



## MEMORANDUM

August 7, 2020

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

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request approval of a Memorandum of Understanding for the Pier 70 Mixed-Use District Project, roughly bounded by 20<sup>th</sup> Street to the north, San Francisco Bay to the east, 22<sup>nd</sup> Street to the south, and Illinois Street to the west.

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 20-39

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*This memorandum is updated slightly from the memorandum reviewed by Port Commissioners at the May 26, 2020 meeting. New text is indicated in underline format.*

### **EXECUTIVE SUMMARY**

In September 2017, the Port Commission adopted a series of resolutions authorizing a mixed-use development project on the Pier 70 28-Acre Site, the Illinois/20<sup>th</sup> Street parcels known as Parcel K North and Parcel K South, and the Hoedown Yard (together, the "Pier 70 Mixed-Use District Project" or "Project"). Subsequently, in October 2017, the San Francisco Board of Supervisors approved the Project.

Among other documents, the Project is subject to an inter-departmental agreement called the Interagency Cooperation Agreement ("ICA"), which governs how City departments will cooperate on project implementation. Signatories to the ICA are the Port, Public Works, San Francisco Public Utilities Commission ("SFPUC"), and San Francisco Municipal Transportation Authority ("SFMTA"). The ICA contemplates that

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the City agencies will enter a memorandum of understanding regarding permitting, ownership, and maintenance of public infrastructure to be constructed at Pier 70 (the “Interjurisdictional MOU” or “MOU”).

As was anticipated at Project approvals, the MOU memorializes the City departments’ agreement that standard streets, potable water, sewer, and power utilities will be considered for acceptance by City departments while the Port will generally consider for acceptance parks, open spaces and non-standard streets and features. Port-accepted facilities will be funded through sitewide Community Facilities District (“CFD”) special taxes.<sup>1</sup> City acceptance of public infrastructure at the site is a key benefit for the Port and for the City’s efficient delivery of public services. If infrastructure is accepted under the ICA and the MOU, maintenance of the Project’s neighborhood serving infrastructure would be transferred to agencies with the specialized expertise and appropriate funding mechanism (e.g., utility rate payers, gas tax, and other State road subvention payments) to maintain those assets.

The MOU also addresses ownership, liability, and maintenance of a new combined sewer in 20<sup>th</sup> Street. Additionally, to satisfy a condition for SFPUC to consider the sewer for acceptance, the MOU commits the Port to temporarily refrain from obstructing overland flows on a portion of the Shipyard currently used for parking. In order to comply with Subdivision Code (“Code”), the SFPUC is requiring this temporary restriction to maintain the pre-existing overland flow and release of water from within the Project site through the Shipyard to the Bay.

Port staff worked diligently with City staff to ensure the overland stormwater restriction is time-limited in accordance with public trust regulations and sensitive to the Port’s commitment to retenanting and reactivating the Shipyard. The restriction would remain in place until the *earlier* of: (1) Phase 3 of the Project or (2) when the restricted area is needed by a new Shipyard tenant. When either (1) or (2) occurs, the Project developer will be required to construct an alternative overland flow solution as a reimbursable improvement under the Project’s Disposition and Development Agreement. The alternative overland flow solution must meet the City’s Subdivision Code and the design will be subject to approval by Port, SFPUC, and Public Works. Because of this new Code-required infrastructure’s location within the Shipyard, Port staff in the Maritime and Real Estate and Development Divisions have been in regular communication and will continue this cross-divisional work in development of the infrastructure design.

Port staff recommends that the Port Commission (i) approve the Interjurisdictional MOU requiring that the Port’s approvals become effective concurrent with positive

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<sup>1</sup> Formation of the Community Facilities Districts was approved by the Board of Supervisors on January 24, 2020. For Special Tax District 2019-1 (Pier 70 Condominiums), see <https://sfgov.legistar.com/LegislationDetail.aspx?ID=4282676&GUID=EB0D541B-2B51-4EE9-9F50-D6E6E4437D48&Options=&Search>. For Special Tax District 2019-2 (Pier 70 Leased Properties), see <https://sfgov.legistar.com/LegislationDetail.aspx?ID=4280960&GUID=FE945D08-D711-4B98-B9DB-329A2A9C7DC6>.

recommendations from the other affected City departments (specifically, from Public Works, SFPUC, and SFMTA), and (ii) grant the Executive Director the authority to enter into the agreements necessary to design and implement the Code-required overland flow solution and remove the temporary restriction on the Shipyard. SFPUC approved the MOU on May 26, 2020 and Port staff are working with Public Works and SFMTA to schedule these actions in the coming weeks.

