

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 22-0159

WHEREAS, The City and County of San Francisco (City) owns certain unimproved real property presently under the jurisdiction of the San Francisco Public Utilities Commission (SFPUC) located along State Route 84 (SR-84) in the City of Fremont, California, known as SFPUC Parcel No. 57 and certain unimproved real property located in the unincorporated Town of Sunol in Alameda County, California, known as SFPUC Parcel No. 65 (collectively, the City's Real Property); and

WHEREAS, The California Department of Transportation ("Caltrans") proposes to construct certain safety improvements and address structural and operational deficiencies at spot locations along SR-84 on Niles Canyon Road and Paloma Way between State Route 238 and Interstate 680 in southern Alameda County (Project); and

WHEREAS, As a component of the Project, Caltrans seeks to acquire in fee portions of the City's Real Property, consisting of approximately 17,832 square feet in the aggregate (Fee Interest), obtain a temporary construction easement of approximately 16,150 square feet upon the City's Real Property for constructing, installing, removing, and relocating certain improvements along SR-84 (TCE"), and acquire a utility easement of approximately 1,583 square feet upon the City's Real Property for the benefit of Pacific Gas & Electric Company (PG&E) (Utility Easement) within the Project area. The Fee Interest, the TCE and the Utility Easement are collectively referred to as the Property; and

WHEREAS, Caltrans has authority to exercise the power of eminent domain and to compel City to sell the Property; and

WHEREAS, Caltrans and City recognize the expense, time, effort, and risk to both parties in determining the compensation for acquiring the Property by eminent domain litigation, and to avoid such litigation, Caltrans and City desire to enter into an Agreement for Sale of Real Estate, Temporary Construction Easement and Utility Easement (Sale Agreement); and

WHEREAS, On May 18, 2021, in conformance with Charter section 8B.121, the Assistant General Managers of the Water, Wastewater, and Power Enterprises declared that the approximately 17,830 square foot portions of SFPUC Parcel No. 57 to be sold in fee to Caltrans as the Fee Interest and the approximately 1,533 square feet of permanent easement interest to be conveyed to PG&E as the Utility Easement were not essential to the SFPUC's utility needs, as evidenced by the executed declaration attached to the Agenda Report accompanying this Resolution; and

WHEREAS, The Property is "surplus land", as defined in California Government Code Section 54221(b), because it is owned in fee simple by City and not necessary for City's use; and

WHEREAS, The Property is "exempt surplus land", as defined in California Government Code Section 54221(f)(1)(D), because it is surplus land that the City is transferring to an agency of the State of California for that agency's use; and

WHEREAS, Pursuant to Section 23.3 of the Administrative Code, the City may convey the Property to Caltrans without a competitive bidding process if the Board of Supervisors determines that a competitive process “is impractical, impossible, or is otherwise not in the public interest”; and

WHEREAS, In this case, a competitive bidding process is impractical and is otherwise not in the public interest because the sale of the Property to Caltrans will avoid the expense, time, effort, and risk of eminent domain litigation and will support the construction of public highway improvements, and because the Property's location and dimensions make use by any other entity impractical; and

WHEREAS, The City, through the SFPUC, intends to sell the Property to Caltrans on an "as-is with all faults" basis; and

WHEREAS, Caltrans' offer of fair and just compensation in the sum of Eleven Thousand Nine Hundred Seventy Dollars (\$11,970) for its purchase of the fee and easement interests in portions of the City's Real Property, including the Utility Easement that will be conveyed to PG&E, was made in accordance with California Government Code 7267.2; and

WHEREAS, On January 18, 2018, Caltrans, acting as the California Environmental Quality Act (CEQA) lead agency, certified a Final Environmental Impact Report (FEIR) / Environmental Assessment with Finding of No Significant Impact (FONSI) for the Niles Canyon Safety Improvements Project (“Project”); and

