or other means reasonably aimed at providing stakeholders with an opportunity to attend the presentation.
4.5(e) Effect of Down Market Delay	The Port may request a meet and confer process to decide whether a Down Market Delay would also toll the Port's obligations that are time-sensitive; provided, that the DDA includes a list of Port obligations that cannot be tolled, including its obligations under the Financing Plan, processing of applications in Phases unrelated to the Down Market Delay, acceptance of approvals and other matters identified in 4.5(e)(ii).
7.4, Price for Option Parcels	New language clarifies the basis for determining the price for purchase/lease of each Option Parcel with reference to the Appraisal Instructions. "The price the Option Parcel (by deed or Parcel Lease) will be (i) the Fee Value for fee transfers, (ii) the Fee Value or Prepaid Lease Value for fully Pre-Paid Leases, or (iii) the annual ground rent determined with regard to the Fee Value or Prepaid Lease Value, as any of those values are determined by the Final Appraisal in accordance with the Appraisal Instructions; however, if the Final Appraisal is equal to or less than the applicable Down Market Threshold, then the procedures of Subsection 7.4(d) (Effect of Down Market Delay)."
7.9, Parcel K North	Adjustments made to reflect the timing of the City's approval of the sale of Parcel K North, to occur after the initial Project approvals.
7.11/7.14, Historic Tax Credits Part 1 and 2	Language added to allow the Port Director to waive the requirements for submittal of a Part 1 and Part 2 for the Historic Tax Credit application if she reasonably determines based on discussions with the National Park Service that the buildings would not qualify for tax credits.
9.4, Environmental Indemnity	Developer will indemnify the Port, City and State Lands for hazardous materials conditions to the same extent as provided under the Master Lease.
15, Horizontal Improvements Generally	Developer is permitted to assign its obligations for Deferred Infrastructure in all Phases, subject to Other City Agency review, inspection, and acceptance of the Deferred Infrastructure under the ICA and the Subdivision Code. However, Developer retains primary responsibility for seeking and obtaining:

	<p>(i) reimbursement for Deferred Infrastructure costs under the Acquisition Agreement; and (ii) acceptance of Deferred Infrastructure by the Board of Supervisors or the Port, as applicable.</p> <p>Developer must complete the following work to prepare Development Parcels for conveyance to Vertical Developers:</p> <ul style="list-style-type: none"> • Record a Final Map (which may be a Final Transfer Map). • Development Parcels may be left in an as-is condition until conveyed. For Development Parcels that will include a basement level, Developer may excavate the basement to generate fill for use elsewhere on-site, subject to any required Water Board approval. For other Development Parcels, Developer may elect at its sole option to grade the building pad to target subgrade elevation with soil compacted under the applicable grading permit and the geotechnical recommendations for the site as certified by Developer’s geotechnical engineer. • Developer must perform all necessary site preparation and must retain the obligation to construct all necessary infrastructure to serve the Development Parcel per the Schedule of Performance, other than except for any Deferred Infrastructure that a Vertical Developer assumes under the Vertical DDA. <p>Developer must meet the following conditions to commence construction of Phase Improvements other than site preparation:</p> <ul style="list-style-type: none"> • Developer must obtain: (i) approval of the Streetscape Master Plan, the applicable Phase Approval, approval of Schematic Design for any Park Parcel, as applicable, and all other required Regulatory Approvals, including Construction Permits. • Developer must have obtained Public Works’ conditional approval of the Tentative Map for the Phase Area, entered into a Public Improvement Agreement with the City, provided all bonds required under the Subdivision Code, and received Public Works’ authorization to begin construction.
<p>15.6, Deferred Infrastructure</p>	<p>To the extent known, Developer must identify “Deferred Infrastructure Zones” associated with the applicable Phase Improvements in each Phase Submittal and with each Basis of Design Report. The Deferred Infrastructure Zones are areas that are adjacent or related to Development Parcels and would be anticipated to be constructed in conjunction with the vertical improvements. Deferred Infrastructure remains subject to approval by relevant City Agencies as provided in the ICA.</p>
<p>15.7, SOP Compliance</p>	<p>This Section sets forth the process for determining when Developer has adequately constructed and completed Phase Improvements for purposes of the Schedule of Performance:</p> <ul style="list-style-type: none"> • When Developer believes that it has completed a component of infrastructure or a public park, it may submit to the Chief Harbor Engineer a request for a “Determination of SOP Compliance”, accompanied by various documents to establish satisfactory completion. Unless the SOP Compliance Request relates to Deferred Infrastructure or all Phase improvements in a Phase, the Chief Harbor Engineer will make an SOP Compliance Determination without regard to Deferred Infrastructure.