## **STRATEGIC OBJECTIVES**

The Pier 70 Mixed-Use District Project implements the following Port Strategic Objectives:

- **Evolution**, by delivering new open spaces; and
- **Productivity**, by transforming the underutilized portions of Pier 70 into a vibrant neighborhood with new tenants and financing mechanisms.

## **BACKGROUND**

In September 2017, the Port Commission adopted a series of resolutions authorizing the Pier 70 Mixed-Use District Project on the Pier 70 28-Acre Site, the Illinois/20<sup>th</sup> Street parcels known as Parcel K North and Parcel K South, and the Hoedown Yard. Subsequently, in October 2017, the San Francisco Board of Supervisors approved the Project, and on November 15, 2017, Mayor Lee signed all Project-related legislation.

The Port's development partner for development of the 28-Acre Site is FC Pier 70, LLC, now an affiliate of Brookfield Properties ("Developer" or "Brookfield"). The 28-Acre Site project is governed by a Disposition and Development Agreement dated as of May 2, 2018 ("DDA") and related agreements between the Port and the Developer.

The Port approved the Phase Submittal for Phase 1 of the Project in May 2018. Horizontal construction of Phase 1 is underway and includes the development of three acres of parks and backbone infrastructure to support up to 588 residential units, of which up to 159 units, or 30%, will be below market rate, and more than 100,000 square feet of maker/PDR/retail space. In addition, the rehabilitation of historic Building 12 is currently underway and the Developer has received design review and administrative approval for two other vertical projects (Parcel E2 and Parcel A).

## **Local Business Enterprise Status**

The 28-Acre site project led by Brookfield has a 17.0% Local Business Enterprise ("LBE") participation goal. Contracts awarded during the first quarter of 2020 (end of March) were comprised primarily of Phase 1 horizontal improvement construction work, early phase construction work on historic Building 12 and design consultants for upcoming vertical projects. Brookfield also expanded the role of RDJ Enterprises, an LBE-Minority Business Enterprise ("MBE") firm, to tailor LBE engagement efforts and

provide technical assistance to LBEs with barriers to entry in order to maximize LBE participation on available trade packages.

The main contract awarded in the first quarter of 2020 was the construction of Pier 70's first vertical building, historic Building 12, to general contractor Plant Construction. Plant and its subcontractors are still in the process of subcontracting out all the dollars targeted for LBEs under the general contract. As a result, the current percentage of contracted dollars to LBEs is lower than it will ultimately be once Plant and its subcontractors finish subcontracting. Through the end of the first quarter 2020, Plant has only awarded approximately 45% of the subcontracts under the Building 12 general contract, including work for site preparation, abatement, structural steel and work associated with lifting the historic structure. There is another approximately \$6M dollars under the general Building 12 contract that Plant is targeting for LBE subcontracts. As a result, the statistics in the following paragraph do not capture all the LBEs that are anticipated to work on the Building 12 project. Upon award of all remaining subcontractors at Building 12, Brookfield anticipates the overall project will award over \$50M or 26% in contracts to all LBEs.

Through the end of the first quarter of 2020, the Developer has awarded \$187.9 million in contracts, of which \$44.3 million or 23.6% have been awarded either directly or through subcontracts with general contractors to LBE firms, including Small Business Administration-LBEs. \$40.1 million or 21.3% has been awarded to small and micro-LBE firms. \$22.4 million or 11.2% of total contract dollars have been awarded to small and micro-LBE firms located in the three zip codes (94107, 94124 & 94134) located next to the project area.

