

1 [Development Agreement - Reservoir Community Partners, LLC - Balboa Reservoir Project]
 2
 3 **Ordinance approving a Development Agreement between the City and County of San**
 4 **Francisco and Reservoir Community Partners, LLC, for the Balboa Reservoir Project (at**
 5 **the approximately 17.6-acre site located generally north of the Ocean Avenue**
 6 **commercial district, west of the City College of San Francisco Ocean Campus, east of**
 7 **the Westwood Park neighborhood, and south of Archbishop Riordan High School),**
 8 **with various public benefits, including 50% affordable housing and approximately four**
 9 **acres of publicly accessible parks and open space; making findings under the**
 10 **California Environmental Quality Act, findings of conformity with the General Plan, and**
 11 **with the eight priority policies of Planning Code, Section 101.1(b), and findings of**
 12 **public convenience, necessity, and welfare under Planning Code, Section 302;**
 13 **approving development impact fees and waiving any conflicting provision in Planning**
 14 **Code, Article 4, or Administrative Code, Article 10; confirming compliance with or**
 15 **waiving certain provisions of Administrative Code, Section 6.22 and Chapters 14B, 23,**
 16 **41B, 56, 82, and 83, Planning Code, Sections 169, 138.1, and 414A, 415, and 422, Public**
 17 **Works Code, Section 806(d), Subdivision Code, Section 1348, and Health Code, Section**
 18 **12B; and ratifying certain actions taken in connection therewith, as defined herein.**

19 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 20 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 21 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 22 **Board amendment additions** are in double-underlined Arial font.
 23 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 24 **Asterisks (* * * *)** indicate the omission of unchanged Code
 25 subsections or parts of tables.

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

1 Section 1. Project Findings. The Board of Supervisors makes the following findings:

2 (a) California Government Code Sections 65864 et seq. authorizes any city, county,
3 or city and county to enter into an agreement for the development of real property within the
4 jurisdiction of the city, county, or city and county.

5 (b) Pursuant to California Government Code Section 65865, Chapter 56 of the San
6 Francisco Administrative Code ("Chapter 56") sets forth certain procedures for the processing
7 and approval of development agreements in the City and County of San Francisco (the
8 "City").

9 (c) The City, under the jurisdiction of the San Francisco Public Utilities Commission
10 (the "SFPUC") owns approximately 17 acres of undeveloped land located in the City that is
11 located generally north of the Ocean Avenue commercial district, west of the City College of
12 San Francisco Ocean Campus, east of the Westwood Park neighborhood, and south of
13 Archbishop Riordan High School (the "Project Site"). The Project Site is currently used for
14 surface parking.

15 (d) On November 16, 2020, the City sent written notices of availability regarding the
16 Project Site as required pursuant to California Government Code Section 52220 et.seq.

17 (e) On March 9, 2017, the City issued a Request for Proposals ("RFP") for the
18 disposition and development of the Project Site in accordance with the selection criteria
19 described in the RFP. In response to the RFP, the City evaluated proposals from nine
20 development teams, and selected a joint venture of BRIDGE Housing Corporation and
21 AvalonBay Communities, Inc. as the highest scoring proposer. The selected joint venture
22 formed Reservoir Community Partners, LLC, a Delaware limited liability company
23 ("Developer"), to plan, develop, and execute the Project.

24 (f) The City and Developer entered into an Exclusive Negotiating Agreement on
25 December 8, 2017 ("ENA") pursuant to which Developer, in coordination with the City, has

1 conducted pre-development evaluations and design studies of the Project Site and negotiated
2 the terms and conditions of a mixed income housing development of up to approximately
3 1,100 housing units, including approximately 550 units affordable to low- and moderate-
4 income households, approximately 4 acres of publicly accessible open spaces (including
5 property immediately adjacent to the south of the Project Site that contains an SFPUC
6 underground pipeline and will remain under the ownership of the City and the jurisdiction and
7 control of the SFPUC), a childcare center serving approximately 100 children, a community
8 room, approximately ____ square feet of commercial space, 550 parking spaces for use by
9 residents and approximately 220 parking spaces for use by the general public, in addition to
10 new streets, sidewalks, sewer and water infrastructure, including an Auxiliary Water Supply
11 System, and bicycle and pedestrian facilities, located on the Project Site (the "Project").

12 (g) Developer filed an application with the City's Planning Department for approval
13 of a development agreement relating to the Project (the "Development Agreement") under
14 Chapter 56. A copy of the Development Agreement is on file with the Clerk of the Board of
15 Supervisors in File No. 200423.

16 (h) Concurrently with this ordinance, the Board of Supervisors is taking a number of
17 actions in furtherance of the Project, as generally described in the Development Agreement,
18 including Exhibit E to the Development Agreement.

