

File No. 100687

Committee Item No. 2

Board Item No. 27

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: BUDGET AND FINANCE

Date: July 14, 2010

BOARD OF SUPERVISORS MEETING

Date: 7/20/10

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER

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Completed by: Andrea S. Ausberry

Date Friday, July 9, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Agreement to Purchase Permanent Subsurface Easements and Temporary License
2 Agreements to Enter and Use Property for the Sunnydale Sewer System Improvement
3 Project totaling \$2,459,664]

4 Resolution approving and authorizing agreements for the acquisition of the
5 following real property rights required for the Sunnydale Sewer Improvement Project
6 No. CENMSCIC2362 totaling \$2,459,664: (1) permanent subsurface sewer easements
7 over portions of San Francisco APN 4991/24 and 4991/65 comprising 11,677.7 square
8 feet, (2) permanent subsurface sewer easements over portions of San Francisco
9 APN 5100/3, 5101/7 and 5102/9 comprising 24,468 square feet, (3) a temporary 18-
10 month License with a 6-month option term over San Francisco APN 4991/24, 4991/61,
11 4991/65 comprising 47,568 square feet, and 22,215 square feet over the contiguous
12 Brisbane APN 005-153-030, and (4) a temporary 18-month License with a 6-month
13 option term over portions of San Francisco APN 5100/3 and 5107/1 comprising
14 24,613.7 square feet; adopting findings under the California Environmental Quality
15 Act (CEQA"); adopting findings that the conveyance is consistent with the City's
16 General Plan and Eight Priority Policies of City Planning Code Section 101.1; and
17 authorizing the Director of Property to execute documents, make certain
18 modifications and take certain actions in furtherance of this resolution.

19
20 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) has developed
21 a project known as the Sunnydale Sewer System Improvement Project, (also commonly
22 referred to as Project No. CENMSMSCI2362, and herein as the "Project"), that includes the
23 construction of new and replacement sewer facilities in the Visitation Valley-Sunnydale
24
25

1 neighborhood in San Francisco to provide improvements to the collection and
2 transportation of sewage and storm water; and

3 WHEREAS, The objectives of the Project are to construct new and replacement sewer
4 facilities in the Visitacion Valley/Sunnydale neighborhood to improve conditions to reduce
5 incidents of flooding. The Project will be constructed in two phases. Phase I will include
6 construction of a sewer tunnel from the intersection of Sunnydale Avenue and Talbert Street
7 to the Sunnydale Storage Facility and Pump Station at Harney Way and will include
8 installation of approximately 4,000 feet of new pipeline. Phase II will include construction of
9 sewer pipelines along Talbert Street between Visitacion Avenue and the former Union Pacific
10 (UP) railroad right-of-way, along Visitacion Avenue between Rutland Street and Talbert
11 Street, and along the former UP railroad right-of-way between Schwerin Street and Talbert
12 Street and will include installation of approximately 2,800 feet of pipeline; and

13 WHEREAS, The Project is located primarily within the City and County of San
14 Francisco, except for approximately 200 feet of pipeline near the southern end of Talbert
15 Street within an existing sewer easement in Daly City in San Mateo County and a staging
16 area located partially in the City of Brisbane. The sewers will be constructed in street rights-of-
17 way and in easements across private property; and

18 WHEREAS, A Final Mitigated Negative Declaration (FMND) was approved by the San
19 Francisco Planning Department by on April 8, 2010, a copy of which is on file with the Clerk
20 of the Board of Supervisors in File No. 100687; and

21 WHEREAS, On May 11, 2010, as required by the California Environmental Quality
22 Act ("CEQA") , the SFPUC by Resolution No. 10-0082, a copy of which is included in Board
23 of Supervisors File No. 100607 and is incorporated herein by this reference, (1) approved
24 the Project, (2) adopted the FMND, the CEQA findings and the Mitigation Monitoring and
25 Reporting Program ("MMRP") required by CEQA, and (3) authorized the General Manager