Vertical construction, in particular the "super structure" component of the projects, typically have more difficulty achieving higher LBEs participation rates in San Francisco compared to horizontal projects, which require fewer specialty trades that may not include as wide a range of LBE companies. As a result, Brookfield has taken advantage of its horizontal work to significantly exceed its LBE goal and will continue to target higher LBE levels on the infrastructure, parks and other horizontal work scopes of the project going forward. In addition, in advance of the project entering into the vertical building phase, RDJ undertook a "deep dive" analysis to identify LBEs that are well positioned to bid on upcoming vertical construction and/or will benefit from increased coordination efforts for construction scope matching within interior trades with good availability of LBE firms. RDJ has also focused on directing LBEs to COVID-19 business supports to ensure stability and certainty that they will still be available for these forthcoming LBE opportunities. While the Developer will continue to focus its efforts on maximizing opportunities for LBEs on all aspects of the projects to continue to meet or exceed the 17% LBE goal, given the coming shift of scope to vertical construction opportunities, Brookfield anticipates seeing a lower LBE participation rate in subsequent LBE participation reports than has been previously reported for primarily horizontal work.

Brookfield has been proactively working to increase the diversity of its team. In the first quarter of 2020 (with commencement of work on Building 12), Brookfield awarded \$15.6 million in contracts to MBEs, including \$5.2 million to LBE-MBE firms. LBE-MBE contractors that have commenced work on Building 12 include Eagle Environmental (performing abatement work, Hercules Builders performing carpentry work on the building's new roof, Marinship Development performing work on the building's shoring, Ground Control and On-the-Level Concrete performing concrete demolition and foundation work, respectively.

## **Purpose of Interjurisdictional MOU**

Since master planning at Pier 70 started nearly a decade ago, the Port has sought to ensure the newly constructed, neighborhood scale, public infrastructure becomes part of the City's network of streets and utilities. Typically, when infrastructure is constructed for City-ownership, a developer will offer the infrastructure and the fee title to the land beneath the infrastructure to Public Works and other departments. Because the Port cannot provide fee title to the streets due to the Port's public trust obligations, the Port has customarily instead entered into MOUs to provide departmental land rights and to establish the roles and responsibilities of each department as to the public infrastructure. For the Project, this includes acceptance of all infrastructure by the Board of Supervisors, with delegation of certain elements to City agencies in the Interjurisdictional MOU. For example, the MOU delegates streets to Public Works for operations and maintenance; utilities to the SFPUC; and mobility infrastructure to SFMTA.

The Interjurisdictional MOU facilitates management of key infrastructure by the agency with the appropriate expertise, experience and resources. Specifically, SFPUC will maintain utility assets funded by ratepayers; Public Works will maintain standard streets and improvements through its a mix of funding sources (General Fund, gas tax, and other State road programs); SFMTA will maintain streetlights and mobility improvements through its array of sources, and the Port will maintain parks, open space, and non-standard improvements through the special taxes generated by the project through the CFD.

## **PROPOSED INTERJURISDICTIONAL MOU**

### **Overview of Key Terms**

The Interjurisdictional MOU sets forth the departments' expectations regarding:

- which department will consider what are called "offers of acceptance" from the Developer upon completion of each infrastructure component (see **Attachment A** for Maintenance Matrix, an attachment to the MOU);
- which agency will lead permitting and regulation for each infrastructure component; and

- how the parties will cooperate in undertaking their duties at the Site, including noticing prior to construction, indemnification requirements in contracts, and the handling of hazardous materials, among other terms.

In general, Public Works, SFPUC, and SFMTA will consider for acceptance “standard” infrastructure components upon completion, e.g., standard streets, streetlights, water and sewer utilities, and bike racks, among others. Generally, the Port will consider for acceptance all parks and open space, as well as specialized or unique Project features including two one-block street segments that do not meet City standards due to existing physical constraints,<sup>2</sup> the relocated Building 15 frame that will span 22<sup>nd</sup> Street at the entrance to the Project, decorative pavers, raised crosswalks, and street furniture, among others. (See **Attachment A**, Maintenance Matrix, for further detail about responsibility for acceptance of each infrastructure component.) Project tenants will pay special taxes to the CFD to maintain parks, open space, and the non-standard infrastructure. **Attachment B** illustrates the Project’s public spaces and locations of anticipated City-accepted streets and Port streets.

