

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 19-0227

WHEREAS, The City and County of San Francisco (City), under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), owns certain real property known as the City Property Street, Block 3777, Lot 052 (City Property), an approximately 1.37-acre parcel improved with a warehouse and parking lot currently used by the SFPUC for heavy equipment and materials storage, SFPUC vehicle parking, construction staging, and other related purposes; and

WHEREAS, The SFPUC also operates a hydrogen peroxide tank (HP Tank) on the City Property; and

WHEREAS, The SFPUC leases adjacent property at 651 Bryant Street, Block 3777, Lot 050 (City Leased Premises), for related SFPUC office and warehouse purposes under a lease that expires on October 18, 2029; and

WHEREAS, The City Property is small and to meet the SFPUC's anticipated futurewater and power utility yard needs, either expansion of the existing facility or securing a replacement facility will be necessary soon; and

WHEREAS, 2000 Marin, L.P., a Delaware limited partnership (Developer), owns certain real property known as 2000 Marin Street, Block 4346, Lot 003 (2000 Marin), an approximately 7.98-acre parcel with a 74,000-square foot building built in 1989; and

WHEREAS, The Developer proposes to acquire the City Property in exchange for 2000 Marin, and seeks to develop a mixed-use project on the City Property, the City Leased Premises, and other adjacent parcels the Developer proposes to acquire from third parties (Developer's Project); and

WHEREAS, The City Property and the City Leased Premises are located within the City's proposed Central SOMA Plan, a multi-year public and cooperative interagency planning process the City began in 2011 (Planning Department Case No. 2011.1356EMTZU); and

WHEREAS, The Central SOMA Plan was approved by the City Planning Commission on May 10, 2018 and approved by the Board of Supervisors on December 4, 2018; and

WHEREAS, This Commission has reviewed relevant portions of the Central SoMa EIR, and the Community Plan Evaluation (CPE) certificate prepared for the 598 Brannan Street development project, which includes the 639 Bryant Street site and 2000 Marin Street property exchange. These documents have been available for this Commission's review as well as public review; and

WHEREAS, In approving the Central SoMa Plan, the Planning Commission adopted CEQA findings in its Resolution No. 20183. The Planning Commission also adopted CEQA findings in its Motion No. 20459 when it approved the 598 Brannan Street Project, which included the 639 Bryant Street site and the 2000 Marin Street property exchange. This Commission hereby incorporates the CEQA findings contained in Resolution No. 20183 and Motion No. 20459, including the MMRP, by this reference thereto as though set forth herein in their entirety; and

WHEREAS, On April 17, 2018, the Board of Supervisors adopted Resolution No. 115-18 (File No. 180370) supporting negotiations for a potential exchange of the City Property for 2000 Marin, subject to City analysis and approvals following any required environmental review; and

WHEREAS, City and Developer executed and delivered a Conditional Land Disposition and Acquisition Agreement (Original Agreement) dated as of August 1, 2018 to establish a framework for the exchange of the City Property for 2000 Marin (Exchange Transaction) and to state the terms and conditions under which the Exchange Transaction would occur, subject to all necessary approvals and environmental review required by the California Environmental Quality Act (CEQA), and other applicable laws; and

WHEREAS, The SFPUC authorized its General Manager to execute and deliver the Original Agreement pursuant to SFPUC Resolution No. 18-0121, and pursuant to Resolution No. 218-18, File No. 180550, City's Board of Supervisors and Mayor authorized City's Director of Property and/or the General Manager to execute and deliver the Original Agreement; and

WHEREAS, The Original Agreement was made effective on October 9, 2018 (Original Effective Date); and

WHEREAS, The Developer and the SFPUC propose entering into an Amended and Restated Land Disposition and Acquisition Agreement (Amended Agreement) for the Exchange Transaction, a copy of which has been presented to this Commission and is on file with the Commission Secretary; and

WHEREAS, 2000 Marin has soil contamination and pursuant to a deed covenant, 2000 Marin is subject to oversight by the California Department of Toxic Substance Control (DTSC). Any disturbance of the existing four-inch to 12-inch thick asphalt concrete cap requires DTSC consent and oversight and could require environmental remediation, the costs of which would depend on the extent of the soil disturbance; and

WHEREAS, Under both the Original Agreement and the Amended Agreement, the SFPUC must pay for any hazardous materials remediation costs that it may incur in connection with its future development of 2000 Marin. A separate deed covenant prevents any post-2015 owner of 2000 Marin from bringing claims arising from the soils contamination against prior owners of the property; and

WHEREAS, In accordance with the requirements of the Original Agreement, in May 2019, the environmental consulting firm Ramboll completed a Phase II Site Investigation of 2000 Marin (Phase II Report) based upon a proposed conceptual scope of work for a potential use for the site; and