19 (i) While the Development Agreement is between the City, acting primarily through
20 the Planning Department, and Developer, other City agencies retain a role in reviewing and
21 issuing certain later approvals for the Project. Later approvals include all approvals required
22 under the Balboa Reservoir Special Use District ("SUD") or as otherwise set forth in the
23 Municipal Code, approval of subdivision maps and plans for horizontal improvements and
24 public facilities, design review and approval of new buildings, and acceptance of Developer's
25 dedications of horizontal improvements and parks and open spaces for City maintenance and

1 liability under the Subdivision Code. As a result, affected City agencies have consented to the
2 Development Agreement.

3 (j) The Project is anticipated to deliver approximately 550 units of much needed
4 affordable housing and to generate approximately 460 construction jobs during construction
5 and an approximately \$1.7 Million annual increase in general fund revenues to the City. In
6 addition to the significant affordable housing, housing, jobs, transit-oriented development, and
7 economic benefits to the City from the Project, the City has determined that development of
8 the Project under the Development Agreement will provide additional benefits to the public
9 that could not be obtained through application of existing City ordinances, regulations, and
10 policies. These additional public benefits include: (1) affordable housing contributions in
11 amounts exceeding those required pursuant to existing City ordinances, regulations, and
12 policies and that are intended to constitute approximately 50% of the total number of housing
13 units in the Project; (2) workforce obligations, including the payment of the prevailing rate of
14 wages in all elements of construction of the Project, significant training, employment, and
15 economic development opportunities, related to the development and operation of the Project;
16 (3) construction and maintenance of publicly accessible open space, totaling approximately 4
17 acres; (4) delivery of a child care facility for approximately 100 children; (5) a community
18 meeting room; (6) construction of new sewer and water infrastructure, including an Auxiliary
19 Water Supply System; and (7) construction of new public streets and rights-of-way including
20 vehicular, bicycle, and pedestrian improvements, and a Project design that prioritizes and
21 promotes travel by walking, biking, and transit for new residents, tenants, employees, and
22 visitors; all as further described in the Development Agreement. The Development
23 Agreement will eliminate uncertainty in the City's land use planning for the Project Site and
24 secure orderly development.

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1 (k) Funding for construction of the public infrastructure in the Project will include
2 special taxes under a community facilities district (“CFD”) to be formed by Developer and the
3 City, as more particularly described in the Financing Plan attached to the Development
4 Agreement.

5
6 Section 2. Environmental Findings. On May 28, 2020, by Motion No. 20730, the
7 Planning Commission certified as adequate, accurate, and complete the Final Environmental
8 Impact Report ("FEIR") for the Project pursuant to the California Environmental Quality Act
9 (California Public Resources Code Sections 21000 et seq.) ("CEQA"), the CEQA Guidelines
10 (14 CCR Sections 15000 et seq.), and Administrative Code Chapter 31. A copy of Planning
11 Commission Motion No. 20730 is on file with the Clerk of the Board of Supervisors in File No.
12 200635. Also, on May 28, 2020, by Motion No. 20731, the Planning Commission adopted
13 environmental findings, including a rejection of alternatives and a statement of overriding
14 considerations ("CEQA Findings") and a Mitigation Monitoring and Reporting Program
15 ("MMRP"). These Motions are on file with the Clerk of the Board in File No. 200635. In
16 accordance with the actions contemplated in this ordinance, the Board of Supervisors has
17 reviewed the FEIR and related documents, and adopts as its own and incorporates by
18 reference herein the CEQA Findings, including the statement of overriding considerations,
19 and the MMRP.

20
21 Section 3. General Plan and Planning Code Findings.

22 (a) The Board of Supervisors will consider companion legislation concerning the
23 Balboa Reservoir Special Use District (the “SUD”) that adopts public necessity findings under
24 Planning Code Section 302. The Board also will consider companion legislation that adopts
25 General Plan amendments and makes findings of consistency with the General Plan, as

1 proposed for amendment, and the eight priority policies of Planning Code Section 101.1(b).
2 Copies of the companion legislation are on file with the Clerk of the Board of Supervisors in
3 File Nos. 200635 and 200422, respectively, and they are incorporated herein by reference.

4 (b) For purposes of this ordinance, the Board of Supervisors finds that the
5 Development Agreement will serve the public necessity, convenience, and general welfare
6 under Planning Code Section 302 for the reasons set forth in the companion legislation on the
7 SUD identified in subsection 3(a).

8 (c) For purposes of this ordinance, the Board of Supervisors finds that the
9 Development Agreement is in conformity with the General Plan, as proposed for amendment,
10 and the eight priority policies of Planning Code Section 101.1(b) for the reasons set forth in
11 the companion legislation on the General Plan amendments identified in subsection 3(a).