### **Overland Flow Temporary Restriction**

Subdivision Code requires an overland path of release for stormwater. At Pier 70, during large storm events, stormwater drains northerly from within the Pier 70 Project site across portions of the Pier 70 Shipyard to the Bay, resulting in ponding in low-lying areas of the Shipyard. The Project site has been designed to collect and contain the sewage and stormwaters within the Project boundaries and accommodate the 100-year storm event with 100-year tide elevation and 12-inches of future sea level rise within the curb line of the Project. In addition, the Project incorporates redundant features to ensure stormwater from the Project stays within the new system rather than running across the Shipyard. However, during larger storm events or if there were a failure to maintain the drainage facilities, the overland release of water to the Bay would continue to flow through the Shipyard and possibly cause ponding in existing low-lying areas of the Shipyard.

As a condition to the Street Improvement Permit issued by Public Works in March 2019, SFPUC has stipulated it will not accept ownership, liability or maintenance of the new combined sewer system being built on 20<sup>th</sup> Street unless (1) the Port agrees to preserve without obstruction the existing path of overland flow across the Shipyard or (2) the Port and City agree on an alternative Code-compliant infrastructure improvement to mitigate any potential flooding during larger storm events.

As a first step, the MOU commits the Port to temporarily refrain from building new structures on a portion of the Shipyard currently used for parking. This will maintain the historic path of overland flows from within the Project site through the Shipyard to the

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<sup>2</sup> The one block segments of Michigan Street and Louisiana Street between 20<sup>th</sup> Street and future 21<sup>st</sup> Street, on either side of the Historic Core Project, cannot meet Public Works’ requirement for a sidewalk on both sides of the street due to existing physical constraints.

Bay until the construction of an alternative method of overland flow that complies with Subdivision Code. It is important to note that the MOU restriction will not impact the current uses in the overland path or preclude the Shipyard from operating within existing building footprints; rather, it limits future construction or changes to grade within the overland path subject to the restriction. The Port, City and Brookfield will then work together to develop alternative, cost-effective design solutions by this fall that, when implemented, would release the Port from the MOU restriction. Port staff anticipates returning to the Port Commission at that time with an informational presentation on the recommended Code-compliant infrastructure improvement and implementation protocols. Implementation of the alternative Code-required infrastructure improvement must occur by Phase 3 of the Project or when the restricted area is needed by a new Shipyard tenant, whichever occurs first. At such time, the Developer will be required to construct the agreed upon Code-required infrastructure improvement as a reimbursable expense under the DDA.

### **RECOMMEND APPROVAL OF MOU**

City acceptance of public infrastructure at the site is a key benefit for the Port and for the City's efficient delivery of public services. If infrastructure is accepted under the ICA and the MOU, maintenance of neighborhood serving infrastructure is transferred to the appropriate agency with specialized expertise for infrastructure maintenance and funding mechanisms (e.g., utility rates payers, gas tax, and other State road subvention payments) to maintain those assets. During this incredibly difficult budget environment, the Port is grateful that its City partners agree that agencies focused on streets, utilities, and mobility are best-suited to accept and maintain those types of improvements, leaving the Port to operate and maintain open spaces, including those critical assets connecting the public to the San Francisco Bay and furthering the Port's stewardship of trust property for the public.

The Port has planned financially for the acceptance of facilities described in **Attachment A** through the Community Facilities District Service Special Tax (passed by the Board earlier this year). The total tax is projected to generate \$2.5 million to \$2.75 million per year at buildout, in 2020 dollars. Port staff will return to the Port Commission for consideration of operational programs, as it makes progress on better defining and quantifying management and maintenance of the public realm at Pier 70.

## **NEXT STEPS**

Port staff are working closely with Public Works, SFPUC, SFMTA, the Mayor's Director of Housing Delivery, and the Office of Economic and Workforce Development to complete due diligence and prepare approval packages for the Phase 1 Final Map for Board of Supervisors' consideration. The Final Map is required to continue development of the Pier 70 Project, a key improvement to the Port's property. This Project will fulfill key public trust goals of increasing public access and enjoyment of the waterfront while delivering a significant number of new below market rate and market rate housing units. While the global pandemic has created economic risk and uncertainty, the Developer has continued with construction of horizontal improvements and Building 12 vertical improvements and the Port also wishes to continue to advance the Project.

