

1 [Accept Gift - Alta Laguna, LLC - 55 Laguna Street; In-Kind Agreement]

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3 **Ordinance accepting as a gift to the City from Alta Laguna, LLC certain costs of**
4 **constructing public open space and community facility improvements at 55 Laguna**
5 **Street, pursuant to an In-Kind Agreement with the City; accepting as a gift the costs**
6 **associated with maintaining the improvements; and making findings under the**
7 **California Environmental Quality Act.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

12

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. **Background.**

15 (a) **Project Approval Actions.**

16 (1) On January 17, 2008 (in Motion No. 17532), the Planning Commission
17 (“Commission”) certified the Final Environmental Impact Report (“FEIR”) and in Motion Nos.
18 17533 to 17537, inclusive, the Commission took various approval actions that authorized the
19 construction at 218-220 Buchanan Street (also known as 55 Laguna Street) of approximately
20 330 dwelling units, approximately 110 additional affordable senior dwelling units, community
21 facility space, and neighborhood-serving retail, parking, and two separate publicly-accessible
22 open spaces.

23 (2) On March 4, 2008, the Board of Supervisors upheld on appeal the
24 Commission’s certification of the FEIR. In 2009, the San Francisco Superior Court upheld the
25 adequacy of the FEIR in *Save the Laguna Street Campus v. City and County of San*

1 *Francisco, et al.* (Case No. CPF 08 508277) and the Court of Appeal affirmed that decision in
2 2010.

3 (3) In April 2008, the Board of Supervisors approved an amendment to the
4 General Plan, Zoning Map amendments, and an ordinance establishing (in Section 249.32 of
5 the Planning Code) the Laguna, Haight, Buchanan and Hermann Streets Special Use District.
6 (See Ordinance Nos. 66-08, 67-08, and 68-08.) Planning Code Section 249.32(b)(5) required
7 the Commission to consider imposition of a community infrastructure impact fee or to accept
8 in lieu thereof the in-kind provision of community infrastructure improvements (including
9 additional publicly accessible open space and an in-door community facility) generally
10 consistent with the priorities set forth in the Market and Octavia Area Plan.

11 (4) On July 28, 2011 (in Motion No. 18427), the Commission approved
12 modification of the Conditions of Approval relating to the Project's compliance with the
13 Inclusionary Housing Program. On August 16, 2012 (in Motion No. 18693), the Commission
14 approved modification of the original site plan and granted certain authorized exceptions to
15 Code requirements. On May 8, 2012, the Planning Department had issued an Addendum to
16 the Project's FEIR, which concluded that the analyses conducted and the conclusions
17 reached in the FEIR remained valid for the modified project and that no supplemental
18 environmental review was required. A copy of Commission Motion No. 18693 is on file with
19 the Clerk of the Board in File No. 170943.

20 (b) **55 Laguna Street In-Kind Agreement.**

21 (1) In May 2010, the City enacted Article 4 of the Planning Code and re-
22 located into that Article the City's existing development impact and in-lieu fees. Section 421 et
23 seq. established the Market and Octavia Community Improvements Fund, into which the
24 Market and Octavia Community Impact Fees were to be deposited, and included the option of
25 directly providing community improvements to the City in return for a waiver of all or a portion

1 of the Fee. (See Ordinance No. 108-10.) Alta Laguna, LLC, et al., the project sponsors,
2 subsequently submitted a request for waiver of the Market and Octavia Community Impact
3 Fee in return for providing the open space and community facility improvements that were
4 included in the Project (“In-Kind Improvements”).

5 (2) On September 20, 2012 (in Motion No. 18706), the Commission
6 approved the waiver of the Project’s Market and Octavia Community Improvements Impact
7 Fee and a draft form of the related In-Kind Agreement pursuant to Planning Code Section
8 421.3(d) et seq. In the Motion’s Executive Summary of the proposal and the required
9 Commission action, Planning Department staff informed the Commission that the draft
10 Agreement was consistent with the Project’s 2008 in-kind proposal. In its action, the
11 Commission expressly found that although the In-Kind Improvements would be privately
12 maintained and operated, the relevant public agencies would review the operations plans for
13 each amenity to insure that each improvement is fully publicly accessible. A copy of
14 Commission Motion No. 18706 is on file with the Clerk of the Board in File No. 170943.

15 (3) Subsequently, Alta Laguna, LLC. entered into an In-Kind Agreement with
16 the City dated December 14, 2012. A copy of the executed In-Kind Agreement is on file with
17 the Clerk of the Board in File No. 170943.

