



MEMORANDUM

February 22, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Resolution Authorizing 66-Year Memoranda of Understanding with the San Francisco Public Utilities Commission for the Installation, Acceptance and Operation of Certain Utility Facilities that Serve Port Master Plan Projects without Paying Rent

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary

In approving the master planned mixed use developments at the Pier 70 Waterfront Site and at Mission Rock, the Port Commission approved agreements relating to the construction and operation of infrastructure serving these new neighborhoods. These approvals included approval of infrastructure plans that noted locations where the San Francisco Public Utilities Commission (the SFPUC) would own and operate facilities for its water, wastewater, and electric utility services.

The Port's policy is to charge fair market value for use of its property by other city agencies, including the SFPUC. While the project approval documents made clear that the Port's land value was predicated on the efficient installation of the infrastructure needed to develop the sites, the financial analysis supporting the approvals did not include any reference to rent from these utility sites. This reflects the broader policy under the City's Subdivision Code, which governs construction and acceptance of utilities serving new developments. That code requires a fee title or easement dedication to the relevant city agency without compensation to allow for the operation of

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the public facilities once installed; due to the Port's legal requirements as trustee of its property a 66-year rent-free MOU is the closest analogue that the Port could offer.

Accordingly, Port staff is returning to the Port Commission seeking clear authorization to execute long-term agreements allowing use of Port property without payment of rent, so long as the use is part of the approved infrastructure plan for the applicable project and the facilities do not serve areas outside of Port jurisdiction.

Strategic Objective

If approved, this proposed action would advance the Productive objective of the Port's Strategic Plan by furthering the successful development of the Pier 70 and Mission Rock mixed-use projects.

Background

On September 26, 2017, the Port Commission approved the transaction documents for the Pier 70 Special Use District and associated project agreements with Brookfield Properties (formerly Forest City). On January 30, 2018 the Port Commission approved the transaction documents for the Mission Rock Special Use District and associated project agreements with Seawall Lot 337 Associates.

In the transaction documents for both projects, the Interagency Cooperation Agreement and attached Infrastructure Plan (Resolution Nos. 17-48 and 18-07), describe the respective Developers' obligations to build the new roadways, parks, utility systems, and streetscapes. These components have been preliminarily engineered to meet the demands of the fully built-out development and modeled to closely integrate within the existing neighborhood systems.

Like the other City departments expected to accept and operate the infrastructure under their respective jurisdictions, the SFPUC reviewed and consented to the preliminary engineering and models compiled into the Infrastructure Plan. Acceptance and operation of utility infrastructure by the relevant agency is a critical financial and operational consideration for the Port; the Port does not have the expertise nor the revenue streams to operate its own utility network for these large and complex projects. The SFPUC's consent to acceptance was predicted on the assumption underlying the financial projections of the project and on the generally-applicable provisions of the City Subdivision Code: namely, that the Port would not seek rent for use and operation of these locations even if they were outside of the project site, because the Port's project revenues instead depend on the occupancy of the vertical development parcels within the projects served by this utility infrastructure. Now that the projects are approaching the entry of their first memoranda of understanding (MOUs) with SFPUC in support of these aims, Port staff has agreed to bring this item to the Port Commission so that the rent expectations are clear for all sides.

Staff Analysis

Based on the terms of the City's Subdivision Code described above, and advice from the SFPUC that it does not pay any consideration for dedicated fee or easement

property in practice, it is not clear that the SFPUC would be willing to accept and operate the infrastructure once constructed if the Port required the SFPUC to pay rent,. Therefore, to avoid those operational and financial challenges, it is in the Port's interest to receive direction from the Port Commission that rent would not be required in certain defined instances where the infrastructure is directly related to a Port development project. This authorization would be limited to the following circumstances:

- 1) The facilities must be part of an adopted Infrastructure Plan for the Pier 70 or Mission Rock projects;
- 2) The policy applies only to SFPUC water and wastewater facilities, and electrical distribution lines, service facilities and infrastructure needed to provide service to the projects, including wholesale distribution tariff (WDT) intervening facilities;
- 3) Once installed and accepted, these facilities must be operated and maintained by the SFPUC and not the Port; and
- 4) Once operational, the facilities must not serve customers or areas outside of Port property.

For any facility that does not satisfy all four conditions, the Port's regular policies and delegated authority would apply. Staff believes that this authorization would assist in fulfilling the objectives laid out in Resolution 17-48 and 18-07 to successfully complete and realize the financial and public benefits of these projects. Port staff also believes that the narrowly tailored conditions proposed for this authorization avoid any unintended consequences, because the Port Commission must approve any material changes to the Infrastructure Plan.

Recommendation

For the reasons set forth above, Port staff recommends that the Port Commission approve the attached Resolution and authorize the Executive Director to enter into 66-year term Memoranda of Understanding with the SFPUC to install and/or accept, operate, and maintain certain utility facilities located on Port property that serve the Port without requiring rent.

Prepared by: Kevin Masuda
Project Manager

For: Michael Martin,
Deputy Director Real Estate and Development

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 19-07**

WHEREAS, The Port Commission approved the transaction documents for the Pier 70 Special Use District on September 26, 2017 and the transaction documents for the Mission Rock Special Use District on January 30, 2018; and

WHEREAS, the transaction documents for the two Special Use District projects both include an Interagency Cooperation Agreement and attached Infrastructure Plan. City Departments have reviewed and consented to the preliminary engineering plans described in the respective Infrastructure Plans, and

WHEREAS, the financial assumption underlying the approval documents for both projects, and the consent of the agencies expected to accept and operate the utility infrastructure once constructed, was that utility facilities within the respective project Special Use Districts, having infrastructure serving Port properties and located within the project do not require rent; and

WHEREAS, the Port Commission did not explicitly state the authorization to allow rent-free use of Port property for utility infrastructure in the transaction documents; and

WHEREAS, the Port Commission desires to provide authority for rent-free, 66-year-term Memoranda of Understanding for San Francisco Public Utilities Commission facilities serving Port properties, whether located within or outside of the respective Special Use District, subject to certain conditions; now, therefore be it

RESOLVED, That the San Francisco Port Commission hereby authorizes the Port Director or her delegate to enter into 66-year term Memoranda of Understanding with the San Francisco Public Utilities Commission for rent-free use of Port property for utility facilities serving Port properties, regardless of whether those facilities are located inside or outside of the project Special Use District, provided that the following conditions are met:

- a) The facility must be part of an adopted Infrastructure Plan for the Pier 70 or Mission Rock projects;
- b) The authorization applies only to SFPUC water and wastewater facilities, and electrical distribution lines, service facilities and infrastructure needed to provide service to the projects, including wholesale distribution tariff (WDT) intervening facilities;
- c) Once installed and accepted, these facilities must be operated and maintained by the San Francisco Public Utilities Commission and not the Port; and
- d) Once operational, these facilities must not serve areas or customers outside of Port property

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of February 26, 2019.

Secretary