	<ul style="list-style-type: none"> • The Chief Harbor Engineer will grant an SOP Compliance Request by issuing an SOP Compliance Determination that will be recorded, to conclusively establish Developer’s compliance with the Schedule of Performance. Failure of the Chief Harbor Engineer within the required times, subject to further notice and cure, will be deemed approval for purposes of the Schedule of Performance. • Recordation of the SOP Compliance Request will relieve any person with an interest in the property from any obligation or liability with respect to its failure to comply with the Schedule of Performance obligations to which the recorded document applies
15.8, Port Acceptance of Park Parcels and Phase Improvements	<p>Public parks constructed by Developer will be accepted by the Port. Other Phase Improvements, such as certain streets and utilities, may be accepted by the Port upon agreement with other City agencies.</p> <p>The DDA sets forth a process whereby the Chief Harbor Engineer will request Port Commission approval of the applicable park or phase improvement after it issues the SOP Compliance Determination.</p> <p>The Port Commission will act on acceptance of the applicable park or phase improvement, and will delegate to the Chief Harbor Engineer the authority to accept Deferred Infrastructure related to the park or phase improvement.</p> <p>Upon the Port Commission’s acceptance, the applicable park or other phase improvement will be released from the Master Lease and will become an accepted Port-owned public park.</p>
Appendix to Transaction Documents	
Updated to reflect changes to the DDA and Financing Plan.	
DDA Exhibit B2, Schedule of Performance	
Replaced concept of “Final Completion” with “Determination of SOP Compliance” for consistency with Section 15.7 of the DDA.	
DDA Exhibit B4, Workforce Development Plan	
Workforce Development Plan	Revised language pertaining to the First Source Hiring Program for Construction Work, to clarify that Horizontal Developer and Vertical Developers must enter into a Memorandum of Understanding with the City’s First Source Hiring Administration.
Attachment A-3, First Source Hiring for Construction	Removed duplicate pages
DDA Exhibit B5, Transportation Program	
Clarifies expectations for implementation of transit improvements and the project shuttle, per recent discussions with the Potrero Boosters.	
DDA Exhibit B10, Form of Master Lease	

Basic Lease Information	Tenant will deliver a Bond in an amount equal to 5% of the Phase Improvements as additional security for the maintenance and repair of any Phase Improvements.
4.5, Liquidated Damages for Repeat Prohibited Uses	If Tenant engages in the same type of Prohibited Use more than twice in a 24 month period, Tenant will incur a \$25,000 liquidated damages penalty (subject to escalation over time) for each subsequent similar Prohibited Use.
19.2, Hazardous Materials Indemnification; 19.4, Exclusions	<p>Among other hazardous materials indemnification obligations, Tenant will indemnify Port for Tenant's failure, or the failure of its Subtenants and Agents, to comply with the Pier 70 Risk Management Plan within the 28-Acre Site and the failure of its Invitees and the Invitees of its Subtenants and Agents to comply with the Pier 70 Risk Management Plan within the Premises.</p> <p>The hazardous materials indemnification obligations will not apply to (1) the gross negligence or willful misconduct of the Indemnified Parties, (2) third party claims for exposure to hazardous materials occurring prior to the time that Tenant had exclusive control of the Premises, and (3) except to the extent claim for exposure was not caused by failure to comply with the Pier 70 Risk Management Plan, claims arising from exposure to pre-existing hazardous materials after the Acceptance Date of any Horizontal Improvement Parcels, or newly discovered Hazardous Materials that are not pre-existing hazardous materials after the Acceptance Date, which presence is limited to the Horizontal Improvement Parcels and not present in the Premises, in each case other than (i) claims by Tenant and its Subtenants and Agents and (ii) claims arising from Handling, Release or Exacerbation by Tenant or its Subtenants, Agents or their respective Agents.</p> <p>If an indemnification claim can reasonably be asserted under a pollution liability insurance policy under which the indemnified party is an additional insured or potential claimant, then Port will cooperate with Tenant to assert such insurance claim and the indemnification obligation will not be effective unless such claim has been asserted and diligently pursued and until any policy limits are reached.</p>
Exhibit D, Rent	<p>100% of Net Income will be applied as "Land Proceeds" as provided under Section 1.6 of the Financing Plan on a quarterly basis, but calculated as if the Percentage Rent had been applied monthly rather than quarterly.</p> <p>Net Income will be gross revenues less parking taxes, repaving and striping of parking lots, and actual, out-of-pocket costs associated with Ancillary Permitted Uses. Net Income for parking revenues will be deemed to be 66% of gross parking revenues less parking taxes and repaving and striping of parking lots.</p>
DDA Exhibit C1, Financing Plan	
1.3(b)(i)	Elimination of 20 th /Illinois Plaza as a facility to be financed by the Pier 70 Condo CFD.