WHEREAS, Ramboll took 33 soil samples from 12 borings and submitted them for chemical analyses. Based on the analyses results, Ramboll determined that approximately 30% of the soil samples (9 of 33 samples) are classified as "hazardous waste" under the Resource Conservation and Recovery Act (RCRA), 30% of the soil samples (10 of 33 samples) are classified as non-hazardous waste under the RCRA but as hazardous waste under California law, and the

remaining 40% of the soils samples are classified as non-hazardous waste suitable for disposal at a Class II Landfill; and

WHEREAS, The SFPUC retained TRC Solutions, Inc. (TRC), an environmental and engineering firm, to review the results of the Phase II Report. TRC took no issue with the Phase II Report sampling and results and issued a report dated June 20, 2019 which compiled a \$10,040,175 engineering cost estimate (Environmental Cost Estimate) to transport and dispose of the soil generated. TRC based its estimate on the remediation required for a proposed conceptual scope of work at 2000 Marin but those costs may ultimately be more or less depending on SFPUC's final plans for use of the site, which has not yet been determined; and

WHEREAS, On November 19, 2019, the Planning Department determined that the relocation of SFPUC's Power Enterprise Utility Field Services to Port property is exempt from the CEQA Guidelines Section 15301, Class 1 (Existing Conditions); and

WHEREAS, In addition to providing for the Exchange Transaction, the Amended Agreement also provides that:

1. The Developer will construct and install new tenant improvements for the SFPUC at Port leased facilities at Pier 23 and the Roundhouse Two (together, the Port Leased Premises.) The SFPUC desires such facilities to be temporary to give the SFPUC time (a) to undertake a long-term facility master planning process to determine the optimal use of 2000 Marin and other SFPUC property in the City and the scope of improvements necessary for such use, including improvements for the expanding Power Enterprise operations, and (b) to identify adequate funding for such improvements. The Developer will pay up to \$2,700,000 for the costs of installing and constructing tenant improvements at the Port Leased Premises. City will reimburse the Developer for any tenant improvement costs above \$2,700,000.
2. Promptly after the completion of the tenant improvements at the Port Leased Premises, and the City's acceptance of the tenant improvements, on a date mutually agreeable to the parties (Moving Date), the Developer will provide all services necessary (Moving Services), to move the Power Enterprise's personal property and equipment from the City Property and the City Leased Premises to the Port Leased Premises. The City will reimburse the Developer for its approved costs incurred in connection with the Moving Services.
3. Because the SFPUC's obligation to pay rent to the Port for the Port Leased Premises will commence on March 1, 2020 (Port Commencement Date), the Developer will either waive or reimburse the City for any rent or other payments required under the 651 Lease on or after the Port Commencement Date in order to prevent City from having to simultaneously pay rent for both the City Leased Premises and the Port Leased Premises. If the Developer acquires the City Leased Premises prior to close of escrow for the Exchange Transaction (Close of Escrow) and therefore becomes the City's landlord, the Developer will allow the SFPUC to occupy the City Leased Premises free of charge from the Port Commencement Date through the Moving Date. If the Developer does not acquire the City Leased Premises

prior to Close of Escrow, the Developer will pay or reimburse City for, and indemnify and hold City harmless from, all rent and other sums payable under the 651 Lease with respect to the period from and after the earlier of the Moving Date or the Port Commencement Date otherwise payable by City to the landlord of the City Leased Premises.

4. The Developer will deposit into escrow at the closing of the Exchange Transaction a flat sum of \$1,000,000 (Transaction Costs) for the City's reimbursable expenses arising from the Exchange Transaction and the Developer's approved costs incurred in moving the SFPUC from the City Property and the City Leased Premises to the Port Leased Premises. After the Developer moves the SFPUC from City Property and the City Leased Premises, the Developer's agreed-upon moving costs will be disbursed to the Developer from the sums deposited in escrow and the balance of funds held in escrow will be disbursed to the City. City's Transaction Costs include (a) City's attorney's fees for negotiation and preparation of the Exchange Transaction documents; (b) City's costs incurred to investigate the physical condition, title, and suitability of 2000 Marin for City's use; (c) City's appraisal fees; (d) City's personnel, consultant, and other environmental review costs and fees; and (e) City's title insurance, escrow costs and other closing costs to acquire 2000 Marin. The Developer's obligation to pay the \$1,000,000 will survive the termination or cancellation of the Amended Agreement.
6. The SFPUC will decommission the HP Tank on the City Property at its sole cost by abandoning it in place prior to Close of Escrow. The SFPUC has not determined if, where, or when a replacement HP tank will be installed. The SFPUC may seek to place a new hydrogen peroxide tank on land owned by the California Department of Transportation (Caltrans) which is located on or adjacent to Harrison Street, San Francisco between Merlin Street and Morris Street (Merlin Morris Site), or another suitable nearby site. The Developer has a professional relationship with Caltrans. If the SFPUC seeks to place a new hydrogen peroxide tank on or adjacent to the Merlin Morris Site or another suitable site owned by Caltrans, as further consideration to the SFPUC, and at Developer's sole expense, the Developer will use commercially reasonable efforts to obtain from Caltrans its complete authorization for the SFPUC's placement of a new hydrogen peroxide tank on the Merlin Morris Site or another suitable nearby site owned by Caltrans; and