1 to seek the Board of Supervisors' approval of and, if approved, to execute certain
2 necessary agreements and deeds; and

3 WHEREAS, The Project files, including the FMND, the CEQA findings, the MMRP
4 and SFPUC Resolution No. 100687 have been made available for review by the Board and
5 the public, and those files are considered part of the record before this Board; and

6 WHEREAS, The Board of Supervisors has reviewed and considered the information
7 and findings contained in the FMND, the CEQA findings, the MMRP and SFPUC
8 Resolution No. 100687, and all written and oral information provided by the Planning
9 Department, the public, relevant public agencies, SFPUC and other experts and the
10 administrative files for the Project; and

11 WHEREAS, This Board, by Resolution No. 100607 adopted on _____, 2010, a copy of
12 which is on file with the Clerk of the Board of Supervisors in File No. 100687 and which is
13 incorporated herein by this reference and considered part of the record before this Board,
14 adopted findings under CEQA related to the Project, including the statement of overriding
15 considerations and and the MMRP; and

16 WHEREAS, In accordance with the SFPUC Resolution and pursuant to the terms
17 and conditions of the Agreements for Purchase and Sale and temporary Licenses to Enter
18 and Use Property, copies of which are on file with the Clerk of the Board of Supervisors in
19 File No. 100687, the Sellers have agreed to a total acquisition costs of \$2,459,664, which
20 was determined by independent appraisal and approved by the Director of Property; and

21 WHEREAS, The subject real property rights required for the Project and the
22 breakdown of the related acquisition costs are:

23 (1) permanent subsurface sewer easements over portions of San Francisco APN
24 4991/24 and 4991/65 comprising 11,677.7 s.f. at the fair market value of \$654,000,
25

1 (2) permanent subsurface sewer easements over portions of San Francisco APN
2 5100/3, 5101/7 and 5102/9 comprising 24,468 s.f. at the purchase price of \$1,020,000
3 consisting of the fair market value of \$345,000 together with \$675,000 as full compensation
4 for the Seller's expected costs of foundation modifications to avoid negative impacts
5 affecting the Project's proposed sewer tunnel,

6 (3) a temporary 18-month License to enter and use property with a 6-month option
7 term over San Francisco APN 4991/24, 4991/61, 4991/65 comprising 47,568 s.f., and
8 22,215 s.f. over the contiguous Brisbane APN 005-153-030 from Sierra Properties, Inc. , at
9 a cost of \$639,212, and

10 4) a temporary 18-month License to enter and use property with a 6-month option
11 term over portions of San Francisco APN 5100/3 and 5107/1 comprising 24,613.7 s.f. at a
12 cost of \$146,452; and

13 WHEREAS, Copies of the Agreements For Purchase and Sale of the easement
14 rights (the "Purchase Agreements") between the City, as buyer, and Universal Paragon
15 Corporation and its affiliated entities (collectively, the "Sellers"), as the Sellers, are on file
16 with the Clerk of the Board of Supervisors under File No. 100687; and

17 WHEREAS, Copies of the License Agreements to Enter and Use Property (the
18 "License Agreements") between the City, as licensee, with Universal Paragon Corporation
19 and its affiliated entities (collectively, the "Licensors") as the Licensors, are on file with the
20 Clerk of the Board of Supervisors under File No. 100687; and

21 WHEREAS, The Director of Property has determined, based on an independent MAI
22 appraisal, that the Purchase Agreements and the temporary License Agreements reflect
23 the fair market value of the subject property rights; and,

24 WHEREAS, The Director of Planning, by letter dated May 13, 2010, found that the
25 purchase of all the necessary property rights for the Project, is consistent with the City's

1 General Plan and with the Eight Priority Policies of City Planning Code Section 101.1,
2 which letter is on file with the Clerk of the Board of Supervisors under File No. 100687 , and
3 which letter is incorporated herein by this reference; now, therefore, be it

