



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 18706

HEARING DATE: SEPTEMBER 20, 2012

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Date: September 20, 2012
Case No.: **2012.0033 ACFEU**
Project Address: **218 – 220 BUCHANAN STREET**
(aka – 55 Laguna Street)
Zoning: NC-3 (Neighborhood Commercial, Moderate Scale)
RM-3 (Residential, Mixed, Medium Density)
Laguna, Haight, Buchanan and Hermann Streets Special Use District
40-X, 50-X, 85 X Height and Bulk Districts
Block/Lot: 870/001, 002 and portions of Lot 003
0857/001,001A

Project Representative:
Steve Vettel, Farela, Braun + Martel
Russ Building, 235 Montgomery, 14th Floor
San Francisco, CA 94104

Project Sponsors: Alta Laguna, LLC
c/o Brian Pianca, Alta Laguna, LLC
20 Sunnyside Avenue, Suite B
Mill Valley, CA 94941

55 Laguna, LP
c/o Seth Kilbourn, Openhouse
870 Market Street, Suite 458
San Francisco, CA 94102

c/o Ramie Dare, Mercy Housing California
1360 Mission Street, #300
San Francisco, CA 94103

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APPROVING AN IMPACT FEE WAIVER FOR 55 LAGUNA STREET IN THE AMOUNT OF \$4,237,047 FOR THE PROVISION NO LESS THAN 12,000 SQUARE FEET OF COMMUNITY FACILITY SPACE, NO LESS THAN 28,000 SQUARE FEET OF OPEN SPACE (THE PROPOSED WALLER PARK) AND NO LESS THAN 10,000 SQUARE FEET OF COMMUNITY GARDENING SPACE.

PREAMBLE

- On January 17, 2008, under Case No. 2004.0770E!MZTC and Motion 17537, the San Francisco Planning Commission approved the Conditional Use Authorization/Planned Unit Development pursuant to Planning Code Sections 303 and 304 allowing construction of a moderate density mixed use development of approximately 330 dwelling units, approximately 110 affordable senior dwelling units, with community facility space, neighborhood-serving retail, parking and two separate publicly-accessible open spaces. The CU/PUD was upheld on appeal by the Board of Supervisors (Motion M08-0040) on March 4, 2008 (“the original project”).
- On April 15, 2008, the Board of Supervisors amended the General Plan, approved ordinances to amend the use districts and height/bulk districts, and create Planning Code Section 249.32, the Laguna, Haight, Buchanan and Hermann Streets Special Use District.
- On May 30, 2008 the Market and Octavia Plan became effective, including now Section 421 of the San Francisco Planning Code, The Market and Octavia Community Improvements Impact Fee applicable to all projects in the plan area, including the subject property.
- On January 13, 2012, Steve Vettel filed an application (in Conditional Use Application No. 2012.0033C) on behalf of Alta Laguna, LLC and 55 Laguna, LP (hereinafter “Project Sponsor”) with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 303 and 304 to modify the previously approved Planned Unit Development (“the modified project”).
- On August 16, 2012, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting and approved Conditional Use Application No. 2012.0033C in its Motion No. _____ modifying certain elements of the 2008 Planned Unit Development (the “Planning Approval”).
- The original project reviewed in the 55 Laguna Mixed Use Project Final Environment Impact Report (FEIR) was certified by the Planning Commission on January 17, 2008. An Addendum to the 55 Laguna Mixed Use Project Final Environmental Impact Report (FEIR) was prepared and issued May 8, 2012. The Addendum concluded that the analyses conducted and the conclusions reached in the FEIR remain valid for the modified project, and that no supplemental environmental review is required for the proposed project modifications. The modified project would neither cause new significant impacts not identified in the FEIR, or result in a substantial increase in the severity of previously identified significant impacts. No changes have occurred with respect to circumstances surrounding the original project that would cause significant environmental impacts to which the modified project would contribute significantly, and no new information has been put forward which shows that the modified project would cause significant environmental impacts. Therefore, no supplemental environmental review was required beyond this addendum.