12
13 Section 4. Development Agreement.

14 (a) The Board of Supervisors approves all of the terms and conditions of the
15 Development Agreement, in substantially the form on file with the Clerk of the Board in File
16 No. 200423.

17 (b) The Board of Supervisors approves and authorizes the execution, delivery, and
18 performance by the City of the Development Agreement as follows: (1) the Director of
19 Planning and (other City officials listed thereon) are authorized to execute and deliver the
20 Development Agreement, with signed consents of those City departments, agencies, boards,
21 commissions, and bureaus that have disposition, subdivision or other permit, entitlement, or
22 approval authority or jurisdiction over development of the Project, or any improvement located
23 on or off the Project Site, including the San Francisco Public Utilities Commission, San
24 Francisco Municipal Transportation Agency, Department of Public Works, and Fire
25 Department; and (2) the Director of Planning, the General Manager of the San Francisco

1 Public Utilities Commission, the Director of the Mayor's Office of Housing and Community
2 Development, and other applicable City officials are authorized to take all actions reasonably
3 necessary or prudent to perform the City's obligations under the Development Agreement in
4 accordance with its terms.

5 (c) The Director of Planning, at the Director's discretion and in consultation with the
6 City Attorney, is authorized to enter into any additions, amendments, or other modifications to
7 the Development Agreement that the Director of Planning determines are in the best interests
8 of the City and that do not materially increase the obligations or liabilities of the City or
9 materially decrease the benefits to the City as provided in the Development Agreement.

10
11 Section 5. Development Impact Fees.

12 By approving the Development Agreement, the Board of Supervisors authorizes the
13 Controller and City Departments to accept the funds paid by Developer as set forth therein,
14 and to appropriate and use the funds for the purposes described therein. The Board
15 expressly approves the use of the development impact fees as set forth in the Development
16 Agreement, and waives or overrides any provision in Article 4 of the Planning Code and
17 Article 10 of the Administrative Code that would conflict with the uses of these funds as
18 described in the Development Agreement.

19
20 Section 6. Administrative Code Chapter 56 Conformity. The Development Agreement
21 shall prevail in the event of any conflict between the Development Agreement and
22 Administrative Code Chapter 56, and without limiting the generality of the foregoing, the
23 following provisions of Chapter 56 are waived or deemed satisfied as follows:

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1 (a) Reservoir Community Partners, LLC, a Delaware limited liability company, and
2 its successors and assignees permitted under the Development Agreement, shall constitute a
3 permitted "Applicant/Developer" for purposes of Section 56.3(b).

4 (b) The Project comprises approximately 17 acres and is the type of large multi-
5 phase and/or mixed-use development contemplated by the Administrative Code and therefore
6 satisfies Section 56.3(g).

7 (c) The provisions of the Development Agreement and the Workforce Agreement
8 attached to the Development Agreement as Exhibit I shall apply in lieu of Section 56.7(c).

9 (d) The provisions of the Development Agreement regarding any amendment or
10 termination, including those relating to "Material Change," shall apply in lieu of Sections 56.15
11 and 56.18.

12 (e) The provisions of Section 56.20 are satisfied by the terms of the ENA, a copy of
13 which is on file with the Clerk of the Board of Supervisors in File No. 200423.

14
15 Section 7. Administrative Code Chapter 56 Waiver; Ratification.

16 (a) In connection with the Development Agreement, the Board of Supervisors finds
17 that the City has substantially complied with the requirements of Administrative Code Chapter
18 56, and waives any procedural or other requirements if and to the extent not strictly complied
19 with.

20 (b) All actions taken by City officials in preparing and submitting the Development
21 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
22 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
23 by City officials consistent with this ordinance.

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1 Section 8. Planning Code Waivers; Ratification.

2 (a) The Board of Supervisors finds that the impact fees and other exactions due
3 under the Development Agreement will provide greater benefits to the City than the impact
4 fees and exactions under Planning Code Article 4 and waives the application of, and to the
5 extent applicable exempts the Project from, impact fees and exactions under Planning Code
6 Article 4 on the condition that Developer pays the impact fees and exactions due under the
7 Development Agreement.

8 (b) The Board of Supervisors finds that the Transportation Demand Management
9 Plan ("TDM Plan") attached to the Development Agreement and other provisions of the
10 Development Agreement comply with the City's Transportation Demand Management
11 Program in Planning Code Section 169.

12 (c) The Board of Supervisors finds that the Master Infrastructure Plan attached to
13 the Development Agreement sets forth sufficient standards for streetscape design and waives
14 the requirements of Planning Code Section 138.1 (Streetscape and Pedestrian
15 Improvements).