4 RESOLVED, The Board, after review and consideration of the FMND, the CEQA
5 findings and record as a whole, finds that the FMND is adequate for its use as the decision
6 making body for the action taken herein and hereby incorporates by reference the CEQA
7 findings contained in Resolution No. No.10-0607; and be it

8 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted
9 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be
10 it

11 FURTHER RESOLVED, The Board finds that since the FMND was finalized, there
12 have been no substantial Project changes and no substantial changes in the Project
13 circumstances that would require major revisions to the FMND due to the involvement of
14 new significant environmental effects or an increase in the severity of previously identified
15 significant impacts, and there is no new information of substantial importance that would
16 change the conclusions set forth in the FMND; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors of the City and County of
18 San Francisco hereby finds that the Purchase Agreements and temporary License
19 Agreements are consistent with the General Plan and with the Eight Priority Policies of City
20 Planning Code Section 101.1 for the same reasons as set forth in the letter from the
21 Director of Planning dated May 13, 2010, and hereby incorporates such findings by
22 references as though fully set forth in this resolution; and, be it

23 FURTHER RESOLVED, That in accordance with the recommendations of the Public
24 Utilities Commission and the Director of Property, the Board of Supervisors hereby
25 approves the Purchase Agreements and temporary License Agreements and the

1 transaction contemplated thereby in substantially the form of such agreements presented to
2 this Board; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
4 Property to enter into any additions, amendments or other modifications to the Purchase
5 Agreements (including, without limitation, the attached exhibits) that the Director of
6 Property determines are in the best interest of the City, that do not increase the purchase
7 price for the easements or temporary License Agreements or otherwise materially increase
8 the obligations or liabilities of the City, and are necessary or advisable to complete the
9 transaction contemplated in the Purchase Agreements and temporary License Agreements
10 to effectuate the purpose and intent of this resolution, such determination to be conclusively
11 evidenced by the execution and delivery by the Director of Property of the Purchase
12 Agreements and temporary License Agreements and any amendments thereto; and, be it

13 FURTHER RESOLVED, That the Director of Property is hereby authorized and
14 urged, in the name and on behalf of the City and County, to accept the deeds to the
15 easements acquired from the Sellers upon the closing in accordance with the terms and
16 conditions of the Purchase and Sale Agreements and to execute the temporary License
17 Agreements and to take any and all steps (including, but not limited to, the execution and
18 delivery of any and all certificates, agreements, notices, consents, escrow instructions,
19 closing documents and other instruments or documents) as the Director of Property deems
20 necessary or appropriate in order to consummate the conveyance of the easements
21 pursuant to the Purchase and Sale Agreements and execution of the temporary License
22 Agreements, or to otherwise effectuate the purpose and intent of this resolution, such
23 determination to be conclusively evidenced by the execution and delivery by the Director of
24 Property of any such documents.

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RECOMMENDED:

Amy L. Brown
Amy L. Brown
Director of Property

\$2,459,664 Available

Appropriation: Index Code ~~CENMSCIC2362~~
CWPX5CCFFCP1

[Signature]
Controller

Items 2, 3, and 4 Files 10-0687, 10-0688, and 10-0607	Department(s): Public Utilities Commission (PUC)
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EXECUTIVE SUMMARY**Legislative Objectives**

- File 10-0687: Resolution authorizing the Public Utilities Commission to purchase various permanent underground easements and temporary licenses to enter and use above-ground property from Universal Paragon Corporation, or affiliate entities of Universal Paragon Corporation, for a total price of \$2,459,664, in order to allow for the construction of the Sunnydale Sewer System Improvement Project.
- File 10-0688: Resolution authorizing the Public Utilities Commission to purchase various permanent underground easements from Recology Properties, Inc. and Recology San Francisco, for a total price of \$174,001, in order to allow for the construction of the Sunnydale Sewer System Improvement Project (SSSIP).
- File 10-0607: Resolution adopting findings under the California Environmental Quality Act for the Sunnydale Sewer System Improvement Project, and directing the Clerk of the Board of Supervisors to notify the Controller of this action.

