

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 20-0135

WHEREAS, The City and County of San Francisco (City) owns approximately 17.6 acres of real property under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) near Frida Kahlo Way and Ocean Avenue, commonly known as the Balboa Reservoir; and

WHEREAS, The SFPUC originally constructed the Balboa Reservoir in 1957 for water storage, but it was never used for its intended water storage purpose. In 2012, after a series of land transfers between various public agencies, the original Balboa Reservoir was reconfigured into its current configuration, and the SFPUC has jurisdiction over the approximately 17.6 acres west of City College of San Francisco (City College) Ocean Avenue campus; and

WHEREAS, In March of 2015, the Board of Supervisors established the Balboa Reservoir Community Advisory Committee (BRCAC) to advise the Board of Supervisors, the Mayor, and City departments, to provide a regular venue for interested community stakeholders and the general public to discuss any proposed development at the Balboa Reservoir; and

WHEREAS, In February 2016, the SFPUC completed all noticing and other requirements under the California Government Code Section 54220 et seq. (State Surplus Lands Act); and

WHEREAS, In November of 2016, following nearly two years of community outreach, the SFPUC initiated the developer selection process by issuing a request for qualifications to solicit developers interested in acquiring the Balboa Reservoir site to build mixed income housing and develop open space. The three top-scoring teams were subsequently invited to respond to a request for proposals (RFP). The selected developer teams for the RFP submitted their final proposals and presented their proposals to the community in June of 2017. In August of 2017, a panel including representatives from the City, City College and the BRCAC selected a development team for the project; and

WHEREAS, On November 14, 2017, by Resolution No. 17-0225, this Commission approved an Exclusive Negotiating Agreement (ENA) between City, through the SFPUC, and the Developer, a joint venture comprised of AvalonBay Communities and Bridge Housing as co-master developers, with Mission Housing, Pacific Union Development Company, and Habitat for Humanity of Greater San Francisco participating on the development team. The ENA authorized the parties to negotiate the terms and conditions for the development and sale of the Balboa Reservoir; and

WHEREAS, The Developer seeks to purchase approximately 16 acres of the Balboa Reservoir (the Property) and to develop the Property with approximately 1,100 units of much needed housing including fifty percent (50%), or 550 homes, as affordable housing units. Thirty three percent (33%) of the housing will be made affordable by the Developer at the Developer's cost, and the remaining seventeen percent (17%) will be subsidized by City with non-SFPUC sources of funds. The development project includes approximately 1,000 units of multi-family rental residential housing, approximately 100 for-sale residential units, ground-floor community

space, approximately 4 acres of privately owned and publicly accessible open space, parking garages, and a child-care facility (the Project); and

WHEREAS, The Project includes affordable housing that exceeds the requirements of the Planning Code for inclusionary affordable housing and is in keeping with the goals of the Public Land for Housing Initiative established by Mayor Ed Lee, and with voter approved Proposition K in 2015; and

WHEREAS, The Project includes extensive investments in public infrastructure, including new water distribution, auxiliary water supply facilities, stormwater management improvements, sanitary sewer systems, power facilities, and street lighting that the City will accept, at no cost to the City, upon completion; and

WHEREAS, Under the ENA, the parties have negotiated several transaction documents for the sale and development of the Property, including a development agreement that provides the Developer with vested development rights for the Project in exchange for substantial public benefits (Development Agreement). Pursuant to the Development Agreement, the Project will be subject to specified ordinances, regulations, rules and policies governing the design, construction, fees and exactions, use or other aspects of the Project; and

WHEREAS, The parties have also negotiated an Agreement for Sale of Real Estate (PSA) for the SFPUC to sell the Property to the Developer for \$11,400,000. In June 2020, a MAI appraiser appraised the fair market value of the Property at \$11,400,000; and

WHEREAS, Under the PSA, the closing date will occur no later than December 31, 2022, and the Developer will pay to the SFPUC: (i) a non-refundable Initial Payment of \$500,000 upon City's execution of the PSA; (ii) annual pre-closing deposits of \$400,000; and (iii) annual interest at the rate of three percent on the unpaid balance of the purchase price; and

