

## **LEGISLATIVE DIGEST**

[Contract - Brookfield Properties - Electric Facilities Installation at Pier 70 - Not to Exceed \$1,700,000]

**Ordinance authorizing the Public Utilities Commission to contract with Brookfield Properties to install certain electrical facilities in substructures installed by Brookfield Properties on Pier 70, for an amount not to exceed \$1,700,000 and for a term of three years from March 1, 2021 to February 28, 2024; and waiving certain provisions of the Administrative Code.**

### **Existing Law**

Under Chapter 6 of the Administrative Code, all City and County of San Francisco (“City”) departments and agencies must engage in a competitive bidding process before contracting for a public work. In addition, City departments and agencies must comply with the Local Business Enterprise Utilization and Nondiscrimination (“LBE”) provisions contained in Administrative Code chapters 12B, 12C, and 14B.

### **Amendments to Current Law**

The proposed ordinance would authorize the San Francisco Public Utilities Commission (“SFPUC”) to contract certain work at the Pier 70 development project to the project developer Brookfield Properties without: (1) first conducting a competitive bidding process; and (2) requiring Brookfield to comply with the LBE provisions. The contract will be for a term of three years and will contain a not-to-exceed amount of \$1,700,000.

### **Background Information**

The City, acting through the Port of San Francisco (“Port”), and Seawall Lot 337 Associates, LLC (“Mission Rock”) negotiated the terms of a Disposition and Development Agreement for the development of a 28-acre project located on Third Street between Terry Francois Boulevard and Mission Rock Street (“Mission Rock DDA”). On February 23, 2018, the City adopted Resolution No. 42-18, approving the Mission Rock DDA.

On March 6, 2018, the City enacted Ordinance No. 33-18, approving the Mission Rock Development Agreement and, among other things, waiving certain requirements of Chapter 6 of the Administrative Code. The Board found in Ordinance No. 33-18 that the Mission Rock development will help the City realize and further its goals to restore and revitalize Seawall Lot 337 and Pier 48, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, add to the City’s affordable and market-rate housing stock, and create a significant number of construction and permanent jobs in and near the project site.

The City and FC Pier 70, LLC, then a wholly-owned affiliate of Forest City Realty Trust, Inc. and now owned by Brookfield Properties Development (“Brookfield Properties”), negotiated the terms of a Disposition and Development Agreement for development of the 28-acre site on Pier 70 that is bounded generally by Illinois Street on the west, 22nd Street on the south, 20th Street on the north, and San Francisco Bay on the east (“Pier 70 DDA”). On November 9, 2017, the City adopted Resolution No. 401-17, approving the Pier 70 DDA.

On November 15, 2017, the City enacted Ordinance No. 224-17, approving the Pier 70 Development Agreement (“Pier 70 DA”). The Board found in Ordinance No. 224-17 that the Pier 70 development will help the City realize and further its goals to restore and revitalize the Union Iron Works Historic District, increase public access to the waterfront, increase public open space and community facilities within the neighborhood, increase affordable and market-rate housing, and create a significant number of construction and permanent jobs along the southeastern waterfront.

Pursuant to the California Constitution, Charter section 16.101, and Administrative Code Article 99, the City has adopted a policy to supply electricity through the Public Utilities Commission (“PUC”) where feasible to all new City developments.

Both the Mission Rock DDA and Pier 70 DA require the developers to obtain power from the PUC where feasible, and the PUC has determined that it is feasible to serve both developments. The PUC has determined there is a need for new electric service at the PUC’s Mariposa Pump Station.

In order to obtain electric service from the PUC at Pier 70, under the PUC Rules and Regulations for Electric Service (“PUC Rules”) Brookfield Properties must construct at its own expense certain underground substructures including, but not limited to, electric conduits, utility vaults, and equipment pads throughout the Pier 70 development. One of the substructures being constructed by Brookfield Properties could be used to provide temporary service to Mission Rock and the Mariposa Pump Station before it is needed at the Pier 70 development.

Under the PUC Rules, the PUC is responsible for installing certain conductors and other electrical equipment within the substructures Brookfield Properties will install on Pier 70. The PUC has determined that it does not have the personnel needed to perform work required under the PUC Rules, and that entering into a competitive process would unduly delay these development projects and service to the Mariposa Pump Station. The PUC’s cost for this work is approximately \$1,700,000.

The PUC, during its meeting on December 22, 2020, approved Resolution \_\_\_\_\_ authorizing the PUC to: (1) enter into an Electric Service Agreement (through its subsidiary FC Pier 70, LLC) that, among other things, would authorize the PUC to enter into a separate

agreement with Brookfield Properties to install the PUC's electric facilities in Brookfield Properties substructures on Pier 70; and (2) seek Board approval to waive certain City contracting requirements so that the PUC could enter into a separate agreement with Brookfield Properties for PUC to pay Brookfield Properties to install the PUC's electric facilities in Brookfield Properties substructures on Pier 70.

The PUC does not have a sufficient number of qualified personnel to perform this work in the time required. The PUC has also determined there is adequate time to conduct a competitive bidding process. In accordance with the Charter, the PUC is seeking approval from the Civil Service Commission to contract for this work.

In addition, some of this work will be on property under the control of Brookfield Properties, so coordination with Brookfield Properties will be required. Finally, Brookfield Properties has agreed to limit the costs to the amount that the PUC will be required to refund Brookfield Properties under the PUC Rules.

It is reasonable and in the public interest for the PUC to contract with Brookfield Properties to do this work, without competitive bidding, because Brookfield Properties is already subject to certain workforce development requirements. In approving the Pier 70 DA, the Board also approved the Workforce Development Plan attached to the Pier 70 DDA, which replaced the following contracting requirements in the Administrative Code: (1) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance); (2) Article VII of Chapter 23 (Prevailing Wage, Apprenticeship, and Local Hire Requirements in City Real Property Sales Contracts and Leases); and (3) Chapter 83 (First Source Hiring Program) to the extent that these requirements apply to construction work that is subject to the Local Hiring Requirements of the Workforce Development Plan.

In addition, in approving the Pier 70 DA the Board granted waivers of certain contracting requirements in the Administrative Code including: (1) Chapter 6 (Public Works Contracting Policies and Procedures) other than the payment of prevailing wages as required; (2) Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance); (3) Section 12Q.5(f) (Health Care Accountability); and (4) Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions).

Reimbursing Brookfield Properties is consistent with the Pier 70 DDA and Exhibit C1 to the Pier 70 DDA, and the Financing Plan ("FP") between the Port and Brookfield Properties, which requires the Port to reimburse Brookfield Properties its Capital Costs of Horizontal Improvements (as each is defined in the Appendix to the Pier 70 DDA) in connection with its construction at the Pier 70 development, to the extent of available Project Payment Sources (as defined in the Appendix to the Pier 70 DDA), and to the extent such Capital Costs of Horizontal Improvements are approved by the Acquisition and Reimbursement Agreement (FP Exhibit A).

In any contract between the PUC and Brookfield Properties entered into pursuant to this ordinance the PUC intends to require Brookfield Properties to comply with the City's contracting requirements and policies contained in the Administrative Code, except to the extent the Board has waived any of those requirements either in this ordinance or in Ordinance No. 224-17.

n:\legana\as2020\2100195\01493906.doxc