Key Points

- The existing Sunnydale Sewer Tunnel transports wastewater and stormwater from a 720 acre drainage basin in southeast San Francisco to a pump station near the San Francisco Bay. According to Mr. Manfred Wong, Project Manger for the PUC, this sewer tunnel has inadequate capacity to meet drainage needs during significant storms, such that temporary flooding occurs in Visitacion Valley. The PUC's SSSIP is a \$57,700,000 project which would provide an additional 6,800 feet of sewer pipeline to increase the capacity of the Sunnydale Sewer System, such that flooding would be prevented or minimized.
- The proposed easement acquisitions would provide the PUC with (a) permanent access to the underground area where the new pipeline will be constructed, and (b) temporary access, during the SSSIP construction period, to additional areas above and adjacent to the new underground pipeline to allow for construction of the new pipeline.

Fiscal Impacts

- The proposed total easement purchases of \$2,633,665 (\$2,459,664 plus \$174,001) would be funded from Wastewater Revenue Bond proceeds for the PUC's SSSIP as previously appropriated by the Board of Supervisors.
- Through multiple previous appropriations, the Board of Supervisors appropriated a total of \$57,700,000 to the Sunnydale Sewer System Improvement Project, including \$1,500,000 for the purchase of permanent easements. The total cost to acquire the proposed easements is \$2,633,665, or \$1,133,665 more than the previous appropriation of \$1,500,000, which was approved in August of 2009 (File 09-0546). The increased costs of \$1,133,655 have resulted because (a) the PUC did not anticipate paying \$675,000 above fair market value for one

underground easement in order to compensate the seller for modifications to the foundation of the seller's building which sits above the easement area, and (b) the PUC had underestimated the total acquisition costs by an additional \$458,665. While the cost of the proposed easements have increased since August of 2009 (when the \$1,500,000 for the proposed easement acquisitions was appropriated by the Board of Supervisors), other project costs have decreased such that the overall SSSIP budget remains at \$57,700,000.

Recommendations

- Amend the title of the proposed resolution (File 10-0688) to include reference to the purchase of a permanent subsurface easement at Assessor's Parcel Number 5104/1, which was included in the body of the resolution but inadvertently excluded from the title of the proposed resolution.
- Approve (a) the proposed resolution (File 10-0687), and (b) the proposed resolution (File 10-0688), as amended.
- Amend the proposed resolution (File 10-0607) adopting findings under the California Environmental Quality Act (CEQA) to reference the appropriation ordinance which placed funds on reserve pending completion of environmental review, as shown in the Recommendations Section of this report.
- Approve the proposed resolution (File 10-0607), as amended.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

The proposed easement purchases are subject to Board of Supervisors approval pursuant to Section 23.1 of the City's Administrative Code.

Background

The existing Sunnysdale Sewer Tunnel, constructed in 1913, transports wastewater and stormwater from a 720 acre drainage basin in southeast San Francisco (consisting of residential areas of Visitacion Valley, open space in McLaren Park, and industrial areas east of Bayshore Boulevard) to a pump station near the San Francisco Bay. This sewer tunnel has inadequate capacity to meet drainage needs during significant storms, such that temporary flooding occurs within Visitacion Valley. The PUC's Sunnysdale Sewer System Improvement Project (SSSIP) is a \$57,700,000 project which would provide for an additional 6,800 feet of sewer pipeline to increase the capacity of the Sunnysdale Sewer System, such that flooding would be prevented or minimized.

The proposed easement purchases (Files 10-0687 and 10-0688) would provide the PUC with (a) permanent access to the underground the area where the new pipeline will be constructed, and (b) temporary access, during the SSSIP construction period, to additional areas above and adjacent to the new underground pipeline to allow for construction of the new pipeline.

