

# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. 19-0099

WHEREAS, The City and County of San Francisco (City), under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC), owns in fee certain real property in the City of Mountain View (Mountain View) that contains the SFPUC's Bay Division Pipelines 3 and 4; and

WHEREAS, Mountain View occupies and uses for recreational purposes several SFPUC parcels (SFPUC Parcels) pursuant to seven existing, outdated SFPUC permits (Existing Permits); and

WHEREAS, Mountain View desires to construct a new public park (Fayette Park) over City property adjacent to Fayette Drive in Mountain View (known as SFPUC Parcels 227, 228, and 229); and

WHEREAS, City, through the SFPUC, owns a parcel of real property identified as SFPUC Parcel 199-A that consists of a vacant unlicensed parcel between Stierlin Road and Moffett Boulevard (Maintenance Parcel); and

WHEREAS, The SFPUC has identified 29 trees located on certain parcels of City property located in Mountain View that pose hazards or risks to the SFPUC pipelines and appurtenances and should be removed in accordance with the SFPUC Right of Way Encroachment Policy and the SFPUC Right of Way Integrated Vegetation Management Policy; and

WHEREAS, The SFPUC seeks Mountain View's agreement to remove the identified 29 trees and maintain the Maintenance Parcel and Mountain View's assistance with community outreach in the SFPUC's ongoing efforts to remove existing and future encroachments by adjoining third-party landowners upon City property within Mountain View; and

WHEREAS, The SFPUC lacks documentation of permanent rights in nine parcels of real property (Gap Parcels) that constitute portions of the SFPUC's pipeline right-of-way that lie beneath the following street crossings located in Mountain View: Crisanto Avenue, Fayette Drive, Moffett Boulevard, Ortega Avenue, Rengstorff Avenue, San Antonio Road, Stierlin Road, Tyrella Avenue, and Whisman Road; and

WHEREAS, In order to perfect the SFPUC's rights in, and use of, the Gap Parcels and the SFPUC's pipelines and related appurtenances within, across, and under the Gap Parcels for the protection of its assets and benefit of its rate payers, the SFPUC desires to obtain from Mountain View permanent easement rights under and across the Gap Parcels to avoid the potential risk and huge costs of being forced to relocate its infrastructure located in the Gap Parcels; and

WHEREAS, The SFPUC and Mountain View desire to enter into a Memorandum of Agreement (MOA) that provides for the SFPUC's issuance of seven, revocable modern licenses to replace the seven outdated Existing Permits on the SFPUC Parcels and issuance of a new revocable license to allow Mountain View to construct and operate Fayette Park for public use, for a total of eight revocable licenses (New Licenses); and

WHEREAS, The eight New Licenses will have a total potential license term of 20 years, each with an initial 10-year term, and two five-year extension terms that will automatically take effect unless (1) the license is previously terminated or (2) Mountain View is in default under the terms of the license; and

WHEREAS, As consideration for the eight revocable New Licenses, Mountain View shall provide the following consideration to SFPUC under the MOA: (1) the grant of permanent, subsurface easement rights to the SFPUC, at no cost, in order to perfect the SFPUC's rights in, and use of, the Gap Parcels, (2) Mountain View's removal of 29 trees that present pipeline hazards located on certain City property within Mountain View in accordance with the SFPUC's Right of Way Encroachment Policy and the SFPUC's Right of Way Integrated Vegetation Management Policy, (3) Mountain View's assistance in the SFPUC's ongoing efforts under these policies to remove encroachments by adjoining third-party landowners upon certain other portions of the SFPUC's pipeline right-of-way within Mountain View, and (4) Mountain View's reimbursement of the SFPUC's costs of mitigation and removal of Mountain View's improvements if the SFPUC needs to disrupt Mountain View's improvements on the SFPUC Parcels; and

WHEREAS, The MOA shall remain in effect so long as one of the eight New Licenses remains in effect, and thus has a term of up to 20 years; and

WHEREAS, Based upon the substantial non-monetary consideration to be received from Mountain View in exchange for the New Licenses, the SFPUC recommends that the Board of Supervisors waive the appraisal requirements in San Francisco Administrative Code Section 23.3 and Section 23.30 for this transaction; and

WHEREAS, In January 2011, the SFPUC adopted a Community Benefits Policy which seeks to promote, among other things, educational programming, community health, and environmental justice in the communities impacted by the SFPUC's activities; and

WHEREAS, Mountain View's recreational use of the SFPUC Parcels for non-monetary consideration is consistent with this policy by promoting community health in Mountain View; and

WHEREAS, The City Council of Mountain View authorized the Mountain View City Manager to sign the MOA and the easement deeds in February of 2016; and

WHEREAS, The SFPUC is a Responsible Agency under the California Environmental Quality Act (CEQA) for this action because approval of the MOA is a discretionary action under CEQA. On February 2, 2016 the City of Mountain View determined that the proposed MOA, including the licenses and easements is categorically exempt under Sections 15332, 15321, and 15301(h) ("Infill Development Projects", "Enforcement Actions by Regulatory Agencies", and

“Existing Facilities”) of the CEQA Guidelines. On February 3, 2016 the City of Mountain View issued a Notice of Exemption (NOE); and

WHEREAS, As a Responsible Agency, the SFPUC finds that: (1) the SFPUC has reviewed the MOA and reviewed and considered the categorical exemption and Notice of Exemption (NOE) issued by the City of Mountain View determined that the MOA is within the scope of the City of Mountain View's CEQA determination, and that this document is adequate for the SFPUC's use in approving the MOA; and

WHEREAS, The categorical exemption and the NOE are part of the record of this approval and are available for public review at the SFPUC offices, Real Estate Services Division, 525 Golden Gate Avenue, 8<sup>th</sup> floor, San Francisco, California, which is the custodian of records for the revocable license approval; and the City of Mountain View did not adopt mitigation measures for the actions contained in the MOA. The SFPUC has no direct authority or responsibility with respect to these actions; now, therefore be it

RESOLVED, This Commission has considered the information in the categorical exemption and the Notice of Exemption and the record as a whole, finds that the categorical exemption and the Notice of Exemption are adequate for its use as the decision-making body for the action taken herein; and be it

FURTHER RESOLVED, This Commission further finds that since the categorical exemption and the Notice of Exemption were finalized, there have been no project changes and no substantial changes in project circumstances that would require changes to the determinations of the City of Mountain View due to the involvement of any significant environmental effects, and there is no new information of substantial importance that would change the conclusions set forth in the categorical exemption; and be it

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

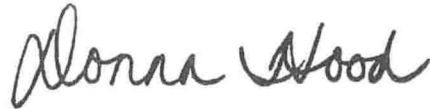
FURTHER RESOLVED, This Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with the MOA; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to request the Board of Supervisors' and the Mayor's approval of an ordinance that (1) waives the appraisal requirements contained in San Francisco Administrative Code Sections 23.3 and 23.30 and (2) approves the MOA, the SFPUC's issuance of the New Licenses, and the City's acceptance from Mountain View of nine, no-cost easements for the Gap Parcels (collectively, the Agreements); and be it

FURTHER RESOLVED, That this Commission authorizes the SFPUC General Manager and/or City's Director of Property, following approval by the Board of Supervisors and Mayor, to execute the Agreements; and be it

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

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of May 28, 2019.*

A handwritten signature in black ink that reads "Alonna Wood". The signature is written in a cursive style with a large initial "A".

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*Secretary, Public Utilities Commission*

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