

SETTLEMENT AGREEMENT

A. This Settlement Agreement (“Agreement”) is entered into by and between the City of Roseville, a municipal corporation, (“City”), and the California Department of Housing and Community Development, a public agency of the State of California (“HCD”). The City and HCD are sometimes referred to individually as a “Party” and collectively as the “Parties.” This Agreement is effective September 16, 2024 (“Effective Date”).

RECITALS

- B. The City owns approximately 236.26 acres of real property located at 6382 Phillip Road in Roseville, California (APN 017-101-008) (“Property”).
- C. Effective March 3, 2021, the City and PDC Sacramento LPIV, LLC, a Delaware limited liability company (“Developer”), entered into an Option and Purchase and Sale Agreement (P&S) whereby the City agreed to sell the Property to the Developer.
- D. Currently, the P&S provides that the Developer will purchase the Property in phases consisting of a minimum of thirty-five (35) acres per phase. However, the City has informed HCD that the City and the Developer intend to amend the P&S to eliminate the phased-approach and instead provide for the Developer to purchase the Property for a one-time, lump-sum payment.
- E. On July 17, 2023, HCD contacted the City after receiving an anonymous tip that the City was not in compliance with the Surplus Land Act (SLA) regarding the City’s proposed disposition of the Property.
- F. On December 4, 2023, HCD issued a Notice of Violation to the City for violating the SLA in relation to the City’s proposed sale of the Property to the Developer.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements contained herein, the Recitals stated above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **City's Payment of 30% Statutory Penalty.** The City will pay the statutory penalty of 30% of the applicable disposition value ("30% Penalty") for its first violation of the SLA as follows:

- a. The SLA defines "disposition value" as: the greater of the final sale price of the Property or the fair market value of the Property at the time of sale, as determined by an independent appraisal of the Property. (*See* Gov. Code, § 54230.5, subd. (a)(2).)
- b. The City will retain a MAI (Member Appraisal Institute) real property appraiser approved in advance by HCD, in writing, to prepare a highest and best use appraisal as defined by the Member Appraisal Institute as: "The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value." The appraiser shall conduct the appraisal no later than sixty (60) days following the Effective Date. Notwithstanding the date the appraisal is conducted, the appraisal shall be considered "the fair market value of the Property at the time of sale" as discussed in Section 1.a., above. The City will bear all costs associated with this appraisal.
- c. The City will provide HCD a copy of the appraisal within ten (10) days of the City's

receipt of the appraisal. The copy should be provided to either Megan Kirkeby or Melinda Coy at HCD.

- d. The 30% Penalty will be calculated based on the higher of the final sale price of the Property or the value as determined by the appraisal. As mentioned in Recital C, above, once the City and the Developer amend the P&S to provide for a one-time, lump sum purchase of the Property, the Parties will use that one-time, lump sum amount as “the final sale price of the Property” for purposes of determining the “disposition value.”

2. **Deposit 30% Penalty into Local Housing Trust Fund.** No later than thirty (30) days following the close of escrow or the City’s receipt of funds representing the final sale price of the Property from the Developer, whichever occurs later, the City shall make a one-time, lump sum deposit of the 30% Penalty into a Local Housing Trust Fund, as defined in HCD’s Local Housing Trust Fund Program Final 2020 Guidelines, available at <https://www.hcd.ca.gov/grants-funding/active-funding/lhtf/docs/2020-Final-Guidelines.pdf>.

3. **Source and Use of Funds.** In paying the 30% Penalty, the City will not use any funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds; funds dedicated to housing for very low-, low-, and moderate-income households; and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The source of funds to pay the 30% Penalty must be from proceeds of the City’s sale of the Property to the Developer. To the extent the P&S includes installment payments, full payment of the 30% Penalty will still be due immediately upon the first installment. The City will commit and expend the 30% Penalty deposited into the Local Housing

Trust Fund within five years of deposit for the sole purpose of financing newly constructed housing units that are affordable to extremely low-, very low-, or low-income households. (See Gov. Code, § 54230.5, subd. (a)(3).) The Parties agree that, for purposes of this Agreement, “expend” means “irrevocably transfer or encumber.”

4. **Reversion of Remaining Penalty Monies to State.** Five years after deposit of the 30% Penalty into the Local Housing Trust Fund, if the funds have not been expended, the funds will revert to the State of California and the City will deposit such funds in the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund for the sole purpose of financing newly constructed housing units located in the City that are affordable to extremely low-, very low-, or low-income households. Expenditure of any penalty moneys deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund will be subject to appropriation by the Legislature. (See Gov. Code, § 54230.5, subd. (a)(4).)