- The Board of Supervisors affirmed the FEIR certification on April 8, 2008, and the San Francisco Superior Court and California Court of Appeal upheld the adequacy of the FEIR in the case entitled *Save the Laguna Street Campus v. City and County of San Francisco*.
- The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.
- In order to address the impacts from the new mixed residential and commercial development permitted under the Market and Octavia Plan, the implementing Planning Code amendments also imposed an Impact Fee on new residential and non-residential development (the "Fee"). Under Section 421.3, the Fee is required to be paid to the City before issuance of the first site or building permit for a development project is issued. As an alternative to payment of the Fee, the Ordinance provides that the City may waive or reduce the Fee obligation at that time if the Project Sponsor agrees to provide specified community improvements. In order for the Project Sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Planning Code requires the City and the Project Sponsor to enter into an "In-Kind Agreement".
- The Project Sponsor has requested that the City enter into an In-Kind Agreement relating to 55 Laguna Street for the provision of no less than 12,000 square feet of community facility space, no less than 28,000 square feet of open space (the proposed Waller Park) and no less than 10,000 square feet of community gardening space ("In-Kind Improvements"), located at 55 Laguna Street (described in the In-kind agreement). Specifically the Project Sponsor seeks a \$4,237,047 waiver for 218 Buchanan Street.

MOVED, that the Commission hereby authorizes the Market and Octavia Impact Fee Waiver for 55 Laguna Street based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

- The above recitals are accurate and constitute findings of this Commission.
- The following improvements respond to the community improvements needs identified in the Market and Octavia Plan and analyzed in the establishment of the Market and Octavia Community Improvements Development Impact Fee.

Publicly Accessible Open Space: two new publicly accessible open spaces, Waller Park and a community garden, would be created and maintained by Alta Laguna, LLC. Waller Park would extend from the intersection of Waller and Buchanan Streets through the site to the corner of Waller and Laguna Streets, effectively re-introducing Waller Street through the site as a public amenity. Waller Park would provide approximately 28,000 square feet of publicly accessible

open space and passive recreational uses. Upper Waller Park would include benches, and trees and would take advantage of the steep slope of the project site by providing a scenic overlook with views of the East Bay and downtown San Francisco. Lower Waller Park would include hard and softscape areas with trees, benches, and built-in seating on the slope, overlooking the end of Waller Park. Street trees would be planted along all four exterior streets as well as along all internal pedestrian ways.

A no-fee community garden of no less than 10,600 square feet would be developed and made available to the public and development residents by Alta Laguna LLC. The garden would be located behind Woods Hall Annex at the northeast corner of the site. Access to the garden would be through a stairway and accessible ramp fronting Laguna Street, as well as a stair and gate leading from Haight Street.

At this time the City retains ownership of Waller Street. The Project Sponsor must obtain approval from the City in its proprietary capacity prior to issuance of any building permit for the Project to develop Waller Park.

Community Facility Space: As part of the development's public benefits, Alta Laguna, LLC will undertake seismic and accessibility building shell improvements to Woods Hall Annex to be used as a rent-free community center/facility of no less than 12,000 square feet. The use will be determined in consultation with the community. Alta Laguna, LLC will work with the City to determine if ongoing funding dedicated to operation of the center can be leveraged through the Mills Act.

Public Access: Pedestrians could transverse the site from east to west through Waller Park (the former Waller Street right-of-way) between Laguna and Buchanan Streets. Through creation of Palm Lane, which provides access north to south, pedestrians could transverse the site from Hermann Street to Haight Street through Woods Hall Annex or the garden entry on Haight Street. Waller Park and Palm Lane intersect at approximately midway through the site. At-grade bicycle access to the site would be from Palm Lane at Hermann Street.

- **Identified Plan Need.** The Market and Octavia need analysis identified Open Space and Recreational facilities as needed infrastructure to support new development. Planning Code Section 421 designates impact fee revenue to these types of infrastructure.
- **Interagency Support.** These improvements will be publicly accessible and privately maintained and operated. The relevant public agencies will review operations plans for each amenity to insure that each improvement is fully publicly accessible.
- **In-Kind Improvement Valuation.** The Department determines the final value of the proposed improvements to be equivalent to the fee amount based on 2012 cost estimates provided by the project sponsor.

DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves an impact fee waiver .

The Commission approves an in-kind agreement that substantially conforms to the attached drafts and authorizes the Director and City Attorneys' office to make changes as necessary to finalize the agreement.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on September 20, 2012.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on September 20, 2012.