WHEREAS, On June 30, 2022 Caltrans issued a National Environmental Policy Act (NEPA)/CEQA Re-Validation Form to correct an administrative discrepancy in the FEIR/FONSI regarding right-of-way requirements; and

WHEREAS, Caltrans has adopted the mitigation measures included in the FEIR/FONSI to avoid or substantially lessen the significant environmental effects identified in the FEIR/FONSI and set forth in the Environmental Commitments Record (which is the equivalent to the Mitigation Monitoring and Reporting Program), and has assumed responsibility for their implementation; and

WHEREAS, the FEIR/FONSI, NEPA/CEQA Re-Validation Form, CEQA Findings, Environmental Commitments Record, and SFPUC Responsible Agency Findings that are part of the record of this approval are available for public review at the SFPUC offices, Real Estate Services Division, 525 Golden Gate Avenue, 10th Floor, San Francisco, California; and

WHEREAS, Since Caltrans adopted the FEIR/FONSI, there have been no substantial changes in the Project or changes in Project circumstances that would result in new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR/FONSI; and

WHEREAS, This Commission, acting as a responsible agency under the CEQA Guidelines Sections 15096 and 15381, has reviewed the FEIR/FONSI and has determined that the approval and execution of the Agreement is within the scope of the Project's CEQA approval, and that the FEIR/FONSI and other materials are adequate for use in approval and execution of the Agreement; and

WHEREAS, The SFPUC has no direct authority or responsibility with respect to the proposed Project other than to enable Caltrans, through approval and execution of the Agreement, to carry out the proposed Project; now, therefore, be it

RESOLVED, This Commission has reviewed and considered the FEIR/FONSI and record and finds that the FEIR/FONSI is adequate for use as the decision-making body for the action taken by this Resolution; and be it

FURTHER RESOLVED, This Commission finds that since the FEIR/FONSI was finalized, there have been no substantive Project changes and no substantial changes in Project circumstances that would require revisions to the FEIR/FONSI due to the potential involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FEIR/FONSI; and be it

FURTHER RESOLVED, The SFPUC adopts the findings contained in the recitals set forth above as if set forth here in full; and be it

FURTHER RESOLVED, That this Commission hereby declares the Property surplus to the SFPUC's utility needs in accordance with Section 8B.121(e) of the City Charter; and be it

FURTHER RESOLVED, That this Commission finds, in consideration of the foregoing, that the Property is "surplus land," as defined in California Government Code Section 54221(b), because it is owned in fee simple by the City and not necessary for the City's use; and be it

FURTHER RESOLVED, That this Commission finds, in consideration of the foregoing, that the Property is "exempt surplus land", as defined in Government Code Section 54221(f)(1)(D), because it is surplus land that the City, a local agency, is transferring to Caltrans, an agency of the State of California, for that agency's use; and be it

FURTHER RESOLVED, That this Commission asks the Board of Supervisors to determine, in accordance with Section 23.3 of the Administrative Code, that a competitive bidding process for the conveyance of the Property is impractical and is otherwise not in the public interest because the sale of the Property to Caltrans will avoid the expense, time, effort, and risk of eminent domain litigation and will support the construction of public highway improvements and the Property's location and dimensions make use by any other entity impractical; and be it

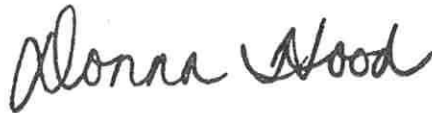
FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of the Sale Agreement; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the SFPUC General Manager to execute the Sale Agreement, upon approval from the Board of Supervisors and Mayor; and be it

FURTHER RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official in connection with this Agreement; 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 Sale Agreement, including, without limitation, the exhibits, that the SFPUC General Manager and/or the City's 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 Sale Agreement 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 September 13, 2022.

A handwritten signature in black ink that reads "Monna Wood". The signature is written in a cursive, flowing style.

Secretary, Public Utilities Commission