Through previous multiple appropriations, the Board of Supervisors appropriated a total of \$57,700,000 to the Sunnydale Sewer System Improvement Project. In the most recent appropriation, in the amount of \$7,000,000 for the SSSIP (out of a total appropriation of \$348,064,054 to various PUC wastewater capital improvement projects), the Board of Supervisors placed the entire \$7,000,000 on a Controller's reserve pending the completion of the environmental review required by the California Environmental Quality Act (CEQA). Environmental review was completed on April 8, 2010. The proposed resolution (File 10-0607) would approve the findings of that environmental review, and notify the Controller of the approval to allow the Controller to release the \$7,000,000 of funds on reserve.

Construction of the SSSIP is estimated to begin in August of 2010 and be completed in December of 2012.

DETAILS OF PROPOSED LEGISLATION

The PUC is requesting authorization to purchase various easements, totaling \$2,633,665, as shown in Table 1 below.

Table 1: Easements Proposed To Be Purchased

File	Seller	Property	Duration	Square Feet	Purchase Price	Price Per Square Foot
10-0687	Universal Paragon ¹	APN 4991/24/65	Permanent	11,677.70	\$654,000	\$56.00
		APN 5100/3, 5101/7, and 5102/9	Permanent	24,468.00	1,020,000	41.69
		APN 4991/24,61,65 and Brisbane APN (005-153-030)	24 Months ²	69,783.00	639,212	9.16
		APN 5100/3 and 5107/1	24 Months ³	24,613.70	146,452	5.95
Subtotal for File 10-0687				130,542.40	\$2,459,664	*
10-0688	Recology ⁴	APN 5104/1	Permanent	5,955.00	35,000	5.88
		APN 5104/4	Permanent	4,470.00	22,000	4.92
		APN 4991/7,8	Permanent	15,437.00	82,000	5.31
		APN 4991/9	Permanent	5,964.00	35,000	5.87
		APN 4991/68	Permanent	0.19	1	5.26
Subtotal for File 10-0688				31,826.19	\$174,001	**
Total				162,368.59	\$2,633,665	\$16.22

* Average price per square foot for the easements included in File 10-0687 is \$18.84.

** Average price per square foot for the easements included in File 10-0688 is \$5.47.

¹ For the purposes of Table 1 above, the term "Universal Paragon" refers to either (a) Universal Paragon Corporation, or (b) one of their affiliate organizations (Visitation Development, LLC or EP Associates, LLC).

² According to Ms. Claudine Venegas of the Real Estate Division, the 24 month term of this temporary easement at a total cost of \$639,212 includes (a) an 18 month term at a cost of \$479,409, and (b) an optional 6 month extension at an additional cost of \$159,803.

³ According to Ms. Venegas, the 24 month term of this temporary easement at a total cost of \$146,452 includes (a) an 18 month term at a cost of \$109,839, and (b) an optional 6 month extension at an additional cost of \$36,613.

⁴ For the purposes of Table 1 above, the term "Recology" refers to either Recology Properties, Inc. or Recology San Francisco.

As discussed above, the easements shown in Table 1 above would provide the PUC with (a) permanent access to the underground the area where the new pipeline will be constructed, and (b) temporary access, during the SSSIP construction period, to additional areas above and adjacent to the new underground pipeline to allow for construction of the new pipeline.

As shown in Table 1 above, the average price per square foot of the easements to be purchased from Universal Paragon is \$18.84, which is \$13.37 per square foot, or 244.4 percent, more than the average price per square foot for easements purchased from Recology at \$5.47 per square foot. Ms. Venegas stated that the easements purchased from Universal Paragon are 244.4 percent more expensive because the easements impose a greater limit on the value of Universal Paragon's property since (a) the easements extend through the center of the property rather than the periphery, (b) the easements impact the ability of the owner to develop the property underground (which would be necessary for developments such as an underground parking garage), and (c) the zoning for three of the parcels to be purchased from Universal Paragon (specifically APN 5100/3, 5101/7, and 5102/9) allows for high-density housing and retail development, which, according to Ms. Venegas, is much more valuable than the industrial zoning found at the other locations.

