

1 [Real Property Sale - Easement to JWG McHenry, LLC, and City of Modesto - Portion of San
2 Francisco Public Utilities Commission Parcel 656, Modesto, Stanislaus County - \$35,000]

3 **Resolution approving and authorizing the conveyance of one permanent easement to**
4 **the City of Modesto, for \$35,000 to be paid by JWG McHenry, LLC, a California limited**
5 **liability company, to allow JWG McHenry, LLC, to widen a portion of McHenry Avenue,**
6 **including installing street, curb, gutter, driveway, and sidewalk improvements within an**
7 **approximately 3,627 square foot portion of property owned by the City under the**
8 **jurisdiction of the San Francisco Public Utilities Commission, identified as SFPUC**
9 **Parcel 656; adopting findings that the conveyance is consistent with the General Plan,**
10 **and the eight priority policies of Planning Code, Section 101.1; adopting findings under**
11 **the California Environmental Quality Act (CEQA), CEQA Guidelines, and Administrative**
12 **Code, Chapter 31; adopting findings under Administrative Code, Section 23.3, that**
13 **offering the easement for sale through competitive bidding would be impractical; and**
14 **authorizing the Director of Property and/or the SFPUC General Manager to execute**
15 **documents, make certain modifications, and take certain actions in furtherance of this**
16 **Resolution.**

17
18 WHEREAS, The City owns in fee certain real property under the jurisdiction of the San
19 Francisco Public Utilities Commission ("SFPUC") designated as SFPUC Parcel 656 ("SFPUC
20 Property") adjacent to State Highway 108 (also known as McHenry Avenue) in the City of
21 Modesto, Stanislaus County; and

22 WHEREAS, The SFPUC Property is a portion of SFPUC's right of way for subsurface
23 water transmission pipelines and overhead electrical power transmission lines and towers;
24 and

1 WHEREAS, JWG McHenry, LLC (“Developer”) owns land bordering the SFPUC
2 Property on both its northern and southern sides, totaling approximately 6.17 acres (the
3 “McHenry Property”), which Developer intends to develop; and

4 WHEREAS, As a condition of its approval of Developer’s plans to develop the McHenry
5 Property (“McHenry Project”), the City of Modesto (“Modesto”) required Developer to widen
6 McHenry Avenue between Claratina and Grecian Avenues, including installing street, curb,
7 gutter, and sidewalk improvements (“Improvements”) within an approximately 3,627 square
8 foot portion of the SFPUC Property (“Easement Area”); and

9 WHEREAS, SFPUC agreed to allow the Developer to construct the Improvements
10 within the Easement Area at the Developer’s expense under a revocable license agreement
11 and to recommend that City convey an easement to Modesto or another responsible public
12 agency for roadway and sidewalk use (“Easement”) subject to the following conditions
13 (“SFPUC Conditions”): (i) the Improvements must include a protective cap (“Bridge”) over the
14 SFPUC subsurface water transmission pipelines; (ii) the Easement must be conveyed in an
15 agreement in form acceptable to City, reserving the SFPUC’s right to use the Easement Area
16 for uses that are compatible with the Easement; (iii) Modesto or another responsible public
17 agency must accept ownership of the Improvements and responsibility for maintenance and
18 repair; and (iv) City must receive payment for the fair market value of the Easement; and

19 WHEREAS, San Francisco Charter, Section 8B.121(a) grants the SFPUC Commission
20 the exclusive charge of the real property assets under the Commission’s jurisdiction, Charter
21 Section 8B.121(e) provides that the Commission may transfer real property interests the
22 Commission declares to be surplus to the needs of any utility, and Charter, Section 9.118(c)
23 provides that any sale of real property owned by the City must be approved in advance by the
24 Board of Supervisors; and

1 WHEREAS, Modesto is responsible for maintenance and repair of McHenry Avenue
2 under an agreement with the State of California Department of Transportation (“Caltrans”),
3 and Caltrans has approved the Improvements but declined to accept the proposed Easement;
4 and

5 WHEREAS, SFPUC staff, through consultation with the Director of Property and the
6 Office of the City Attorney, have negotiated with Developer a proposed Agreement for Sale of
7 Real Estate (“Sale Agreement”), a copy of which is on file with the Clerk of the Board of
8 Supervisors under File No. 160348, which is incorporated herein by this reference, by which
9 Developer would agree to pay as the purchase price for the Easement the appraised fair
10 market value of \$35,000, and City would agree to convey the Easement to Modesto via an
11 easement agreement in form attached to the Sale Agreement (“Easement Agreement”); and