Linda D. Avery
Commission Secretary

AYES: Fong, Wu, Antonini, Borden, Hillis, Sugaya

NAYS: None

ABSENT: Moore

ADOPTED: September 20, 2012

**Motion No. 18706
September 20, 2012**

**CASE NO. 2012.0033 ACEF
218 – 220 BUCHANAN STREET
(aka – 55 Laguna Street)**

Attachment 2. Draft In-Kind Agreement

**55 LAGUNA STREET IN-KIND AGREEMENT
(PER PLANNING CODE SECTION 421)**

THIS IN-KIND AGREEMENT (the “Agreement”) is entered into as of _____, 2012, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”), and ALTA LAGUNA, LLC, a Delaware limited liability company (“Project Sponsor”), with respect to the project approved for 55 Laguna Street (aka 218-220 Buchanan Street), San Francisco, California 94102 (the “Project”).

RECITALS

A. On December 19, 2008, the San Francisco Board of Supervisors enacted Ordinance No. 298-08 (File No. 081153) (the “Ordinance”), adding Section 326-326.8 to the San Francisco Planning Code (now Sections 421-421.7). Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Sections 421-421.7 shall mean Sections 421-421.7 of the San Francisco Planning Code.

B. In order to mitigate the impacts from the new residential and commercial development permitted under the Market and Octavia Area Plan, the Ordinance imposed an Impact Fee on new residential and commercial development (the “Fee”). Under Section 421.3(f), the Fee is required to be paid to the City before issuance of the first construction document for a development project. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an “In-Kind Agreement” described in Section 421.3(d).

C. The property described in Exhibit A attached hereto (the “Land”) and generally known as 55 Laguna Street (Lots 1 and 1A in Assessor’s Block 857 and Lots 1, 2, and a portion of Lot 3 in Assessor’s Block 870) is owned by the Regents of the University of California (“UC Regents”) and is ground leased to the Project Sponsor and 55 Laguna, L.P., the sponsor of the affordable senior element of the project. The Project Sponsor and 55 Laguna, L.P. have submitted applications for the development of a mixed residential and commercial development on the Land. The Planning Commission originally approved a Planned Unit Development for the Project on January 17, 2008 (Motion No. 17537), prior to the enactment of Section 421-421.7. In Motion No. 17537, the Commission approved in-kind improvements in lieu of the future Fee. On August 16, 2012, the Planning Commission approved Motion No. _____ modifying certain elements of the Planning Unit Development and Motion No. _____ formally approving this In-Kind Agreement.

D. The Market and Octavia Area Plan contains objectives and policies for creating a complete mixed-use transit oriented neighborhood, including developing public open space, park improvements, and community/recreational facilities in the Plan Area to support new residents.

E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of community infrastructure improvements consistent with the objectives and policies of the Market and Octavia Area Plan on a portion of the Land that would generally be comprised of the approximately 28,000 square foot public open space referred to as Waller Park, the approximately 10,600 square foot community garden located behind Woods Hall Annex and the approximately 12,600 square foot rent-free community facility in Woods

Hall Annex (collectively, “In-Kind Improvements”) in order to satisfy its Fee obligation per the terms of the Ordinance.

F. The In-Kind Improvements meet an identified community need as analyzed in the Plan and as identified in Planning Code Section 421.1 and are not a physical improvement or provision of space otherwise required by the Planning Code or any other City Code.

G. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings.

“**Agreement**” shall mean this Agreement.

“**City**” shall have the meaning set forth in the preamble to this Agreement.

“**Date of Satisfaction**” shall have the meaning set forth in Section 4.8 below.

“**DBI**” shall have the meaning set forth in Section 3.3 below.

“**Effective Date**” shall have the meaning set forth in Section 5.1 below.

“**Final Inspection Notice**” shall have the meaning set forth in Section 4.6 below.

“**First Certificate of Occupancy**” shall have the meaning set forth in Section 4.4 below.

“**First Construction Document**” shall have the meaning set forth in Section 401 of the Planning Code.

“**Impact Fee**” or “**Fee**” shall mean the fee charged to all residential and commercial development projects in the Market and Octavia Plan Areas under Section 421.3 of the Ordinance.

“**In-Kind Improvements**” shall have the meaning set forth in Recital E.

“**In-Kind Value**” shall have the meaning set forth in Section 3.2 below.

“**Initial Amount**” shall have the meaning set forth in Section 3.3 below.

“**Inspection Notice**” shall have the meaning set forth in Section 4.6 below.