The PUC is also requesting approval of CEQA findings for the Sunnydale Sewer System Improvement Project (File 10-0607). Environmental review was completed by the Planning Department on April 8, 2010. The proposed resolution (File 10-0607) would approve the findings of that environmental review, and notify the Controller of the approval to allow the Controller to release the \$7,000,000 of funds on reserve, as discussed above.

FISCAL IMPACTS

The purchase of the proposed easements total \$2,633,665 which would be funded from the proceeds of Wastewater Revenue Bonds previously appropriated by the Board of Supervisors on August 18, 2009 (File 09-0546), to the PUC's Sunnydale Sewer System Improvement Project (SSSIP).

The debt service on such Wastewater Revenue Bonds is paid through wastewater rates⁵ charged to PUC's wastewater customers.

According to Ms. Claudine Venegas, Senior Real Property Officer at the Real Estate Division, the prices paid for each easement shown in Table 1 above represent the fair market value for each easement, as calculated by an independent appraisal⁶.

⁵ Wastewater rates through FY 2013-2014 were considered approved by the Board of Supervisors on June 5, 2009 because, pursuant to Proposition E approved by the voters on November 5, 2002, the rates were not rejected by the Board of Supervisors within 30 days of their submission to the Board.

⁶ The purchase price of all easements is equal to the fair market value as determined by an independent appraisal except for the proposed easement purchase at APN 5100/3, 7, 9 at a total cost of \$1,020,000, which is the sum of (a) \$345,000 for the fair market value of the easement according to an independent appraisal, and (b) \$675,000 to compensate the seller for the anticipated costs of foundation modifications necessary as a result of the SSSIP.

OTHER CONSIDERATIONS

The proposed easement purchases in the amount of \$2,633,665, exceed the cost anticipated at the time funds were appropriated for such easement purchases of \$1,500,000 by \$1,133,665.

According to Mr. Manfred Wong, PUC Project Manager for the SSSIP, the cost of the proposed easement acquisitions totaling \$2,633,665 is \$1,133,665 more than the \$1,500,000 cost which was estimated at the time the funds were appropriated for such easement purchases. Mr. Wong stated that this is because at the time of the \$1,500,000 estimate in August of 2009, (a) the PUC did not anticipate paying \$675,000 above fair market value for one underground easement in order to compensate the seller for modifications to the foundation of the seller's building which sits above the easement area (see Footnote 6 above), and (b) the PUC had underestimated the total acquisition costs by an additional \$458,665, resulting in total increased costs of \$1,133,665 (\$675,000 plus \$458,665),

The title of the proposed resolution (File 10-0688) does not include reference to one of the easements proposed for purchase

The title of File 10-0688 does not include reference to Assessor's Parcel Number (APN) 5104/1. However, the body of the proposed resolution (File 10-0688) includes the authorization to purchase the proposed easement on APN 5104/1. According to Ms. Venegas, the title of the proposed resolution (File 10-0688) should include reference to the proposed easement on APN 5104/1. Therefore the Budget and Legislative Analyst recommends amending the title of the proposed resolution (File 10-0688) to include reference to the purchase of a permanent subsurface easement at APN 5104/1.

The proposed resolution (File 10-0607) refers to a reserve which is not relevant to environmental review.

As discussed above, in the most recent appropriation to the SSSIP in File 10-0339 (Ordinance 95-10), the Board of Supervisors appropriated \$7,000,000 to the SSSIP (out of a total appropriation of \$348,064,054 to various PUC wastewater capital improvement projects) and placed the entire \$7,000,000 on a Controller's reserve pending the completion of the environmental review required by the California Environmental Quality Act.