12 WHEREAS, SFPUC staff and Modesto have negotiated the proposed terms and
13 conditions of the Easement Agreement by which Modesto would accept ownership of the
14 Improvements, including the Bridge, and responsibility for operation, maintenance and repair
15 of the Improvements, and City would convey to Modesto an easement for street and sidewalk
16 improvements and use; and

17 WHEREAS, By Resolution No. 2015-166 adopted on May 26, 2015, Modesto’s City
18 Council approved the Easement Agreement, and Modesto has executed and delivered the
19 Easement Agreement, a copy of which is on file with the Clerk of the Board of Supervisors
20 under File No. 160348, which is incorporated herein by this reference; and

21 WHEREAS, The San Francisco Planning Department on October 15, 2015, found the
22 proposed conveyance of the Easement to be consistent with the General Plan, and eight
23 priority policies of Planning, Section 101.1 (“General Plan Findings”), a copy of which is on file
24 with the Clerk of the Board of Supervisors under File No. 160348, which is incorporated herein
25 by this reference; and

1 WHEREAS, On July 14, 2015, by SFPUC Resolution No. 15-0156 (“SFPUC
2 Resolution”), a copy of which is on file with the Clerk of the Board of Supervisors under File
3 No. 160348, which is incorporated herein by this reference, the SFPUC Commission found
4 that the Easement was surplus to the needs of any utilities under SFPUC’s jurisdiction,
5 provided that the SFPUC Conditions were met; found that offering the Easement for sale by
6 competitive bidding would be impractical; approved the terms and conditions of the Sale
7 Agreement and Easement Agreement; and authorized the SFPUC General Manager and/or
8 the City Director of Property, following Board of Supervisors approval, to execute such
9 agreements and make certain modifications and take certain action in furtherance of such
10 resolution; and

11 WHEREAS, Modesto, acting as lead agency under the California Environmental
12 Quality Act (Cal. Pub. Res. Code, Section 21000 et seq., hereinafter “CEQA”), and the State
13 CEQA Guidelines (Cal. Admin. Code, Title 14, Section 15000 et seq., (hereinafter “CEQA
14 Guidelines”), for the City of Modesto Urban Area General Plan (“General Plan”) certified a
15 Master Environmental Impact Report (“Master EIR”) on October 14, 2008 (State
16 Clearinghouse No. 2007072023); and

17 WHEREAS, In conjunction with the approval of the General Plan by Modesto City
18 Council Resolution No. 2008-582, Modesto adopted CEQA Findings (“Modesto CEQA
19 Findings”), including: (1) the adoption of a statement of findings of significant impacts and
20 incorporation into General Plan policies mitigation measures identified in the Master EIR to
21 mitigate, avoid or limit impacts; (2) the adoption of a statement of overriding considerations;
22 and (3) the rejection of alternatives; and

23 WHEREAS, As provided by CEQA, Section 21157.1, Modesto prepared a Finding of
24 Conformance to General Plan Master EIR: Initial Study Environmental Checklist Community
25 and Economic Development 2013-015 for the Proposed Claratina Avenue Automotive

1 Dealerships, dated May 29, 2013 (“Finding of Conformance”) and issued the Finding of
2 Conformance on August 12, 2013, determining that the McHenry Project will have no
3 additional significant effect on the environment, as defined in subdivision (d) of Section 21158
4 of the Public Resources Code, that was not identified in the Master EIR; no new or additional
5 mitigation measures or alternatives are required; the McHenry Project is within the scope of
6 the project covered by the Master EIR; and all applicable policies, regulations, and mitigation
7 measures identified in the Master EIR have been applied to the McHenry Project or otherwise
8 made conditions of approval of the Project; and

9 WHEREAS, On December 10, 2013, Modesto approved the McHenry Project
10 (“Administrative Approval”) , subject to conditions, including the requirement to comply with
11 mitigation measures from the Master EIR applicable to the McHenry Project; and

12 WHEREAS, The Master EIR, the Modesto CEQA Findings, the Finding of
13 Conformance, and the Administrative Approval have been made available for review by the
14 Board and the public, are a part of the record of this approval by the Board, and are available
15 for public review at the SFPUC Real Estate Services Division, 525 Golden Gate Avenue, 10th
16 Floor, which is the custodian of records for the requested permanent Easement and are on file
17 with the Clerk of the Board of Supervisors under File No. 160348; and