“**Land**” shall have the meaning set forth in Recital C.

“Memorandum of Agreement” shall have the meaning set forth in Section 7.1 below.

“Ordinance” shall have the meaning designated in Recital A.

“Payment Analysis” shall have the meaning set forth in Section 5.2 below.

“Payment Documentation” shall have the meaning set forth in Section 4.7 below.

“Plans” shall have the meaning set forth in Section 4.2 below.

“Project” shall have the meaning set forth in the preamble to this Agreement.

“Project Sponsor” shall have the meaning set forth in the preamble to this Agreement.

“Project Sponsor Fee” shall mean the Project Sponsor’s share of the Fee, as calculated pursuant to Section 3.1 hereof.

ARTICLE 2 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

2.1 The above recitals relating to the Project are true and correct.

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of Delaware, (2) has the power and authority to own and lease its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the ground lessee of the real property on which the Project is located.

2.3 To the knowledge of Project Sponsor the execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

2.4 To the knowledge of Project Sponsor, no document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain any untrue statement of material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

2.5 Neither the Project Sponsor, nor any of its principals or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

2.6 Pursuant to Section 421.3(d)(5), the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 421.3(c) of the Ordinance. Based on the project entitled by the Planning Commission, the Fee is estimated at \$4,237,047 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project entitled by its First Construction Document. Should the project Sponsor elect to pursue the Project in phases, the Project Sponsor Fee and related In-Kind Improvement expenditures obligations shall be proportional to each phase.

3.2 Based on two estimates provided by independent sources, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$6,776,000 (the "In-Kind Value"); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit C (the "Cost Documentation").

3.3 The Project Sponsor shall pay to the Development Fee Collection Unit at the Department of Building Inspection ("DBI") \$0 (the "Initial Amount"), which is an amount equal to the Project Sponsor Fee (see Exhibit B) minus the In-Kind Value (see Exhibit C), prior to issuance of the Project's First Construction Document, pursuant to Section 421.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Sponsor Fee in the amount of the In-Kind Value, subject to Section 5.2 below.

ARTICLE 4 IN-KIND IMPROVEMENTS

4.1 The Project Sponsor agrees to take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the following three In-Kind Improvements for the benefit of the City and the public. Upon issuance of the Final Inspection Notice for each of the following In-Kind Improvements, the City shall accept the In-Kind Improvement in lieu of the applicable Project Sponsor Fee if this Agreement is still in effect and each of the conditions described herein are met.

4.1.1 Waller Park: The Project Sponsor shall improve approximately 28,000 square feet of the former Waller Street right-of-way as publicly accessible open space, to maintain public access to those open space improvements, to assume maintenance and liability responsibilities, and not to permit any above-ground structures to be built on the land other than a small number of encroaching stoops leading to individual unit entrances and landscape and hardscape open space improvements. Below-grade improvements for underground parking shall be permitted in the former Waller Street right-of-way. There shall be no gates, or similar feature(s) serving to regulate pedestrians, located at either end of Waller Park. There shall be no transformers or utilities located in Waller Park. The Project Sponsor shall prepare an operations plan providing maintenance services for the life of Waller Park, including, but not limited to, gardening, maintenance, and security services for Waller Park. The Director of Planning shall review and approve the proposed operations plan prior to issuance of the first temporary certificate of occupancy for the Project. Such operations plan must ensure that Waller Park functions as a public open space including equal access for all members of the public with operating hours similar to similar publicly owned and operated open spaces, other rules of operation similar to other publicly owned and operated public open spaces, including allowable

activities. The operations plan must discuss strategies to conform with Planning Codes section 138 and 135.1 as they pertain to operations and maintenance, particularly signage.

4.1.2 Community Garden: The Project Sponsor shall improve approximately 10,600 square feet of the site in the area to the west of Woods Hall Annex as a publicly accessible community garden and to assume maintenance and liability responsibilities for the common areas of the garden. Garden plots shall be made available at no fee to members of the public, for gardening purposes on a non-discriminatory manner providing all interested gardeners an equal opportunity to be selected for a garden plot. Public access to the garden shall be provided via Haight Street and Laguna Street. Members of the public maintaining garden plots shall be afforded the same gardening hours and access regardless of whether they are Project residents. The Project Sponsor shall prepare an operations plan providing management services for the life of the Community Garden. The Director of Planning shall review and approve the proposed operations plan prior to issuance of the first temporary certificate of occupancy for the Project. Such operations plan must ensure that the Community Garden functions as a public allotment garden including equal access for all members of the public, including Project residents, with operating hours and rules of operation similar to other publicly owned and operated allotment gardens, including allowable activities.

