

1 [Settlement of Claims - Ronald and Patricia Martell - \$5,007,400.31 and Hold Harmless;  
2 Appropriating \$4,000,000 from the Water Enterprise Fund Balance - Waiver of Contract  
3 Requirements for Landslide Repair on Private Property Not to Exceed \$500,000]

4 **Ordinance authorizing final settlement of Claim No. 16-02314 filed by Ronald and**  
5 **Patricia Martell against the City and County of San Francisco by payment of**  
6 **\$4,469,637.02 establishing a third-party escrow account in the amount of \$537,763.29**  
7 **as a Landslide Contingency Fund, for a total potential payment of \$5,007,400.31 and**  
8 **holding claimants harmless from third party claims for a limited period; the claim was**  
9 **filed on February 25, 2016; the claim involves alleged property damage arising from the**  
10 **January 25, 2016, landslide on Casitas Avenue; appropriating \$4,000,000 from the**  
11 **Water Enterprise fund balance for such purpose; and waiving Administrative Code**  
12 **contract requirements except for Administrative Code, Section 12B.1(a)**  
13 **(nondiscrimination) and Section 6.22(e) (prevailing wage), for San Francisco Public**  
14 **Utilities Commission (SFPUC) contracts to implement landslide stabilization measures**  
15 **at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on 266**  
16 **Casitas Avenue, with an engineer or construction contractor, subject to approval by**  
17 **the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue, if the**  
18 **SFPUC's Commission President and General Manager determine such contract is**  
19 **necessary to protect public facilities or minimize or avoid City liability, not to exceed**  
20 **\$500,000 in total for any such contracts.**

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

23 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby  
24 authorizes the City Attorney to settle Claim No. 16-02314 filed by Ronald and Patricia Martell,  
25 owners of 256 Casitas Avenue, San Francisco ("Claimants") according to the terms of the

1 Settlement Agreement on file with the Clerk of the Board, in File No. 161238. The claim  
2 involves alleged property damage and related expenses from the landslide on Casitas Avenue  
3 on January 25, 2016 in San Francisco (“Casitas Landslide”). The Settlement Agreement  
4 provides that Claimants will repair the landslide on 256 Casitas Avenue and replace the  
5 house, which work will also protect Casitas Avenue at the top of the lot, and a sewer main that  
6 serves the neighborhood located on the property within a public service easement that  
7 crosses the rear of the lot, in exchange for a final settlement payment of \$4,469,637.02 (Four  
8 Million, Four Hundred Sixty-Nine Thousand, Six Hundred Thirty-Seven Dollars and Two  
9 Cents), and paying into an escrow account the amount of \$537,763.29 (Five Hundred Thirty-  
10 Seven Thousand, Seven Hundred Sixty-Three Dollars and Twenty-Nine Cents) (the  
11 “Landslide Repair Contingency Fund”), to be disbursed if necessary, all according to the terms  
12 of the Settlement Agreement on file with the Clerk of the Board, in File No. 161238. These  
13 amounts are in addition to a prior settlement payment to Ronald and Patricia Martell, in the  
14 amount of \$974,859.05 (“Partial Settlement Payment”) in exchange for a full and final release  
15 as to certain specific claimed losses, approved by the San Francisco Public Utilities  
16 Commission (“SFPUC”) on November 8, 2016, pursuant to the authority granted by this Board  
17 in Ordinance 114-16.

18 Section 2. Claim No. 16-02314 was filed on February 25, 2016, by Ronald and Patricia  
19 Martell, the owners of 256 Casitas Avenue, San Francisco.

20 Section 3. The Board herein appropriates four million dollars (\$4,000,000) from the  
21 Water Enterprise fund balance for use by the San Francisco Public Utilities Commission  
22 (“SFPUC”) for purposes of settling the litigation, the balance to be paid from a prior  
23 appropriation for Casitas Properties, Project CUW697.

24 Section 4. The Settlement Agreement provides that Claimants will grant the City and  
25 the owners of the adjacent property at 266 Casitas Avenue, a limited right of access across

1 the 256 Casitas Avenue property to the adjacent property, to accomplish landslide repairs on  
2 266 Casitas Avenue and protect the sewer main that also crosses that property in a public  
3 service easement at the rear of the lot. To avoid additional risk and related costs of  
4 undertaking landslide repair during wet weather, the Claimants agree to defer work on their  
5 property, and the City agrees to hold Claimants harmless from third party claims arising from  
6 the Casitas Landslide until landslide repair work commences, but no later than April 1, 2017,  
7 as provided in the Settlement Agreement.

8 Section 5. In the event that the SFPUC has to implement landslide stabilization  
9 measures at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on  
10 266 Casitas Avenue to protect the sewer main located on that property, the Board hereby  
11 waives Administrative Code contract requirements, except for Administrative Code Section  
12 12B.1(a) (nondiscrimination) and Section 6.22(e) (prevailing wage), for SFPUC to negotiate  
13 and execute contracts for that work with an engineer or construction contractor, subject to  
14 approval by the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue,  
15 if the SFPUC's Commission President and General Manager determine such contract is  
16 necessary to protect public facilities or minimize or avoid City liability, not to exceed \$500,000  
17 in total for any such contracts. The SFPUC shall notify the Controller immediately of the work  
18 involved, the contract(s) entered into and the estimated cost thereof, and notify the Board of  
19 Supervisors within 30 days of the SFPUC's Commission President and General Manager's  
20 determination of necessity of such contract.

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APPROVED AS TO FORM AND  
RECOMMENDED:

DENNIS J. HERRERA  
City Attorney

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Noreen Ambrose  
Utilities General Counsel

FUNDS AVAILABLE:

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BEN ROSENFELD  
Controller

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RECOMMENDED:

PUBLIC UTILITIES COMMISSION

\_\_\_\_\_  
HARLAN L. KELLY  
General Manager

APPROVED:

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DONNA HOOD  
Secretary, Public Utilities Commission