5. **50% Statutory Penalty for Subsequent Violation(s) of the SLA.** The City will be liable for a statutory penalty of 50% of the applicable disposition value for any subsequent violation(s) of the SLA that are not related to the Notice of Violation that was issued by HCD on December 4, 2023. For purposes of this Agreement, the Notice of Violation issued by HCD on December 4, 2023, shall be considered resolved to the satisfaction of the Parties so long as the City fully complies with all provisions of this Agreement. (Gov. Code, § 54230.5, subd. (a)(1).)

6. **15% Affordability Covenant.** No later than close of escrow on the City’s sale of the Property pursuant to the P&S, the City will record a covenant or restriction against the Property providing that not less than 15% of the total number of residential units developed on the Property will be sold or rented at affordable housing cost, as defined in Health and Safety Code section

50052.5, or affordable rent, as defined in Health and Safety Code section 50053, to lower income households, as defined in Health and Safety Code section 50079.5. Rental units will remain affordable to, and occupied by, lower income households for a period of at least 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units will be lower income households, and the units will be subject to an equity sharing agreement consistent with Government Code section 65915, subdivision (c)(2). The covenant or restriction will run with the land and will be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in Government Code section 54222.5, subdivisions (a)-(f). The City will provide HCD a copy of the covenant or restrictions recorded against the Property on a form provided to the City by HCD. (See Gov. Code, § 54233.)

7. **Prohousing Designation.** On November 22, 2022, the City earned a Prohousing Designation pursuant to HCD's Prohousing Designation Program ("PDP"). PDP regulations provide that HCD "shall review and revoke a Prohousing Designation upon determining any of the following has occurred . . . [a] Jurisdiction has failed to comply with state housing law...." (25 CFR § 6607, subd. (a)(1)(E).) HCD will not revoke the City's Prohousing Designation based on the City's disposition of the Property as long as the City fully complies with all terms in this Agreement. For purposes of Prohousing Designation revocation only, this Agreement shall be deemed to be the City's corrective action plan, and any necessary deadlines to make final determinations under applicable regulations are extended to allow the parties to satisfy the terms of the Agreement. (See 25 CFR § 6607, subd (a)(7).)

8. **Monitoring by HCD & Reporting by the City.** Beginning six months after the

Effective Date, the City will provide HCD semi-annual (i.e., every six months) emails to update HCD on the status of the City's fulfillment of the terms of this Agreement including, but not limited to, written evidence the City has a Local Housing Trust Fund, as defined in this Agreement, and evidence that the 30% Penalty was deposited into the Local Housing Trust Fund and expended as provided by the SLA and this Agreement. If deemed reasonably necessary by HCD, the Parties will schedule and hold phone calls and/or meetings to discuss the City's fulfillment of the terms of this Agreement.

9. **Breach & Opportunity to Cure.** If the City fails to comply with any of the terms of this Agreement, HCD will provide the City written notice identifying the term(s) with which the City has failed to comply. HCD will allow the City a reasonable time to cure of no less than (15) business days from the date of HCD's written notice before HCD may pursue judicial action against the City including, but not limited to, the remedies provided by Government Code sections 65585 and 65585.1. To the extent the City must call a special session of its governing body(ies) (including the City Council) to timely cure any failure to comply with this Agreement, the City will promptly call such special session.

10. **City Action to Comply with the SLA.** In the event that the P&S is terminated and the sale that is the subject of the P&S is not finalized, then any and all applicable statutory penalties, requirements for transfers of funds, monitoring and reporting, and other related requirements in the Agreement shall also terminate, along with this Agreement. In such case and at such a time that the City may seek to dispose of the Property in the future, the City will follow the standard SLA protocols to dispose of the Property as surplus land or identify a qualifying exemption in the SLA to dispose of the Property as exempt surplus land. To ensure compliance

with the SLA, the City will receive written approval from HCD at each step of the process (i.e., declaration of the Property as “surplus land,” sending Notice of Availability to required entities, 90-day good faith negotiation process, affordability covenant, and prior to agreeing to disposition terms). In addition, for twenty-four (24) months following the Effective Date, the City will work closely with HCD on all proposed dispositions of real property owned by the City in fee simple to ensure that the City fully complies with the SLA. To work closely with HCD includes, but is not limited to, seeking technical assistance prior to declaring property “surplus” or “exempt surplus,” consulting with HCD throughout the process to dispose of surplus or exempt surplus land, and submitting necessary documents and information to HCD in a timely manner to confirm compliance with the SLA. The City’s agreement to comply with the applicable provisions of the SLA on a going forward basis shall survive the expiration or early termination of this Agreement.