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## **ATTACHMENTS**

- A. Maintenance Matrix, attachment to MOU
- B. Anticipated Port and City Acceptance Items



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

**RESOLUTION NO. 20-39**

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, On September 26, 2017, the Port Commission approved Resolution No. 17-43 approving a Development Disposition Agreement (“DDA”) between Port and FC Pier 70, LLC (“Developer”), an affiliate of Brookfield Properties, for a mixed-use development project on the 28-Acre Site (the “Project”), creation of the Pier 70 Special Use District, including the 28-Acre Site, Parcel K North, Parcel K South and the Hoedown Yard (“Pier 70 SUD”), as well other Project-related documents including an inter-departmental agreement called the Interagency Cooperation Agreement (“ICA”) between the Port, Public Works, San Francisco Public Utilities Commission (“SFPUC”), and San Francisco Municipal Transportation Authority (“SFMTA”), which governs how City departments will cooperate on project implementation; and

WHEREAS, On October 31, 2017, the San Francisco Board of Supervisors approved the Project, the Pier 70 SUD, the Development Agreement by and between Developer and the City, dated as of May 2, 2018 (“DA”), and the ICA; and

WHEREAS, Subsequently, Mayor Lee signed all necessary legislation; and

WHEREAS, The ICA contemplates that the City departments will enter a memorandum of understanding regarding permitting, ownership, and maintenance of public infrastructure to be constructed at Pier 70 (the “Interjurisdictional MOU” or “MOU”); and

WHEREAS, The proposed MOU memorializes the City departments’ agreement that standard streets, potable water, sewer, and power utilities will be considered for acceptance by City departments while the Port will consider for acceptance parks, open spaces and most non-standard streets and features. Port-accepted facilities will be funded through the sitewide Community Facilities District special taxes; and

WHEREAS, The MOU also addresses ownership, liability, and maintenance of a new combined sewer in 20th Street. To satisfy a condition for SFPUC to

consider acceptance of the sewer, the MOU commits the Port to temporarily refrain from building new structures on a portion of the Shipyard. This temporary restriction is required by SFPUC in order to maintain the historic overland drainage of water northerly from within the Project site through the Shipyard to the Bay. Maintenance of an overland path of stormwater flow is also required by Subdivision Code; and

WHEREAS, Port staff worked diligently with SFPUC and other City staff to ensure the restriction is time-limited in accordance with the Public Trust regulations and sensitive to the commitment the Port has made to retenting and reactivating the Pier 70 Shipyard. The restriction would remain in place until the *earlier* of: (1) Phase 3 of the Project or (2) when the restricted area is needed by a new Shipyard tenant. When either (1) or (2) occurs, the Developer will be required to construct an alternative, Subdivision Code-compliant overland flow solution as a horizontal infrastructure improvement eligible for reimbursement under the DDA. The alternative overland flow solution must meet the Subdivision Code and the design will be subject to approval by Port, SFPUC, and Public Works staff; and

WHEREAS, City acceptance of public infrastructure at the site is a key benefit for the Port and for the City's efficient delivery of public services. If infrastructure is accepted under the ICA and the MOU, maintenance of neighborhood serving infrastructure would be transferred to agencies with specialized expertise and appropriate funding mechanism (e.g., utility rate payers, gas tax, and other State road subvention payments) to maintain those assets; and

WHEREAS, The proposed MOU is consistent with the Pier 70 Mixed Use District Final Environmental Impact Report ("FEIR") (2014-001272ENV) and does not alter the maximum development capacity of the site or alter the Project from what was previously analyzed in the FEIR; now, therefore be it

RESOLVED, That the Port Commission hereby approves and authorizes the Executive Director, or her designee, to execute the MOU and recommends its approval to the other consenting City departments; and be it further

RESOLVED, That the Port Commission authorizes and delegates to the Executive Director authority to make changes and take any and all steps, including but not limited to, the attachment of exhibits and the making of corrections, as the Executive Director determines, in consultation with the City Attorney, are necessary or appropriate to consummate the MOU in accordance with this Resolution, including entering into subsequent agreements and interagency memoranda of understanding with other City departments and the Developer regarding design and implementation of an alternative solution to remove the restrictions on the Shipyard; provided, however, that such changes and steps do not materially

decrease the benefits to or materially increase the obligations or liabilities of the Port Commission, and are in compliance with all applicable laws.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 11, 2020.***

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Secretary