1.6(d)	The provisions regarding Interim Lease Revenues were revised to reflect the Percentage Rent concept.
4.1(a)	An RMA Term Sheet is attached as Exhibit H, and sets forth the parameters for drafting the RMAs in connection with the future formation of the CFDs
4.7(d)	Language allowing the Project Reserve to be used as a secondary reserve fund for the Bonds was deleted.
4.12	Language was added that requires the Developer to enter into an agreement with each Vertical Developer to pay the first two years' of the Facilities Special Taxes levied on NOI Property in the Pier 70 Leased Property CFD
5.2(a)(ii)	The City will consult with the Port and the Developer before determining capitalized interest, but the decision will be in the sole discretion of the City
6.2(a)(i) and elsewhere	The Assessor's will use its best efforts to determine the Baseline Assessed Value as soon as practicable, and the link of the best efforts to a final certificate of occupancy was terminated
6.5(h)	A fully-revised section on the credit of Tax Increment to the NOI Parcels was created, whereby only Assessed Property (property with a fully-assessed building and one years' payments of ad valorem taxes) that pays its taxes is eligible for a credit from Tax Increment collected in Sub-Project Areas G-2, G-3, and G-4
7.2	The limitations on additional sources of capital in Section 1.7 do not apply to the advance of Port Capital.
10.2	The conditions for funding community facilities out of the Arts Building Special Tax were set forth by reference to the term "CF Conditions" defined in the Appendix
Exhibit A, Form of Acquisition Agreement	Clarified that draft is subject to further review for conformity with DDA and Financing Plan.
Exhibit B, Form of Special Fund Administration Agreement	The Special Fund Administration Agreement provides for the administration and disposition of tax increment and special taxes in accordance with the Financing Plan from the IFD sub-project areas, the IFRD, and the special tax districts proposed to be formed in connection with the Pier 70 mixed-use project. The revisions in the most recent draft are intended to reflect changes to the Financing Plan since the submission of the Special Fund Administration Agreement in September 2017. The changes include, but are not limited to, reflecting a revised priority of uses for tax increment revenues anticipated to be generated within the IFD sub-project areas from leased and residential condominium properties.
Exhibit D, Form of Promissory Note-LP	Not included in previous packet.
Exhibit E, Form of Partial Assignment	Not included in previous packet.

Exhibit F, Form of Promissory Note-X	Not included in previous packet.
Schedule 4, Public Financing Sources	20 th /Illinois Plaza removed as Permitted Use of Facilities Special Taxes from Pier 70 Condo CFD.
DDA Exhibit C2, Appendix G-2 to Infrastructure Financing Plan for IFD Project Area G	
Updated to conform with document filed in Board File No. 170878 .	
DDA Exhibit C3, RMA Term Sheets - Pier 70 Leased Property, Condo Property + Hoedown Yard CFDs	
Added provisions related to Hoedown Yard.	
DDA Exhibit C6, Tax Allocation MOU	
The Memorandum of Understanding (“MOU”) is an agreement under Charter Section B7.310 among the Port, Controller, Assessor-Recorder and Treasurer and Tax Collector for the purpose of implementing the DDA, Sub-Project Areas, IRFD and CFDs. The revisions in the most recent draft are primarily non-substantive and include a statement that a party cannot terminate the MOU if it would adversely impact the Port’s compliance with the Financing Plan.	
DDA Exhibit D2, Form of Vertical DDA	
19.4, Right to Transfer	<p>Changes reflect agreement from Parcel Lease for transfers of Vertical DDA, as follows:</p> <ul style="list-style-type: none"> • Prior to completion of the Vertical Improvements, Port will not unreasonably withhold its consent to a transfer if the transferee meets certain conditions, including: (i) qualifying as a “Qualified Transferee”, having a minimum net worth of at least \$27.5 million (subject to periodic escalations) and experience with comparable development; (ii) delivering an assignment and assumption agreement; (iii) a release of Port, City and State Lands of any claims resulting from the condition of the property or any claims arising prior to the effective date of the Transfer; (iv) if the transfer involves a change in ownership interests (a “significant change”), the transferee must deliver a certificate setting forth the purchaser of the ownership interest, purchase price, any Net Transfer Proceeds owed to Port and a reaffirmation from Vertical Developer that it will continue to be obligated under all the terms and conditions of the Vertical DDA. • Transfers to affiliates or significant changes where there is no change to the managing party (having an ownership interest of 10% or more plus power to direct day-to-day management) do not require Port consent, but must be noticed. • No restriction on transfer under the Vertical DDA for residential fee parcels after issuance of a Certificate of Completion for the improvements.
Form of Transfer Fee Covenant	For residential fee parcels only, Port will receive 1.5% of the purchase price of each condominium unit after the first sale.
Schedule 15.3, Remedies for	For residential fee parcels only, the Port will retain certain remedies if the Vertical Developer fails to commence construction within thirty (30) months of