18 WHEREAS, The Board, acting as a responsible agency under CEQA, has considered
19 the Master EIR, the Modesto CEQA Findings, the Finding of Conformance for the McHenry
20 Project, and the Administrative Approval, including the environmental effects of the McHenry
21 Project set forth in said documents; and

22 WHEREAS, The Master EIR is available for public review with the Modesto City Clerk,
23 who is the custodian of records; now, therefore, be it

24 RESOLVED, That the Board adopts as its own and incorporates by reference as
25 though fully set forth herein the findings in the SFPUC Resolution, pursuant to Administrative

1 Code, Section 23.3, that offering the Easement for sale by competitive bidding process would
2 be impractical; and, be it

3 FURTHER RESOLVED, That the Board adopts as its own and incorporates by
4 reference as though fully set forth herein the General Plan Findings; and, be it

5 FURTHER RESOLVED, The Board acting as a responsible agency under CEQA
6 hereby adopts and incorporates by reference as though fully set forth herein all findings made
7 pursuant to CEQA set forth in the prior Modesto CEQA Findings, including findings under
8 CEQA Guidelines Sections 15091 and 15093; the Finding of Conformance; and the
9 Administrative Approval that no further environmental review is needed beyond the Master
10 EIR and Finding of Conformance to approve the McHenry Project; and, be it

11 FURTHER RESOLVED, The Modesto CEQA Findings, including without limitation, the
12 statement of overriding considerations, and statement of findings of significant impacts and
13 incorporation into General Plan policies mitigation measures identified in the Master EIR to
14 mitigate, avoid or limit impacts, is a part of the record of this approval and may be found in
15 Board File No. 160348; and, be it

16 FURTHER RESOLVED, The Board finds that this approval is within the scope of the
17 McHenry Project and activities evaluated in the Master EIR and the Finding of Conformance;
18 and, be it

19 FURTHER RESOLVED, The Board further finds that since the Master EIR, Finding of
20 Conformance, and Administrative Approval were finalized, there have been no substantial
21 changes in the McHenry Project and no substantial changes in project circumstances that
22 would require major revisions to the Master EIR due to the involvement of new significant
23 environmental effects or an increase in the severity of previously identified significant impacts,
24 and there is no new information of substantial importance that would change the conclusions
25 set forth in the FEIR, Finding of Conformance and Administrative Approval; and, be it

1 FURTHER RESOLVED, The Board has not identified any feasible alternative or
2 additional feasible mitigation measures within its powers that would substantially lessen or
3 avoid any significant effect the McHenry Project would have on the environment; and, be it

4 FURTHER RESOLVED, Modesto has already incorporated mitigation measures into
5 the McHenry Project by the Administrative Approval, and the Board has no direct authority to
6 implement the mitigation measures; and, be it

7 FURTHER RESOLVED, That in accordance with the recommendations of the Public
8 Utilities Commission and the Director of Property, the Board of Supervisors approves the Sale
9 Agreement and the sale transaction contemplated therein and authorizes the Director of
10 Property and/or the SFPUC's General Manager, in the name and on behalf of the City and
11 County of San Francisco, to execute the Sale Agreement and Easement Agreement in
12 substantially the form presented to the Board and to take any and all steps (including, but not
13 limited to, the execution and delivery of any and all certificates, agreements, notices,
14 consents, escrow instructions, closing documents, and other instruments or documents) as
15 the Director of Property or SFPUC General Manager deems necessary or appropriate in order
16 to consummate the sale of the Easement pursuant to the Sale Agreement, or to otherwise
17 effectuate the purpose and intent of this resolution, such determination to be conclusively
18 evidenced by the execution and delivery by the Director of Property and/or SFPUC General
19 Manager of any such documents; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
21 Property and/or the SFPUC General Manager, in the name and on behalf of the City and
22 County of San Francisco, to enter into any additions, amendments or other modifications to
23 the Sale Agreement (including the attached exhibits) and any other documents or instruments
24 in connection with the Sale Agreement that the Director of Property or SFPUC General
25 Manager determines are in City's best interest, do not materially decrease City's benefits or

1 materially increase the City's liabilities or obligations in connection with the proposed sale
2 transaction or Easement, and are necessary and advisable to complete the proposed sale
3 transaction and effectuate the purpose and intent of this resolution, such determination to be
4 conclusively evidenced by the execution and delivery by the Director of Property or SFPUC
5 General Manager of any such additions, amendments, or other modifications.

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10 RECOMMENDED:

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13 _____
14 Director of Property
15 Real Estate Division

16 RECOMMENDED:

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19 _____
20 General Manager
21 San Francisco Public Utilities Commission
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