

CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED, MAYOR

MEMORANDUM OF UNDERSTANDING

NO. M-_____

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE REAL ESTATE DIVISION

SAN FRANCISCO PORT COMMISSION

**Elaine Forbes
Executive Director**

**Willie Adams, President
Doreen Woo Ho, Vice President
Kimberly Brandon, Commissioner
John Burton, Commissioner
Gail Gilman, Commissioner**

MEMORANDUM OF UNDERSTANDING
(1236 Carroll Ave)

THIS MEMORANDUM OF UNDERSTANDING (herein “**Agreement**”) dated for reference purposes only as of _____, 2022, is made by and between the San Francisco Real Estate Division (“**RED**”), a division of the City Administrator’s Office, of the City and County of San Francisco (“**City**”), and the San Francisco Port Commission (“**Port**”), an agency of the City and County of San Francisco.

Port and RED enter into this Agreement on the basis of the following facts, intentions, and understandings:

RECITALS

A. The City owns property under the jurisdiction of the Port located in San Francisco at Lot 001, Block 4852, consisting of approximately 26,000 square feet (the “**Railroad Remnant Property**”), and paper streets located at Griffith Street and Bancroft Avenue totaling approximately 86,400 square feet (“**Port Paper Streets**”). The Railroad Remnant Property and the Port Paper Streets are collectively referred to in this Agreement as the “**Property**,” as more particularly described on the attached Exhibit A and shown on the attached Exhibit A-1.

B. The State of California (“**State**”) transferred the Property to the Port subject to the common law public trust and the Burton Act statutory trust (Cal. Stats. 1968, Ch. 1333, as amended), which are collectively referred to as the “**Public Trust**.”

C. RED desires to facilitate a transfer of jurisdiction of the Property free of the Public Trust from the Port to RED jurisdiction so that it can be used for earthquake safety and emergency response purposes. The City is studying use of the Property as a new fire training facility for the San Francisco Fire Department, together with approximately 4.9 acres of privately-owned adjacent property that the City may acquire. Construction of a new fire training facility for the San Francisco Fire Department is necessary to replace an existing facility on Treasure Island that will not be available beyond 2025 due to development on the island.

D. To accommodate earthquake safety and emergency response uses of the Property, Assemblymember Ting introduced legislation to authorize the removal of the Public Trust from the Property and the transfer of the Property from the Port to the City under RED jurisdiction, subject to conditions, including that the Port is paid the fair market value of the Property as approved by the California State Lands Commission (“**AB 2607**”).

E. The Port Commission approved the jurisdictional transfer from Port to RED and authorized receipt of payment from the City under the terms and conditions described in this Agreement by Resolution No. _____, adopted by the Port Commission on _____.

F. The City’s Board of Supervisors approved such jurisdictional transfer from the Port to RED and authorized RED to accept such transfer and payment to Port by Resolution No.

_____, adopted by the Board of Supervisors on _____ (the “Transfer Resolution”).

NOW, THEREFORE, IN CONSIDERATION of the foregoing, Port and City hereby agree to the following:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Operative Date of Transfer.

a. The jurisdictional transfer of the Property shall be operative upon the date (the “**Transfer Date**”) that each of the following conditions has occurred, which are independent preconditions to the jurisdictional transfer. Port and RED acknowledge that the failure to achieve any precondition listed below will delay or preclude the Transfer Date.

i. This Agreement is approved by the Port Commission.

ii. This Agreement is approved by the Board of Supervisors.

iii. The amount of the Transfer Fee (as defined in Section 3) is approved by the California State Lands Commission.

iv. The City’s Director of Property has appraised the fair market value of the Property and has obtained an appraisal review of such appraisal, in accordance with Chapter 23 of the City’s Administrative Code.

v. The City has completed all actions necessary to comply with the California Environmental Quality Act (“**CEQA**”), the State CEQA guidelines, and Chapter 31 of the City’s Administrative Code.

vi. Title Company is committed upon the Transfer Date to issue to City marketable and insurable fee simple title to the Property, subject only to those exceptions shown on the attached Exhibit B.