<p>Failure to Commence Construction (Residential Fee Parcels Only)</p>	<p>the Closing Date, subject to Force Majeure (the “Required Construction Commencement Date”). These remedies include the following:</p> <ul style="list-style-type: none"> • Liquidated damages, an amount equal to 2x the daily special tax obligation for the Property for each day that the commencement of residential construction is delayed beyond the Required Construction Commencement Date. • If the residential project does not commence within 12 months after the Required Construction Commencement Date, then the Master Developer has a one-time right to purchase the Property for a purchase price equal to eighty-five percent (85%) of the price that the Vertical Developer paid for the property. • If Master Developer does not exercise its purchase option, then the Port has a one-time right to purchase the Property for eighty-five percent (85%) of the price that the Vertical Developer paid for the property, or cause Vertical Developer to transfer the Property to a third-party for the same 85% price.
<p>Schedule 18.1, Hazardous Materials Indemnification</p>	<p>The Vertical DDA includes the same Hazardous Materials indemnity included in the Parcel Lease for residential fee parcels after such parcel is transferred to Vertical Developer.</p>
<p><i>DDA Exhibit D3, Form of Parcel Lease</i></p>	
<p>19.2, Hazardous Materials Indemnification</p>	<p>The Parcel Lease includes the same Hazardous Materials indemnity included in the Master Lease, except that, in addition to the indemnification obligations under the Master Lease, Tenant will indemnify the Indemnified Parties and State Lands Indemnified Parties from (1) Handling or Release of Hazardous Materials in areas used by Tenant to perform Deferred Infrastructure, until Acceptance thereof, and (2) Handling or Release of Hazardous Materials by Tenant, its Subtenants and Agents outside the Premises but within the 28-Acre Site.</p>
<p>19.7, Waiver</p>	<p>Tenant’s waiver of claims against the Indemnified Parties and State Lands Indemnified Parties does not include claims arising from Indemnified Parties’ gross negligence or willful misconduct.</p>
<p>Exhibit D, 3.6(b), Participation in Recapitalization Proceeds Prior to Early Transfer Date</p>	<p>For any Recapitalization prior to the Early Transfer Date that is not a Qualifying Early Sale (defined as an Assignment to a non-Affiliate or a Recapitalization that results in a change in the Managing Party or the Managing Party owning less than 10% of Tenant), Tenant will pay to Port 1.5% of Recapitalization Proceeds less (i) Tenant’s Purchase Price multiplied by the ownership interests transferred and (ii) Costs of Sale.</p>
<p>Exhibit D, 3.6(c), Participation in Net Sales Proceeds from Reappraisal Events</p>	<p>For any Reappraisal Event prior to the Early Transfer Date that is not a Qualifying Early Sale, Tenant will pay to Port 1.5% of Net Sales Proceeds.</p> <p>Net Sales Proceeds for a Reappraisal Event will be deemed to be an amount equal to (1) the total ownership interests in Tenant after the Reappraisal</p>