WHEREAS, Under the PSA, the Developer may elect to have the City provide carry-back financing on the balance of the purchase price, in which case the Developer will issue a promissory note (Promissory Note) to the City secured by a first-lien deed of trust (Deed of Trust) on the Property. If the Developer elects the carry-back financing, it will pay to the SFPUC: (i) post-closing annual loan payments until December 31, 2028; (ii) a partial balloon payment in 2026; and (ii) annual interest at the rate of three percent on the unpaid balance of the loan until the loan ends, which will be no later than December 31, 2028. Once the Developer has paid the principal balance of the loan down to \$5,700,000, the City will release the lien of its Deed of Trust from the Phase 1 portion of the Property and will retain the lien of the Deed of Trust on the Phase 2 portion of the Property. The Developer may pre-pay the loan in its entirety at any time without penalty; and

WHEREAS, The City, under the SFPUC's jurisdiction, will retain an 80-foot-wide approximately one-acre parcel of land (Retained Fee), with surface appurtenances and a subsurface SFPUC water transmission line, north of Ocean Avenue along the southern boundary of the Balboa Reservoir. SFPUC and the Developer have negotiated a 20-year open space license (Open Space License) for the use of approximately 44,431 square feet of the Retained Fee. The Developer will assign the Open Space License to a non-profit organization before the start of the license term, which shall be no later than December 31, 2024; and

WHEREAS, The Open Space License requires the Developer to use the license area for the installation and maintenance of public open space for the benefit of Project residents and the general public. Because the open space improvements will not be completed until the last phase of the development, the use fee will commence in year 11 of the license term, after construction of the Project has been substantially completed and the open space improvements have been installed in the license area; and

WHEREAS, The use fee for the Open Space License starting in year 11 of the license term will be \$32,380 per year, with 4% annual increases, or the Developer may elect to make an upfront lump sum payment of \$112,000. The fee amount reflects a 50% discount of the appraised fair market rent and such discount is based upon the fact that (1) the license will be assigned to a non-profit entity to operate for public use, (2) the license area has little to no revenue generating potential, (3) the license relieves the SFPUC of the costs of maintaining and securing the license area, and (4) and the license requires the licensee to install and maintain educational signage on the license area to educate users about the Hetch Hetchy Regional Water System and the important role the SFPUC Right-of-Way plays in the SFPUC's transportation of water supply; and

WHEREAS, In 2011, the SFPUC adopted the Community Benefits Program by its Resolution No. 11-0008, which seeks to serve and foster partnership with communities in SFPUC service areas and to ensure public benefits are shared across all communities; and

WHEREAS, The Project will provide an important community benefit to residents in San Francisco and promote a public purpose by creating significant housing and affordable housing, open space, and other public benefits as described in the Development Agreement, which has a 50% affordable housing component; and

WHEREAS, The parties have also negotiated a Recognition Agreement, which provides for the SFPUC's recognition of performance, cure, and reassignment rights between the master co-developers of the Project; and

WHEREAS, To facilitate planned street circulation for the Project, the SFPUC proposes recording a Declaration of Restrictions (Declaration) that will allow a portion of the Retained Fee area to be used as dedicated public right-of-way for purposes of constructing and subsequent use of the planned extension of Lee Avenue where it crosses the Retained Fee; and

WHEREAS, The Balboa Reservoir is subject to a 2012 Access Easement Agreement between City, through the SFPUC, and City College (Original Easement), which contemplated that City College would construct and maintain an Accessway on the Property, and City College has not yet constructed the Accessway as required by the Original Easement; and

WHEREAS, To develop the Project, the Original Access Easement Agreement Area must be widened, and a street must be constructed to City standards on the widened area. Therefore, the parties negotiated an amendment to the Original Easement (Amended Easement); and

WHEREAS, Under the Amended Easement, the City will obtain additional land to widen the Accessway, and in return for conveyance in fee of the revised easement area from City College to City, City will relieve City College of its obligation to construct the Accessway to current City standards as required by the Original Easement; and

WHEREAS, On January 1, 2020, new amendments to the State Surplus Lands Act under Assembly Bill 1486 took effect which imposed additional requirements on some projects but excludes from those requirements properties that have an existing exclusive negotiating agreement and will be conveyed by December 31, 2022. Because City entered into the ENA relating to the Property in December of 2017, and the disposition of the Balboa Reservoir will be completed by December 31, 2022, the additional requirements do not apply to the Project; and