11. **Amendments to P&S.** Any amendments to the P&S with the Developer shall be subject to the terms of this Agreement, unless otherwise terminated.

12. **Final Resolution Between the Parties.** Upon full execution of this Agreement by both Parties, this Agreement will settle and resolve all matters between the Parties relating to the issues addressed in the Notice of Violation and this Agreement.

13. **No Admission of Liability.** Neither the execution of this Agreement nor the payments of any sum of money will constitute or be construed as an admission of any wrongdoing, fault, improper action, or liability by either Party.

14. **Attorneys’ Fees & Costs.** Should either Party need to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs under Civil Code section 1717.

15. **Governing Law, Jurisdiction, and Venue.** The laws of the State of California shall apply to the interpretation and enforcement of this Agreement. Any action or claim to be filed against either Party must be filed in the Superior Court of the County of Sacramento, California.

16. **Notices.** Notices and communications required under this Agreement shall be delivered by First Class Mail and email as follows:

City: City of Roseville

Attn: Economic Development Director

311 Vernon Street

Roseville, CA 95678 HCD: Department of Housing and Community

Development

Housing Policy Development Division

651 Bannon Street, Suite 400

Sacramento, CA 95811

17. **Further Assurances.** Each Party agrees to perform any further actions, execute and deliver any further documents, and obtain consents as may be reasonably requested to fully effectuate the purposes, terms and conditions of this Agreement.

18. **Time of the Essence.** The Parties understand and agree that time is of the essence in the performance of each Party's respective obligations hereunder.

19. **Construction.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

20. **Severability.** The provisions of this Agreement are severable. If any provision is

held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

21. **Integration and Modification.** This Agreement represents the sole and entire agreement among the Parties related to the matters set forth herein, and except as expressly provided to the contrary herein, supersedes any and all prior agreements, negotiations, and discussions between the Parties and/or their representatives. Any amendment to or deletion from this Agreement must be in writing specifically referring to this Agreement, and must be signed by the duly authorized representatives of each Party. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement.

22. **Titles and Headings.** The titles and headings of the respective articles and sections of this Agreement are inserted for convenience only and shall not be deemed to be part of this Agreement or considered in construing this Agreement.

23. **No Waivers Unless in Writing.** The failure of any Party to enforce any of the provisions of this Agreement shall in no way be construed as a present or future waiver of such provisions, nor in any way affect the right of any Party to enforce each and every such provision thereafter. No breach of any provision hereof shall be waived unless expressly waived in writing by the Party granting such waiver. A waiver of one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

24. **Term of Agreement.** This Agreement is for a term commencing upon the Effective Date and ending when the City has fulfilled all its obligations under this Agreement. The term of this Agreement does not limit the liability of the City for any obligations which are expressly stated herein as surviving the expiration or earlier termination of this Agreement.

25. **Advice of Counsel.** The Parties, and each of them, represent and declare that in executing this Agreement they have relied solely upon their own judgment, belief and knowledge, and the advice and recommendation of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by the other Party or any other person.

26. **Binding on Successors.** This Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

27. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute a single Agreement. This Agreement may also be delivered by facsimile or email transmission and in such event all facsimile or email signatures will be deemed complete for all purposes hereof.

28. **Authority.** Each Party represents and warrants to the other that the individual executing and delivering this Agreement on behalf of such Party is duly authorized by such Party to do so, and thereby to bind such Party to each and all of the terms of this Agreement.

This Agreement has been executed by the Parties hereto as of the dates indicated opposite their respective signatures.

CALIFORNIA DEPARTMENT OF
HOUSING AND COMMUNITY DEVELOPMENT,
a public agency of the State of California

By: Melinda Coy Date: 9/16/2024

Melinda Coy
Proactive Housing Accountability Chief

APPROVED AS TO FORM:

By: Stephen J. Byers Date: 9-19-2024

Stephen J. Byers, Attorney for HCD

CITY:

CITY OF ROSEVILLE,
a municipal corporation

By: [Signature] Date: 9.13.2024

Dominick Casey
City Manager

APPROVED AS TO FORM:

By: Michelle Sheidenberger Date: 9/13/24

Michelle Sheidenberger
City Attorney