vii. The City Surveyor has approved the form of the transfer documentation, if required.

viii. The State has lifted the Public Trust through appropriate legislation and related requirements, including but not limited to approval by the California State Lands Commission, and the State has delivered appropriate deeds to the City.

ix. The Transfer Resolution by the Board of Supervisors becomes effective.

x. The Transfer Fee is paid to the Port.

b. The City retains absolute discretion to: (i) make modifications it deems necessary to mitigate significant adverse environmental impacts, (ii) select feasible alternatives that avoid significant adverse impacts, including the “no project” alternative, (iii) balance the benefits of the purchase and the proposed project against the unavoidable significant impacts prior to taking final action, or (iv) determine not to proceed with the jurisdictional transfer of the Property. The Port and RED will use best efforts to cause the Transfer Date to occur within forty-five (45) days of the effective date of the Transfer Resolution.

3. Transfer Fee.

a. The Port shall receive fair market value of the Property, as confirmed by the California State Lands Commission (“**Transfer Fee**”).

b. The Parties agree that a January 2021 appraisal, updated in March 2022, concluded that the fair market value of the Property equaled Five Million Eight Hundred Sixty Thousand and No/100 Dollars (\$5,860,000.00). The Parties agree that this valuation is mutually acceptable and acknowledge that AB 2607 will require that the State Lands Commission confirm that the Port receive funds equal to or greater than the fair market value of the Property.

c. In addition, City will be responsible for any third-party costs required to effectuate the transfer except for survey expenses, including but not limited to title insurance, closing costs, and any other external expenses reasonably incurred that are approved by RED in advance. Notwithstanding, Port will not be reimbursed for Port staff time.

4. Site Access Prior to Transfer. Prior to the Transfer Date Port shall afford City and its agents reasonable access to the Property for the purposes of inspecting the Property and conducting site assessments. City will not perform any invasive on-site testing without the prior written approval of Port.

5. Condition of Property. City acknowledges that Port has made no representations or warranties concerning the physical condition of the Property, including without limitation, the seismological or environmental conditions thereof. By taking jurisdiction of the Property, City shall be deemed to have inspected and accepted it in an "As-Is" condition. City is relying solely on its independent investigation and not on any representations or warranties of any kind whatsoever, express or implied, from Port or its agents as to any matters concerning the Property, its suitability for City’s intended use, or any of the Property conditions and as being suitable for the conduct of City’s proposed use. City acknowledges that the As-Is condition includes the title exceptions shown on the attached Exhibit B.

6. Minor Boundary Adjustments. Because the legal descriptions of the Port Paper Streets and Railroad Remnant Parcel are subject to the review and approval of the California State Lands Commission, adjustments to such legal descriptions may be required. City and Port will work together in good faith to amend and restate the legal descriptions set

forth in Exhibit A in accordance with the requirements of the California State Lands Commission. The legal descriptions and this Agreement may be amended accordingly without further approval or action required by the Port Commission or City's Board of Supervisors, so long as (i) City's Director of Property, Port's Executive Director, and the County Surveyor approve the revised legal descriptions, and (ii) the adjustments to the legal descriptions are minor in nature and do not materially change the overall square footage of the Property.

7. Official Records. Once the Transfer Date occurs, the Director of Property shall record the jurisdictional transfer of the Property in the City's property records in the manner specified in the Transfer Resolution.

8. Notices. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by regular mail, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices must also be given by email to the addresses provided from time to time.

Address for Port: Deputy Director, Real Estate and Development
Port of San Francisco
Pier 1
San Francisco, CA 94111
FAX No: (415) 274-0578
Telephone No:(415) 274-0501
rebecca.benassini@sfport.org

Address for RED: Director of Property
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Re: 1236 Carroll Avenue
FAX No: (415) 552-9216
Telephone No: (415) 552-9860
andrico.penick@sfgov.org

9. Miscellaneous Provisions.

a. California Law. This Agreement shall be construed and interpreted in accordance with the Laws of the State of California and the City's Charter and Municipal Codes.

b. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the parties with respect to the subject matter of the Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of the Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or

other person, and no court or other body should consider those drafts as in interpreting this Agreement.

c. Amendments. No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

d. Further Assurances. The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this Agreement.

e. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by this reference and made a part hereof as set forth in full.