18 (c) **Waller Street Open Space.** In Motion No. 18706, the Commission noted in its
19 Findings that since the City retained ownership of Waller Street, the Project Sponsor needed
20 to obtain approval from the City in the City’s proprietary capacity prior to issuance of any
21 building permit for the Project to develop Waller Park. Subsequently, on July 17, 2013, the
22 City quitclaimed to The Regents of the University of California that portion of Waller Street that
23 had been closed and abandoned as a public street in the early 1900s, reserving a Restrictive
24 Easement. The Restrictive Easement requires that the surface of the former Waller Street
25 right-of-way be used only as publicly accessible open space in accordance with the Project’s

1 2008 Conditions of Approval, as modified in 2012, and the final Project plans approved by the
2 City. The Regents will assume, or cause to be assumed by the ground lessee, maintenance
3 and liability responsibilities for the surface of the property and the improvements thereon in
4 accordance with the Conditions of Approval and the Operations Plans approved by the City;
5 the City retains an exclusive, perpetual easement for the purpose of using, maintaining, and
6 repairing the surface of the former Waller Street right-of-way as publicly accessible open
7 space effective at such time as The Regents' obligation to do so ceases.

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9 **Section 2. Gift Acceptance of a Portion of the Costs of Constructing Open Space**
10 **and Community Facility Improvements at 55 Laguna Street and the Costs of**
11 **Maintenance.**

12 (a) Pursuant to Article 3 of the 55 Laguna Street In-Kind Agreement, the Director of
13 Planning calculated the amount of the Market and Octavia Community Impact Fee to be paid
14 by the Project to be \$4,237,047. The Director also determined, based on two independent
15 sources, that the value of the proposed In-Kind Improvements to be credited against the Fee
16 was approximately \$4,952,484, which figure was subject to modification depending on the
17 actual construction and development costs at final completion.

18 (b) Alta Laguna, LLC has completed construction of the In-Kind Improvements and
19 estimates that its actual costs of construction and development of the In-Kind Improvements
20 exceed the amount of the Octavia and Market Community Impact Fee owed. In addition,
21 under its ground lease with The Regents of the University of California, Alta Laguna is
22 obligated to maintain the In-Kind Improvements.

23 (c) Alta Laguna, LLC has offered to the City and County of San Francisco as a gift
24 the excess cost of construction and development of the In-Kind Improvements, which is
25 estimated to be approximately \$582,676. The gift also includes the costs of permanent

1 maintenance of the In-Kind Improvements. A copy of the gift offer is on file with the Clerk of
2 the Board of Supervisors in File No. 170943.

3 (d) The Board of Supervisors, on behalf of the City and County of San Francisco,
4 graciously accepts the gift offer from Alta Laguna, LLC for the excess cost of construction and
5 development of the In-Kind Improvements and their permanent maintenance.
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7 **Section 3. Findings Under the California Environmental Quality Act (Public**
8 **Resources Code Sections 21000 et seq.)**

9 (a) As set forth in Section 1(a)(2) above, the Board of Supervisors affirmed
10 certification of the Final Environmental Impact Report (“FEIR”) for the Project on March 4,
11 2008 and the Superior Court and Court of Appeal subsequently upheld its adequacy. Further,
12 as set forth in Section 1(a)(4) above, on May 8, 2012, the Planning Department issued an
13 Addendum to the FEIR, which concluded that the analyses conducted and the conclusions
14 reached in the FEIR remained valid for the modified project and that no supplemental
15 environmental review was required.

16 (b) For the actions taken in this ordinance, the Board relies on the 2008 FEIR and
17 hereby incorporates its earlier findings thereon in adopting the General Plan, Zoning Map, and
18 Planning Code amendments described in Section 1(a)(3) above. (See Board File Nos.
19 080319, 071001, and 071002.) The Board finds that no changes in circumstances have
20 occurred that would result in either new impacts not previously identified in the FEIR or an
21 increase in the severity of the impacts identified, and that no new information has been put
22 forward showing that the actions authorized by this ordinance would cause any additional
23 environmental impacts.
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1 Section 4. **Effective Date.** This ordinance shall become effective 30 days after
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
4 of Supervisors overrides the Mayor's veto of the ordinance.

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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: _____
9 JUDITH A. BOYAJIAN
10 Deputy City Attorney
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