

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY APPROVING A NEW PURCHASE AGREEMENT FOR MITIGATION CREDITS TO SATISFY REGIONAL WATER QUALITY CONTROL BOARD CERTIFICATION CONDITION FOR THE LEVEE PROTECTION PLANNING AND IMPROVEMENTS PROJECT (CIP 301-657) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, MAKE PAYMENT AND EXECUTE A BILL OF SALE PURSUANT TO THE AGREEMENT, AND AMEND THE AGREEMENT TO EXTEND DEADLINE FOR PAYMENT AS MAY BE NECESSARY

CITY OF FOSTER CITY

WHEREAS, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a Clean Water Act Section 401 Water Quality Certification and Order for the City of Foster City Levee Protection and Improvements Project (Certification); and

WHEREAS, Condition No. 14 of the Certification requires the City to mitigate the Project's permanent impacts to waters of the State by purchasing 0.05 acre of wetland creation mitigation credits and 0.05 acre of other waters creation mitigation credits from the San Francisco Bay Wetland Mitigation Bank in Redwood City, San Mateo County; and

WHEREAS, to document satisfaction of this condition, the City was required to submit to the RWQCB no later than November 22, 2019 an executed purchase agreement demonstrating that the City has secured the purchase of no less than 0.05 acre of wetland mitigation credits and 0.05 acre of other waters creation mitigation credits. The condition further requires the City to submit to the RWQCB a Bill of Sale demonstrating the mitigation credits specified in the Purchase Agreement have been purchased no later than 30 days prior to the start of construction; and

WHEREAS, following Council action and approval on November 18, 2019, the City entered into and executed a purchase agreement with Keech Properties, LLC (Sponsor) for the purchase of the required mitigation credits, and on November 19, 2019, delivered the fully executed agreement to both the RWQCB and Sponsor; and

WHEREAS, Sponsor is the only entity with entitlements to the San Francisco Bay Wetland Mitigation Bank in Redwood City, San Mateo County authorized by the San Francisco District of the U.S. Army Corps of Engineers (USACE) and the Region 9 of the U.S. Environmental Protection Agency (USEPA) to operate as a Mitigation Bank with credits available for sale and there are no apparent regulatory restrictions on the price sponsor can set for such credits; and

WHEREAS, the executed purchase agreement expired on its terms on December 23, 2019 and therefore a new agreement with the Sponsor is required to complete the purchase of the required mitigation credits in satisfaction of the Certification condition.

WHEREAS, sufficient funds are available in the project funds to complete the purchase of the required mitigation credits pursuant to the new proposed agreement.

NOW, THEREFORE BE IT RESOLVED that:

1. the City Council review, enter into and approve the attached Agreement for Sale of Mitigation Credits (Agreement) between Keech Properties, LLC (Sponsor) and the City pursuant to which the City has the right to purchase from the Sponsor 0.05 credits of Wetland Creation and 0.05 credits of Other Water Creation for the purchase price of \$170,000 until May 25, 2020, upon which date the Agreement shall become null and void if the payment is not made; and
2. the City Council authorizes the City Manager to:
 - a. Execute the Agreement
 - b. Execute an amendment(s) to the Agreement as may be necessary to extend the purchase deadline
 - c. Make payment to the Sponsor pursuant to the Agreement
 - d. Execute the Bill of Sale in the form attached to the Agreement once payment is made.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 20th day of April 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CATHRINE MAHANPOUR, MAYOR

ATTEST:

PRISCILLA SCHAUS, CITY CLERK