4.1.3 Community Facility: The Project Sponsor shall undertake seismic and accessibility building shell improvements to Woods Hall Annex to enable the building to be used as a rent-free community center/facility. Prior to issuance of a site permit or building permit for shell improvements to Woods Hall Annex, the Project Sponsor shall engage community stakeholders, the Planning Department and others in a process to be determined to develop a range of program options for the community center and identify a potential operator of the facility. The Project Sponsor shall prepare an operations plan for the Community Facility which will summarize the range of programmatic options developed through the public process, identify an operator and term of operations, and provide additional detail on how a change of operator will be handled. The Director of Planning shall review and approve the proposed operations plan prior to issuance of the first temporary certificate of occupancy for Woods Hall Annex. Such operations plan must ensure that the community center/facility functions as a community facility including equal access for all members of the public with operating hours and rules of operation similar to other publicly owned and operated community center/facility, including allowable activities.

4.2 The Project Sponsor shall cause its architect and landscape architect to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review of DBI in the ordinary course of the process of obtaining a building permit for the Project (upon such approval, the "Plans"). Such review and approval of the Plans by DBI shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements strictly in accordance with the approved Plans and shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning's written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved Plans and documentation of any approved material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.3 Phasing of Construction of Project and In-Kind Improvements. It is contemplated that the Project will be constructed in four phases as follows and as shown graphically in Exhibit D, with the In-Kind Improvements constructed during Phases 1 and 2, subject to change at the Project Sponsor's election and Planning Director approval:

4.3.1 Phase 1: Demolition of Middle Hall and the Administration Wing of Richardson Hall; construction of Garage 1, Residential Building 1A, Residential Building 1B and Building 3; rehabilitation of Woods Hall (Building 4A); construction of the pedestrian mews. Phase 1 In-Kind Improvements: Seismic upgrade of Woods Hall Annex (Building 4B) and construction of Upper Waller Park, comprising all Waller Park improvements including and westward of the pedestrian mews.

4.3.2 Phase 2: Demolition of Haight Street and Laguna Street retaining walls; construction of Garage 2, Residential Building 2C, 2D and 2E. Phase 2 In-Kind Improvements: Construction of Lower Waller Park, comprising all Waller Park improvements eastward of the pedestrian mews, and the Community Garden.

4.3.3 Phase 3: Rehabilitation of Richardson Hall (Building 6).

4.3.4 Phase 4: Construction of Building 5.

4.4 The In-Kind Improvements applicable to each phase of construction as listed above shall be constructed in conjunction with that phase and shall be completed prior to issuance of the first certificate of occupancy (including a temporary certificate of occupancy)(the "First Certificate of Occupancy") for the applicable phase. The improvements shall be accomplished and in accordance with good construction and engineering practices and applicable laws. The Project Sponsor, while performing any construction relating to the In-Kind Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the surrounding property, and the risk of injury to members of the public, caused by or resulting from the performance of such construction. All construction relating to the In-Kind Improvements shall be performed by licensed, insured and bonded contractors, and pursuant to a contract that includes a release and indemnification for the benefit of the City.

4.5 If the Final Inspection Notice has not been completed prior to issuance of the First Certificate of Occupancy for a phase as described in Section 4.4, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation applicable to the uncompleted In-Kind Improvement(s) to be constructed during the applicable phase of construction (the "Security"), to be held by the City until issuance of the Final Inspection Notice, at which date it shall be returned to the Project Sponsor.

4.6 Upon final completion of the In-Kind Improvement(s) during a phase of construction and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the site to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement, or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Inspection Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Inspection Notice that certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director of Planning based on current City standards, and constitute the full satisfaction of the obligation to provide the particular In-Kind Improvement in

the form required hereunder (the "Final Inspection Notice"). The City may, in its sole discretion, waive the requirements of this Section 4.6.

4.7 For each phase, the Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "Payment Documentation"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments for the applicable phase. For each phase, the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same square feet of public open space and community facilities, based on current value of recently completed projects.

