

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 09-0095

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) currently leases approximately 308.5 acres of its Alameda watershed lands in Sunol Valley for sand and gravel mining under the auspices of Surface Mining Permit (SMP) 30; and

WHEREAS, On November 19, 1992, the Alameda County Planning Commission approved the issuance of SMP 30 with certain terms and conditions; and

WHEREAS, On December 13, 2005, the SFPUC issued a request for proposals (the "RFP") for the exclusive right to negotiate for the operation and potential future expansion of the SMP 30 aggregate quarry; and

WHEREAS, On March 22, 2007, a RFP Review Panel comprised of staff from the SFPUC, San Francisco Department of Real Estate, and the Port of San Francisco interviewed the two top proposers and completed their ranking of said proposals; and

WHEREAS, On May 8, 2007, this Commission adopted Resolution No. 07-0082, authorizing the General Manager of the SFPUC (the "General Manager") to direct staff to enter into negotiations with Oliver de Silva, Inc. ("Tenant"), as the highest ranked respondent to the RFP, to achieve an Exclusive Negotiation Agreement for the lease of the Site (the "Lease"), with the understanding that the final terms and conditions of any Exclusive Negotiation Agreement, lease or related documents negotiated during the exclusive negotiation period will be subject to approval of the Commission, in its sole discretion; and

WHEREAS, The SFPUC and Tenant were able to reach agreement on all terms and conditions for the exclusive negotiation process; and

WHEREAS, The SFPUC and Tenant entered into an Exclusive Negotiating Agreement, dated September 19, 2007 (the "ENA"), which sets forth the terms and conditions upon which the SFPUC and Tenant entered into negotiations for the lease of the Site; and

WHEREAS, The SFPUC and Tenant agreed to a First Amendment to Exclusive Negotiating Agreement (the "Amended ENA") which amended the ENA to add two six (6) month extensions to its term, potentially extending the term of the agreement to September 17, 2009; and

WHEREAS, Tenant has exercised both of the options to extend provided under the Amended ENA; and

WHEREAS, The SFPUC and Tenant have negotiated the Lease in the form on file with the Commission; and

WHEREAS, The Lease provides that upon its effective date Tenant shall promptly apply to Alameda County for, and diligently pursue, the transfer of the existing SMP 30 mining permit from the existing operator to Tenant; and

WHEREAS, Upon the transfer of SMP 30, Tenant shall have the right to mine the Site subject to the terms and conditions of such permit, through its current expiration date of June 1, 2021, or the date the Site is finally reclaimed, whichever comes first; and

WHEREAS, The Lease contemplates the possibility of further permit revisions and extension terms, with such revisions and extensions subject to any and all required environmental and regulatory review; and

WHEREAS, As provided in the Lease, there will be further opportunity to discuss environmental impacts, mitigation measures, stakeholder compensation and conservation programming with respect to any expanded mining activities and these decisions will need Commission and Board of Supervisors approval; and

WHEREAS, Commission staff and Tenant have engaged Sunol Valley stakeholders in discussions, which are ongoing, on the appropriate manner in which to proceed with the activities contemplated under the Lease; and

WHEREAS, This Commission recognizes that quarrying activities are generally accompanied by environmental and human impacts, but based on the information provided by Commission staff, Tenant and other stakeholder groups regarding the proposed conservation of environmental resources in the area and based on the discretion retained by the Commission to review activities under the Lease, the Commission believes that the transaction contemplated by the Lease is an appropriate and responsible approach to such activities; now, therefore, be it

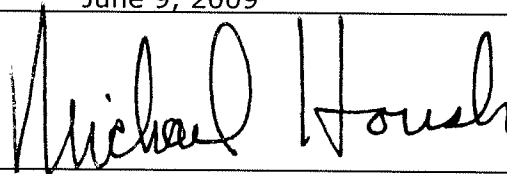
RESOLVED, That this Commission hereby approves the attached Lease and authorizes the General Manager of the San Francisco Public Utilities Commission to forward the completed Lease to the City Board of Supervisors for its consideration as required by City Charter Section 9.118; and, be it further

RESOLVED, That this Commission authorizes the General Manager to enter into any additions, amendments or other modifications to the Lease that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City, do not materially decrease the benefits to the SFPUC or the City, do not materially increase the obligations or liabilities of the SFPUC or the City, and do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, such determination to be conclusively evidenced by the execution and delivery of any such additions, amendments, or other modifications; and, be it further

RESOLVED, That this Commission directs staff to work with Sunol Valley stakeholders to address and respond to community concerns about the effects of proposed expanded mining operations on the area, and further authorizes the General Manager to enter into any additions, amendments or other modifications to the Lease that the General Manager, in consultation with the Commercial Land Manager and the City Attorney, determines are in the best interests of the SFPUC and the City with respect to such stakeholder issues and are necessary and appropriate to achieve the objectives of this Resolution and the Lease; and, be it further

RESOLVED, That upon approval by the Board of Supervisors this Commission hereby authorizes and directs the General Manager to execute the Lease on behalf of the SFPUC.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of June 9, 2009

A handwritten signature in black ink that reads "Michael Housh". The signature is written in a cursive style with a large initial "M".

Secretary, Public Utilities Commission