



MEMORANDUM

May 22, 2020

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

FROM: Katharine E. Petrucione
Acting Executive Director

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Katharine Petrucione
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SUBJECT: Informational presentation on Memorandum of Understanding for the Pier 70 Mixed-Use District Project, roughly bounded by 20th Street to the north, San Francisco Bay to the east, 22nd Street to the south, and Illinois Street to the west

DIRECTOR'S RECOMMENDATION: Information Only – No Action Required

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/20th 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 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").

THIS PRINT COVERS CALENDAR ITEM NO. 8B

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.¹ 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 20th 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 intends to incorporate any Port Commission feedback on the MOU and return on June 9, 2020 with a request for the Port Commission to (i) approve the Interjurisdictional MOU requiring that the Port's approvals become effective concurrent with positive 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.

¹ 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>.

SFPUC is considering action 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/20th 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 through the fourth quarter of 2019 (end of December) were comprised primarily of Phase 1 horizontal improvement construction work, site preparation and abatement work on Historic Building 12 and design consultants for upcoming vertical projects. Brookfield hired RDJ Enterprises, an LBE-Minority Business Enterprise ("MBE") firm, to tailor LBE engagement efforts in order to maximize LBE participation on trade packages. Through the fourth quarter of 2019, the Developer has awarded \$107 million in contracts, of which \$39.7 million or 37.0% have been awarded to LBE firms, including Small Business Administration-LBEs. \$35.5 million or 33.1% has been awarded to small and micro-LBE firms. \$17.1 million or

16.0 % 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.

Brookfield has been proactively working to increase the diversity of its team. In the fourth quarter of 2019, five micro sized LBE-MBE firms were awarded a total \$1.1 million of contracts (15.0% of all contracts awarded in the fourth quarter of 2019). In the first quarter of 2020 (with the commencement of work on the historic Building 12 rehabilitation project), Brookfield awarded 17 LBEs a total of \$6.2 million in contracts. Of these awards, \$5.2 million were awarded to LBE-MBEs. Brookfield awarded an additional \$10.5 million to a non-LBE MBE to perform work on the structural steel component of the Building 12 project. Contractors that have commenced work on Building 12 include Eagle Environmental (LBE-MBE) performing abatement work, Hercules Builders (LBE-MBE) performing carpentry work on the building's new roof, and Ground Control (LBE-MBE) and On-the-Level Concrete (LBE-MBE) performing concrete demolition and foundation work, respectively.

Purpose of Interjurisdictional MOU

Since the Project's start 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,² the relocated Building 15 frame that will span 22nd 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 curblineline 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 20th Street unless (1) the Port agrees to preserve

² The one block segments of Michigan Street and Louisiana Street between 20th Street and future 21st 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.

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 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. 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.

BENEFITS 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 intends to incorporate any Port Commission feedback on the MOU and return on June 9, 2020 with a request for the Port Commission to (i) approve the Interjurisdictional MOU requiring that the Port's approvals become effective concurrent with positive 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.

In addition, Port staff are working closely with Public Works, SFPUC, SFMTA, the Mayor's Director of Housing Delivery, and the Office of Workforce and Economic 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