4.8 For each phase, the Project Sponsor shall not receive final credit for the In-Kind Improvements until the Final Inspection Notice is delivered, the Memorandum of Agreement is recorded and the City receives any additional payments as may be required under Articles 4 and 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "Date of Satisfaction"). The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction. Notwithstanding the foregoing, on and after the Effective Date (as defined in Section 5.1 below), for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement the City shall not withhold the issuance of any additional building or other permits necessary for the Project due to the Project Sponsor's payment of less than the full Project Sponsor Fee amount in anticipation of the In Kind Improvements ultimately being accepted and credited against the Project Sponsor Fee under the terms and conditions set forth in this Agreement.

ARTICLE 5 PAYMENT AND SECURITY

5.1 This Agreement shall not be effective until this Agreement is signed by both the Project Sponsor and the City, is consented to by the UC Regents pursuant to that certain written consent attached hereto as Exhibit E, is approved as to form by the City Attorney, and is approved by the Planning Commission. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

5.2 For each phase, the City shall provide the Project Sponsor with a written report of its review of the Payment Documentation ("Payment Analysis") within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably document that the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same type of public open space and community facilities, with comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the Fee, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor and the Fee. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the Fee or the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

5.3 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the City's Payment Analysis, Project Sponsor and the City shall mutually select a third-party engineer/cost consultant. The City shall submit its Payment Analysis and Project Sponsor shall submit the Payment Documentation to such engineer/cost consultant, at such time or times and in such manner as the City and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The engineer/cost consultant shall select either the City's Payment Analysis or Project Sponsor's determination pursuant to the Payment Documentation, and such determination shall be binding on the City and Project Sponsor.

5.4 Notwithstanding anything in this Agreement to the contrary:

5.4.1 The City shall not issue or renew any further certificates of occupancy to the Project Sponsor until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement and other cash payments received by the City directly from Project Sponsor) before issuance of the First Certificate of Occupancy for the Project.

5.4.2 The City's issuance of a certificate of final completion or any other permit or approval for the Project shall not release the Project Sponsor of its obligation to pay the full Project Sponsor Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.4.3 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and after demand by the City the Project Sponsor fails to pay such amount, such amount shall accrue interest from the date of such demand at the rate of one-half percent per month, or fraction thereof, compounded monthly, until the date of payment. If such nonpayment continues for a period of six (6) months, the City's Treasurer shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the Project Sponsor Fee, including interest, a lien against all parcels used for the housing in the Project and shall send all notices required by that Article.

5.5 The Project Sponsor understands and agrees that any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the

In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

ARTICLE 6 NOTICES

Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

CITY:

Director of Planning
City and County of San Francisco
1660 Mission St.
San Francisco, CA 94103

with a copy to:

Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Susan Cleveland-Knowles

PROJECT SPONSOR:

Alta Laguna, LLC
20 Sunnyside Avenue, Suite B
Mill Valley, CA 94607
Attn: Brian Pianca

with a copy to:

Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94104
Attn: Steven L. Vettel, Esq.

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

ARTICLE 7 RUN WITH THE LAND

7.1 The parties understand and agree that this Agreement shall run with the Project Sponsor's land, and shall burden and benefit every successor owner of the Land. The City would not be willing to enter into this Agreement without this provision, and the parties agree to record a Memorandum of Agreement in the form attached hereto as Exhibit F (the "Memorandum of Agreement"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 8.4, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Agreement, which the Project Sponsor may record.

ARTICLE 8 ADDITIONAL TERMS

8.1 This Agreement contemplates the construction of privately owned publicly accessible In-Kind Improvements as authorized under the Ordinance and is not a public works contract. The City and the Project Sponsor agree that the In-Kind Improvements are of local and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the In-Kind Improvements.

8.2 The City shall have the right, during normal business hours and upon reasonable notice, to review all books and records of the Project Sponsor pertaining to the costs and expenses of providing the In-Kind Improvements.