WHEREAS, Under the Amended Agreement's terms, the Commission's declaration of surplus regarding the City Property and Close of Escrow are conditioned upon the completion of all required environmental review and satisfaction of certain conditions, including (1) the SFPUC Commission's review and acceptance of the environmental condition of 2000 Marin; (2) the SFPUC's de-commissioning of the HP Tank by abandoning it in place at 639 Bryant; and (3) the Board of Supervisors' waiver of certain development impact fees in exchange for Developer's dedication of a public park to the City as part of the Developer's Project (Park Fee Waiver); and

WHEREAS, Developer's obligation to complete the Exchange Transaction is conditioned on, among other things, the Board of Supervisors' approval of the Park Fee Waiver; and

WHEREAS, The fair market value of the City Property is \$63,875,000, as determined by a MAI appraisal by Clifford Advisory, LLC dated May 15, 2018; and

WHEREAS, The fair market value of 2000 Marin is \$63,600,000, as determined by a MAI appraisal by Clifford Advisory, LLC, both dated July 2, 2018; and

WHEREAS, In addition to providing for the exchange of 2000 Marin for the City Property, the Amended Agreement also provides for additional consideration from the Developer; and

WHEREAS, The SFPUC intends to use 2000 Marin for utility purposes after the SFPUC undertakes a facility planning process to determine the optimal use of all of its property in the City, including 2000 Marin, and the scope of improvements necessary for such use; now, therefore, be it

RESOLVED, This Commission hereby finds that existing space for the Power Enterprise at the City Property and the City Distribution Division (CDD) of the SFPUC Water Enterprise at 1990 Newcomb Avenue in San Francisco will not meet the SFPUC's anticipated future utility yard needs and both facilities require either expanding the existing facilities or securing replacement facilities soon; and be it

FURTHER RESOLVED, That the SFPUC is undertaking scheduled repair and replacement projects for all three enterprises and at various locations in San Francisco in the near term and has immediate need for additional space for storage of equipment and vehicles and temporary relocation of existing uses near its operational facilities. When specific plans are developed for any of these facilities, they will undergo CEQA review and consideration by this Commission prior to their approval; and be it

FURTHER RESOLVED, That 2000 Marin presents an extremely rare opportunity for the SFPUC to acquire industrial property with a sufficient area to meet its critical utility yard needs, particularly as the population in San Francisco increases, and the three SFPUC enterprises expand their operations to meet increased utility demand; and be it

FURTHER RESOLVED, That the SFPUC's acquisition of 2000 Marin under the terms and conditions stated in the proposed Amended Agreement could allow improved and more integrated SFPUC utility yard operations for the SFPUC on a site that is five times larger than the City Property, with a location near the SFPUC's Southeast Treatment Plant and CDD and excellent access to public transportation, and will reduce the need for leased space for storage and construction staging; and be it

FURTHER RESOLVED, That, following acquisition of 2000 Marin, the SFPUC intends to undertake a long-term facility master planning process to determine the optimal use of 2000 Marin as well as other SFPUC property in the City, and this Commission will have an opportunity to review and approval such plans upon completion of all necessary technical, feasibility, planning, and environmental reviews; and be it

FURTHER RESOLVED, That this Commission has reviewed the Phase II Report and environmental remediation cost estimate for a potential use of 2000 Marin on file with the Commission Secretary and finds that the additional consideration being provided by the Developer and the opportunity to acquire one of the last large industrial parcels in San Francisco justifies proceeding with the Exchange Transaction notwithstanding the potential substantial cost of future hazardous materials remediation at 2000 Marin, and acknowledges that such costs will ultimately

depend upon SFPUC's plans for its future use of 2000 Marin, which is to be determined and approved by the Commission at a later date following completion of environmental review for any such project; and be it

FURTHER RESOLVED, That after Close of Escrow when the SFPUC acquires 2000 Marin, the City Property will be surplus to the SFPUC's utility needs; and, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and approves all actions heretofore taken by any City official in connection with this Amended Agreement; and, be it

FURTHER RESOLVED, That this Commission authorizes the General Manager of the SFPUC and/or City's Director of Property to seek approval of the Amended Agreement by City's Board of Supervisors and the Mayor, and upon such approval, to execute the Agreement in substantially the same form presented to this Commission; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Property to enter into any amendments or modifications to this Amended Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City, do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes and intent of the Amended Agreement or this resolution, and are in compliance with all applicable laws, including the City Charter; and, be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor and the consummation of the proposed Exchange Transaction, this Commission authorizes the Director of Property and/or the SFPUC General Manager to execute and deliver a quitclaim deed conveying the City Property to Developer; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Property to enter into any amendments or modifications to the Amended Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Agreement or this resolution; and are in compliance with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of November 26, 2019.



Secretary, Public Utilities Commission