

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0088

WHEREAS, The City and County of San Francisco (City) owns two steep adjacent undeveloped parcels in San Francisco. The first parcel is the approximately 3,429 square-foot parcel under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), located on Burnett Avenue at Copper Alley, Assessor's Parcel Lot 23, Block 2719C (SFPUC Parcel). The second parcel (SFPW Parcel) is under the jurisdiction of the San Francisco Public Works Department (Public Works) and was formerly a portion of Old Burnett Avenue, before Burnett Avenue was improved and realigned in the early 1980s to become the current Burnett Avenue. The SFPW Parcel consists of an approximately 8,795 square-foot chevron-shaped strip; and

WHEREAS, George Birmingham (Buyer) owns real property located adjacent to the SFPW Parcel (Buyer's Adjoining Property or Lot 36), which lacks access to an open public street; and

WHEREAS, A homeowner's association (HOA) owns the property (Burnett Terrace Parcel) to the west of Buyer's Adjoining Parcel; and

WHEREAS, The City owns additional property under the jurisdiction of SFPW (Additional SFPW Parcel) bordering the SFPW Parcel on its west side. In 1981, the HOA or its predecessor-in-interest constructed a driveway (HOA Driveway) on the Additional SFPW Parcel, encroaching slightly on the SFPW Parcel. The driveway created a means of ingress and egress for the Burnett Terrace Parcel residents between the Burnett Terrace Parcel and the open public street, the current Burnett Avenue; and

WHEREAS, The HOA Driveway was built pursuant to a revocable encroachment permit for non-exclusive use, which Public Works issued to the HOA or its predecessor-in-interest in 1981; and

WHEREAS, In an effort to gain access to Buyer's Adjoining Parcel, which for practical purposes is landlocked in part by the SFPW Parcel and the HOA Driveway, Buyer commenced an action against City in San Francisco Superior Court and the HOA on or about September 9, 2015 (Action); and

WHEREAS, To settle the Action, Buyer, City and the HOA have entered into a Settlement Agreement and Mutual Release (Settlement Agreement), a copy of which is on file with the Commission Secretary, which provides, among other things, for Buyer and City to enter into an Agreement for the Purchase and Sale of Real Estate (Purchase Agreement), in substantially the form attached as an exhibit to the Settlement Agreement, for Buyer's purchase of both the SFPUC Parcel and the SFPW Parcel for a combined price of \$1,500,000 and a Reimbursement Agreement providing for Buyer's reimbursement to City for certain costs for the

processes necessary to sell the parcels, including a street vacation, SFPUC sale resolution, and the rezoning of parcels from P to underlying RM-1; and

WHEREAS, Under the terms of the Settlement Agreement and proposed Purchase Agreement, staff of the SFPUC and Public Works will undertake the necessary due diligence, applications, and processes to seek approvals for the vacation of the SFPW Parcel as a public street, the rezoning of both City Parcels from P to RM-1, and the sale of the parcels to Buyer, but the City departments, officials, and legislative bodies retain full discretion to approve, reject, or modify the requested legislative actions; and

WHEREAS, Buyer has requested that City convey the SFPUC Parcel to Buyer so that Buyer may use the SFPUC Parcel in part for a driveway to provide ingress and egress between Buyer's Adjoining Property and current Burnett Avenue; and

WHEREAS, Buyer has agreed to the terms and conditions of the Purchase Agreement; and

WHEREAS, Competitive bidding for the sale of the SFPUC Parcel would be impractical, given that the SFPUC Parcel is the subject of litigation and further given its small size and steep slope. The public interest or necessity demands, or will not be inconvenienced by, the sale of the SFPUC Parcel to Buyer, because such sale will eliminate the landlocked nature of Buyer's Adjoining Property, in the event Buyer desires to develop Buyer's Adjoining Property for residential purposes, thus serving the public interest in increasing the supply of housing in the City. The SFPUC recommends the sale to Buyer based on the 2015 appraised value to resolve the dispute and avoid litigating the Action; and

WHEREAS, On April 6, 2017 the Planning Department determined that this proposed sale of surplus property is exempt from the California Environmental Quality Act (CEQA) under Section 15312, Class 12 (Surplus Government Property Sales; now, therefore, be it

RESOLVED, That this Commission hereby finds that the SFPUC Parcel is surplus to the SFPUC's utility needs and authorizes the General Manager of the SFPUC and/or City's Director of Property to seek approval of the Purchase Agreement by City's Board of Supervisors and the Mayor, and upon such approval, to execute the Purchase Agreement in substantially the same form presented to this Commission; and, be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with the Purchase Agreement and the Reimbursement Agreement; and, be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of the Purchase Agreement; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC's General Manager to execute the Purchase Agreement, subject to the approval of the Board of Supervisors and Mayor; and be it

FURTHER RESOLVED, That this Commission hereby authorizes and directs the SFPUC's General Manager to execute the Reimbursement Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager and/or the Director of Property to enter into any amendments or modifications to the Purchase Agreement, including without limitation, the exhibits, that the General Manager or Director of Property determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Purchase Agreement or this Resolution; and are in compliance with all applicable laws, including the City Charter; and, be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to enter into any amendments or modifications to the Reimbursement Agreement, including without limitation, the exhibits, that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City; are necessary or advisable to effectuate the purposes and intent of the Reimbursement Agreement or this resolution; and are in compliance with all applicable laws, including the City Charter, and be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the SFPUC General Manager to execute and deliver a quitclaim deed conveying the SFPUC Parcel to Buyer; and be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the General Manager of the SFPUC to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of April 25, 2017.



Secretary, Public Utilities Commission