8.3 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's first construction document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue the first construction document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under the Ordinance are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

8.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

8.6 This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of California.

8.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

8.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

8.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

8.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about the Land, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions, or negligence of the Project Sponsor or its agents in or about the Land. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Project Sponsor by City and continues at all times thereafter. The Project Sponsor's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

ARTICLE 9 CITY CONTRACTING PROVISIONS

9.1 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.2 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

9.3 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

9.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective

contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

9.5 The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.6 The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its Planning Commission

ALTA LAGUNA, LLC,
a Delaware limited liability company

By: _____
Director of Planning

By: _____
Name: _____
Title: _____

APPROVED:

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

FARELLA BRAUN & MARTEL, LLP

By: _____
Deputy City Attorney

By: _____
Steven L. Vettel

ACKNOWLEDGED:

Department of Building Inspection

By: _____
Authorized Representative

Exhibit A

Legal Description of Land

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Lots 1 and 1A in Assessor's Block 857 and Lots 1 and 2 and a portion of Lot 3 in Assessor's Block 870.

Exhibit C
Cost Documentation

Building	Existing Non-R	New R	New Non-R	Other Use	Notes
1A	0	57,433		0	
1B	0	58,644		0	
2C	0	73,231		0	
2D	0	67,794		0	
2E	0	79,469		0	
3	0	6445			resident
4A – WH	24,790	24790		0	
4B – WHA	12,641	0	12641	12,641	Community
5 - OH	0	54,983		0	
5 - SC	0	0	8615	8,615	Community
6 - Richardson	54,983	54,983	5,200	0	Retail
Admin Bldg	5682	0		0	Demo/Bl dg. 5
Middle Hall	8069	0		0	Demo/Bl dg. 1B
Total	106165	477,772	26,456	21256	

Existing Use	GFA	New Use	GFA	CoU GFA	CoU Fee	New GFA	New GFA Fee	Total Fees
Non-Residential	106165	Non-Res	26,456	NA	NA			\$ -
PDR	0	Residential	477,772	79709 From NR	\$ 473,471.46	398063	\$ 3,809,462.91	\$ 4,282,934.37
Residential	0	PDR		0 From PDR	\$ -			\$ -
								\$ -
					\$ 473,471.46		\$ 3,809,462.91	\$ 4,282,934.37
					CoU/Replacement for Non-Res to Res		Net New Residential	
					5.94		9.57	

Exhibit D
Phasing Plan

Exhibit E

CONSENT OF UC REGENTS

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, the undersigned owner of record of the fee interest in the property known as 55 Laguna Street, San Francisco, CA 94102 and identified as Lots 1 and 1A in Assessor's Block 857 and Lots 1, 2, and a portion of Lot 3 in Assessor's Block 870 for which the 55 Laguna Street In-Kind Agreement (the "In-Kind Agreement") is being entered into, do hereby certify that the In-Kind Agreement may be executed and a Memorandum of In-Kind Agreement may be recorded with our full consent, and that we have authorized ALTA Laguna, LLC, a Delaware limited liability company, to act as our agent in all contacts with the City and County of San Francisco and to sign for all necessary documents and forms in connection with this matter.

OWNER:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Its: _____

Exhibit F

Memorandum of Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

**City and County of San Francisco
Department of Planning
1660 Mission St.
San Francisco, CA 94103
Attn: Director**

(Free Recording Requested Pursuant to
Government Code Section 27383)

Memorandum of In-Kind Agreement

This Memorandum of In-Kind Agreement (this “Memorandum”), is dated as of _____, 2012, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the “City”), and Alta Laguna, LLC (the “Project Sponsor”).

1. The property described in Exhibit A attached hereto (the “Land”) and generally known as 55 Laguna Street, San Francisco, California 94102 is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 421.3 (“Section 421.3”), the Project Sponsor must pay to the City an Impact Fee (the “Fee”) on or before the issuance of the first construction document for the Land; provided, however, the City can reduce such payment under Section 421.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 421.3(d), the City and the Project Sponsor have entered into an in-kind agreement (the “In-Kind Agreement”), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor’s agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor’s satisfaction of the terms of the In-Kind Agreement, the In-Kind Agreement shall terminate and the City will execute and deliver to the Project Sponsor a termination of this Memorandum in recordable form.
5. The Project Sponsor and the City have executed and recorded this Memorandum to give notice of the In-Kind Agreement, and all of the terms and conditions of the In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the In-Kind Agreement itself for a complete and definitive statement of the rights and obligations of the Project Sponsor and the City thereunder.

6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its Planning Commission

By: _____
Director of Planning

ALTA LAGUNA, LLC
a Delaware limited liability company

By: _____
Name:
Its:

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me,

(here insert name and title of the officer)
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me,

(here insert name and title of the officer)
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)