WHEREAS, SFPUC staff recommend that this Commission consent to the Development Agreement and approve the terms and conditions of: (i) the PSA; (ii) the Open Space License; (iii) the Promissory Note; (iv) the Deed of Trust; (v) the Recognition Agreement; (vi) the Declaration; and (vii) the Amended Easement; and recommend approval of all of the foregoing to the Board of Supervisors and the Mayor; and

WHEREAS, On May 28, 2020, in Motion No. 20730, the Planning Commission certified the Balboa Reservoir Final Subsequent Environmental Impact Report (FSEIR) in accordance with the California Environmental Quality Act (CEQA) Public Resources Code sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Reg. sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code. On that same day, in Motion No. 20731, the Planning Commission adopted CEQA Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program; and

WHEREAS, The Planning Commission Secretary is the custodian of records for the Planning Commission FSEIR materials and related records are available at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA 94103 and at <http://ab900balboa.com>. These records have been made available to the SFPUC and the public for review. These records are incorporated herein by reference; and

WHEREAS, This Commission has reviewed and considered the information contained in the FSEIR, the findings contained in Planning Commission Motion Numbers 20730 and 20731, and all written and oral information provided by the Planning Department, the public, relevant public agencies, SFPUC and other experts and the administrative files for the Project; now, therefore, be it

RESOLVED, That this Commission has reviewed and considered the FSEIR and record as a whole, finds that the FSEIR is adequate for its use as the decision-making body for the declaration of surplus property, consent to the Development Agreement, Approval of Purchase and Sale Agreement, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement, the Open Space License, and the Amended Easement, and incorporates the CEQA findings contained in Motion No. 20731, including the Statement of Overriding Considerations and the Mitigation and Monitoring Program as though set forth in this Resolution; and be it

FURTHER RESOLVED, That this Commission further finds that since the FSEIR was finalized, there have been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the FSEIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FSEIR, and be it

FURTHER RESOLVED, That this Commission finds that the Property is surplus to the SFPUC's utility needs and not necessary for the SFPUC's use; and, be it

FURTHER RESOLVED, That this Commission hereby consents to the Development Agreement between City and the Developer substantially in the form and on the terms as outlined in the Development Agreement with respect to the items under the SFPUC's jurisdiction, and authorizes the General Manager to execute the SFPUC Consent to the Development Agreement on behalf of this Commission; and be it

FURTHER RESOLVED, That, subject to appropriation of any necessary funds, this Commission authorizes the SFPUC General Manager, to take any and all steps (including, but not limited to, the execution and delivery of any and all land use approvals, easements, entitlements, permits, agreements, notices, consents, and other instruments or documents) as he or she deems necessary or appropriate, in consultation with the City Attorney, in order to consummate and perform its obligations under the Development Agreement in accordance with this Resolution and legislation by the Board of Supervisors, or otherwise to effectuate the purpose and intent of this Resolution and such legislation; and be it

FURTHER RESOLVED, That, in the event that implementation of the Development Agreement and Infrastructure Plan necessitates the vacation of any streets or easements in which the SFPUC has assets or an ownership interest, the Commission hereby declares such assets to be surplus to its utility needs conditioned upon the Developer's satisfaction of all obligations in the Development Agreement and Infrastructure Plan and subject to SFPUC's receipt of assets or other consideration of equivalent value; and be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; 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 from the Board of Supervisors of the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; and be it

FURTHER RESOLVED, That subject to and upon approval by City's Board of Supervisors and the Mayor, the General Manager is authorized to execute the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, and the Recognition Agreement in substantially the same forms presented to this Commission, including changes to the documents that may be required by the Board of Supervisors, if any; and, be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the City's Director of Property to execute the Amended Easement; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with the Development Agreement, the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes City's Director of Property and/or the SFPUC General Manager to enter into any amendments or modifications to each of the Development Agreement, the PSA, the Open Space License, the Promissory Note, the Deed of Trust, the Declaration, the Recognition Agreement and the Amended Easement,

including without limitation, the exhibits to such documents, that City's Director of Property and/or the SFPUC's General Manager determines, in consultation with the City Attorney, are in the best interest of City; do not materially increase the obligations or liabilities of City; are necessary or advisable to effectuate the purposes and intent of each of the documents 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, this Commission authorizes the SFPUC General Manager and/or City's Director of Property to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 23, 2020.

A handwritten signature in black ink that reads "Alonna Wood". The signature is written in a cursive style with a horizontal line underneath the name.

Secretary, Public Utilities Commission