10. Effective Date. This Agreement shall not be effective unless approved by the San Francisco Port Commission and the San Francisco Board of Supervisors, each in its sole and absolute discretion. This Agreement shall be effective as of the last date of the last signatory as indicated below.

[Signature Page Follows]

IN WITNESS WHEREOF, PORT and RED execute this Memorandum of Understanding No. M-_____ at San Francisco, California, as of the last date set forth below.

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation operating by and through
THE SAN FRANCISCO PORT
COMMISSION

By: _____
ELAINE FORBES
Executive Director

Date: _____

Port Resolution No.: _____

REVIEWED BY:
City Attorney
DAVID CHIU

By: _____
Justin Bigelow
Deputy City Attorney

CITY AND COUNTY OF
SAN FRANCISCO, a municipal
corporation

By: _____
ANDRICO Q. PENICK
Director of Real Estate

Date: _____

Board of Supervisors Resolution No.

EXHIBIT A

Legal Description

[To be inserted prior to conveyance]

EXHIBIT A-1

Map of the Property

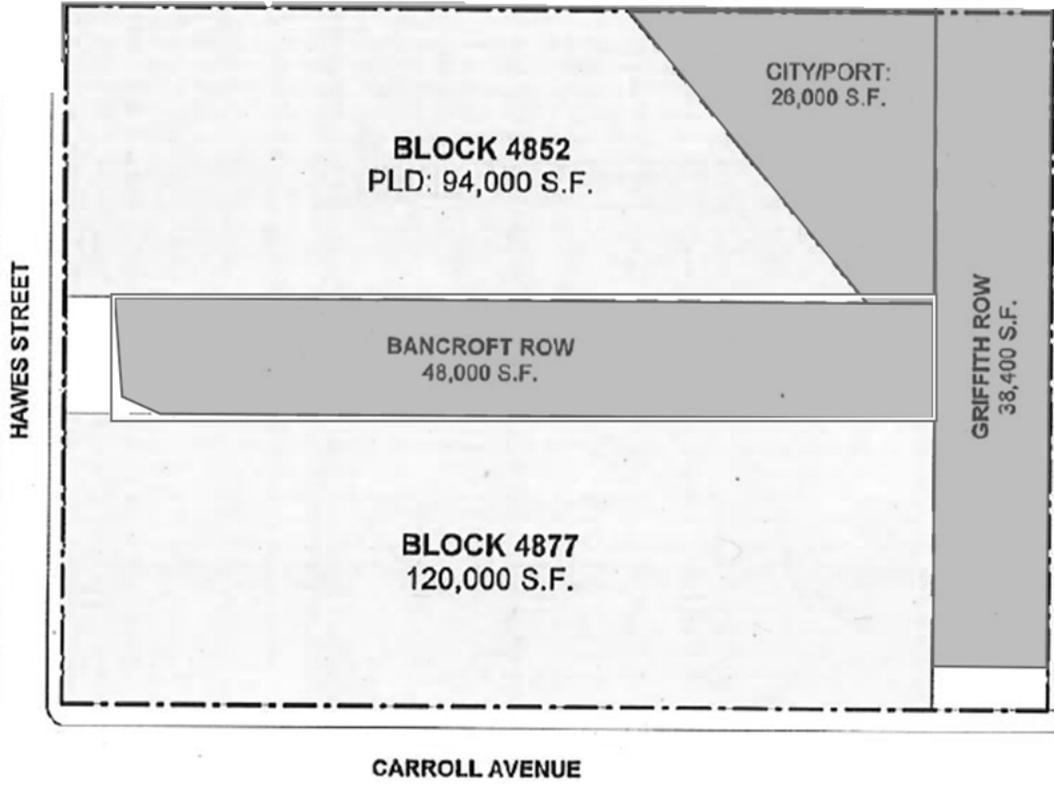


EXHIBIT B

List of Title Exceptions

[Internal Note: draft to be updated]