16 (d) The Board of Supervisors finds that the Affordable Housing Plan attached to the
17 Development agreement meets and exceeds the requirements for the provision of affordable
18 housing under Planning Code Section 415 et seq. and waives the application of Section 415
19 et seq. to the Project on the condition that Developer implements and complies with the
20 Affordable Housing Plan.

21 (e) The Board of Supervisors finds that the Development Agreement provides
22 sufficient benefits and community improvements regarding open space, streetscape, and
23 childcare facilities and waives the requirements of Planning Code Section 422 (Balboa Park
24 Community Improvements Fund).

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1 (f) The Board of Supervisors finds that the Child Care Program attached to the
2 Development Agreement meets and exceeds the requirements for the provision of childcare
3 under Planning Code Section 414A and waives the requirements of Section 414A (Childcare
4 Requirements for Residential Projects).

5
6 Section 9. Other Administrative Code Waivers.

7 (a) The requirements of the Workforce Agreement attached to the Development
8 Agreement shall apply and shall supersede, to the extent of any conflict, the provisions of
9 Administrative Code: (1) Chapter 82 (Local Hire Requirements, Coverage); (2) Chapter 83
10 (First Source Hiring for Construction); (3) Chapter 14B (Local Business Enterprise Utilization
11 and Nondiscrimination in Contracting Ordinance); (4) Chapter 6, Article II, Section 6.22 (Public
12 Work Construction Contract Terms and Working Conditions); and (5) Chapter 23, Article VII
13 (Prevailing Wage, Apprenticeship, and Local Hire Requirements).

14 (b) The Board of Supervisors finds that the competitive selection process for the
15 disposition of the Project Site and the subsequent negotiation of the Development Agreement,
16 including the affordable housing obligations set forth therein, satisfy the goals of
17 Administrative Code Chapter 41B (Community Opportunity to Purchase) and waives the
18 application of Chapter 41B to the Project Site.

19 (c) Pursuant to Resolution No. 85-18, the Board of Supervisors considered an
20 economic study of the Project and found that the plan to undertake and implement the Project
21 was fiscally feasible and responsible. In addition, the Controller conducted an economic
22 impact report of the Project, which is included in Clerk of the Board of Supervisors File No.
23 _____. The Board of Supervisors finds that due to current exigencies, the number
24 of analyses of the Project that have been conducted, and the depth of analysis and
25 sophistication required to appraise the Project Site, an Appraisal Review of the Project Site is

1 not necessary and waives the Administrative Code Section 23.3 requirement of an Appraisal
2 Review as it relates to the Project Site.

3
4 Section 10. Subdivision Code Waivers.

5 A Public Improvement Agreement, if applicable, shall include provisions consistent with
6 the Development Agreement and the applicable requirements of the Municipal Code and the
7 Subdivision Regulations regarding extensions of time and remedies that apply when
8 improvements are not completed within the agreed time. Accordingly, the Board of
9 Supervisors waives the application to the Project of Subdivision Code Section 1348 (Failure to
10 Complete Improvements within Agreed Time).

11
12 Section 11. Public Works Code Waiver; Planning Code Waiver.

13 The Board of Supervisors finds that the Master Infrastructure Plan attached to the
14 Development Agreement sets forth sufficient standards for streetscape design and waives the
15 requirements of Planning Code Section 138.1 (Streetscape and Pedestrian Improvements)
16 and Public Works Code Section 806(d) (Required Street Trees for Development Projects).

17
18 Section 12. Health Code Waiver.

19 The Board of Supervisors finds that the recycled water requirements set forth in Health
20 Code Section 12B would inhibit the timely and efficient construction of the Affordable Units
21 and the Townhouse Units described in greater detail in the Development Agreement, and
22 waives the requirements of Section 12B to the extent such requirements would otherwise
23 apply to the construction of the Townhouse Units and Affordable Units.

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1 Section 13. Effective and Operative Date.

2 (a) This ordinance shall become effective 30 days from the date of enactment.

3 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
4 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
5 Supervisors overrides the Mayor’s veto of the ordinance.

6 (b) This ordinance shall become operative only on (and no rights or duties are affected
7 until) the later of (a) its effective date, as stated in subsection (a), or (b) the date that both of
8 the SUD ordinance and the General Plan ordinance referred to in subsection 3(a) related to
9 the Development Agreement, have become effective. Copies of these ordinances are on file
10 with the Clerk of the Board of Supervisors in File Nos. 200422 and 200423, respectively.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: /s/ ELIZABETH A. DIETRICH
15 ELIZABETH A. DIETRICH
16 Deputy City Attorney

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