	Event held by the Person causing the Reappraisal Event multiplied by (2) the value of the Leasehold Estate as evidenced by the estimated fair market value provided by Tenant to the Assessor (or, if none is provided, based on an Appraisal Report).
Exhibit D, Section (f), Additional Definitions	The deductions used to determine “Net Recapitalization Proceeds” will be the same deductions used to determine “Net Sales Proceeds”
Exhibit XX, Insurance Requirements	Insurance requirements included, which are similar to the insurance requirements as included in the Master Lease.
DDA Exhibit D4, Form of Appraisal Instructions	
V.A., Purpose	Added instruction to find the value of the Lease Fee Interest in the site for Fully Pre-paid Leases and Hybrid Leases. For Hybrid Leases, changed requirement from finding the annual minimum ground rent to finding the factors which, when applied to the Fee Value or the Pre-Paid Lease Value, results in the minimum annual ground rent.
V.C.1., Extraordinary Assumptions	Deleted extraordinary assumption that the entire facilities portion of the CFD Special Taxes will be paid from tax increment. Instead, Appraiser will be provided documentation describing the interaction between the CFD and the IFD.
V.C.2., Special Instructions	<ul style="list-style-type: none"> Requires that Appraiser consult with Qualified Investment Advisors, other market participants, and refer to comparables, among other processes, to quantify the capitalization rate differential between fee simple and leasehold transactions; prior draft left that consultation process up to the Appraiser. Requires that Appraiser shall conduct residual land value as one of the approaches to value rather than may conduct. Provides more description of the Annual Ground Rent Conversion Factor, noting that the Appraiser may use a factor to be applied to either Prepaid Lease value or Fee Simple value, but that the factors are different depending on which value they are to be applied.

**KEY CHANGES TO BOARD FILE 170988
(INTERAGENCY COOPERATION AGREEMENT)**

SECTION	SUMMARY OF CHANGES
3.5 Other City Actions.	In subsection (e) regarding Acceptance, acknowledges that the Infrastructure Plan sets forth standards for certain Street Segments that will require Developer to request exceptions to the Subdivision Code and Subdivision Regulations.
4.4 Processing of Improvement Plans and Issuance of	Revised subsection (b) to provide for a process for the City to respond within 90 days to provide feedback to the Developer on proposed exceptions and

Construction Permits.	<p>design modifications identified by Developer in its Basis of Design Report before Developer makes a formal request.</p> <p>Added new subsection (c) to clarify that the Developer has proposed to submit applications requesting the ability to request Deferred Infrastructure, which means certain Horizontal Improvements that by agreement with the permitting entity may be constructed, completed and/or accepted separate from the rest of such permitted Horizontal Improvements; that deferral would require either amendments to or an exception from the Subdivision Code and/or the Subdivision Code; that Developer and Port may apply for exceptions to the Subdivision Code and the Subdivision Regulations (as may be amended); that the City Parties agree to explore Deferred Infrastructure; but that there are no obligations for acceptance of Deferred Infrastructure under this ICA.</p>
4.5(d)	Changed terminology from “Final Completion” to “SOP Compliance Determination”, consistent with DDA procedures.
4.6 Standards and Procedures for Acceptance.	<p>Revised subsection (b) to reflect that City Agencies will meet and confer to consider standards and procedures for acceptance of Horizontal Improvements, including individual utility systems that would be subject to Developer’s potential post-acceptance maintenance, repair, and liability until the completion of all surface and subsurface improvements in the streets and right-of-ways in which the individual utility system is installed, and the City’s acceptance of such improvements and streets and right-of-ways.</p> <p>Added new subsection (c) to describe a future memorandum of understanding agreement among City Agencies, which will establish a framework for acceptance, ownership, maintenance and regulation of Horizontal Improvements and which will require City Agencies to agree to work in good faith to enter into such a memorandum of agreement within 120 days of Developer’s submission of a complete First Submittal of Horizontal Improvement Plans.</p>
5 Process For Review And Approval Of Subdivision Maps	Verifies that the Subdivision Map Act, the Subdivision Code, and the Subdivision Regulations shall govern the mapping process, removes the majority of the previous Section 5, and replaces that text with the new ICA Attachment D (described below).
6.5 Termination	Clarifies how the Developer, the Port, or Other City Agencies may request the termination of the third-party infrastructure coordinator’s contract.
ICA Attachment C: Developer’s Deferred Infrastructure Concept	New Attachment describing how Developer proposes to implement the Deferred Infrastructure, subject to Developer’s attainment of all required City approvals. is proposed to be implemented. Included for illustrative and discussion purposes only.
ICA Attachment D: Developer’s Proposed Subdivision Concept Application Sequence	New Attachment describing how Developer proposes to implement the subdivision and mapping process is proposed to be implemented. Included for illustrative and discussion purposes only.