However, the proposed resolution (File 10-0607) refers to \$119,800,000 which was placed on reserve by the Board of Supervisors in File 09-0546 (Ordinance 201-09). This reference, while technically correct, is not relevant to the proposed resolution because File 09-0546 placed funds on Controller's reserve pending sale of Wastewater Revenue Bonds, not completion of environmental review. Therefore, the Budget and Legislative Analyst recommends amending the proposed resolution (File 10-0607) as shown below.

Delete paragraph, beginning on page 3 line 14:

“WHEREAS, This Board of Supervisors adopted Ordinance No. 201-09, approving a supplemental appropriation of \$119,800,000, including funds for the Project, subject to Controller’s reserve; now, therefore, be it”

New paragraph, to begin on page 3, line 14 (changes underlined):

“WHEREAS, This Board of Supervisors adopted Ordinance No. 95-10, approving a supplemental appropriation of \$348,064,054, including funds for the Project, subject to Controller’s reserve; now, therefore, be it”

RECOMMENDATIONS

1. Amend the title of the proposed resolution (File 10-0688) to include reference to the purchase of a permanent subsurface easement at APN 5104/1, which was included in the body of the resolution but inadvertently excluded from the title of the proposed resolution.
2. Approve (a) the proposed resolution (File 10-0687), and (b) the proposed resolution (File 10-0688), as amended.
3. Amend the proposed resolution (File 10-0607) adopting findings under the California Environmental Quality Act (CEQA) to reference the appropriation ordinance which placed funds on reserve pending completion of environmental review, as shown below.

Delete paragraph, beginning on page 3 line 14:

“WHEREAS, This Board of Supervisors adopted Ordinance No. 201-09, approving a supplemental appropriation of \$119,800,000, including funds for the Project, subject to Controller’s reserve; now, therefore, be it”

New paragraph, to begin on page 3, line 14 (changes underlined):

“WHEREAS, This Board of Supervisors adopted Ordinance No. 95-10, approving a supplemental appropriation of \$348,064,054, including funds for the Project, subject to Controller’s reserve; now, therefore, be it”

4. Approve the proposed resolution (File 10-0607), as amended.

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: EP Associates LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1) Not Applicable 2) Jonathan Scharfman, Michael Ho 3) Capital Horizon Limited 4) None 5) None	
Contractor address: 150 Executive Park Blvd., Suite 1180, San Francisco, CA 94134	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved:	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits
- Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Claudine O. Venegas	Contact telephone number: 554-9872
Address: 25 Van Ness #400, San Francisco CA 94102	E-mail: Claudine.Venegas@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): SF Board of Supervisors	City elective office(s) held: SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Grand Sierra Properties, Inc.	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1) Denn Hu 2) Denn Hu, Michael Ho 3) Universal Paragon Corporation 4) None 5) None	
Contractor address: 150 Executive Park Blvd, Suite 1180, San Francisco CA 94134	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved:	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Claudine O. Venegas	Contact telephone number: 554-9872
Address: 25 Van Ness #400, San Francisco CA 94102	E-mail: Claudine.Venegas@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): SF Board of Supervisors	City elective office(s) held: SF Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Visitacion Development LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> 1) Not Applicable 2) Jonathan Scharfman, Michael Ho 3) Bestwin Management Limited 4) None 5) None	
Contractor address: 150 Executive Park Blvd., Suite 1180, San Francisco, CA 94134	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved:	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form (Mayor, Gavin Newsom)
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Name of filer: Claudine O. Venegas	Contact telephone number: 554-9872
Address: 25 Van Ness #400, San Francisco CA 94102	E-mail: Claudine.Venegas@sfgov.org

_____ Signature of City Elective Officer (if submitted by City elective officer)	_____ Date Signed
_____ Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)	_____ Date Signed

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

by and between

UNIVERSAL PARAGRAPH CORPORATION and its affiliated entities,
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the purchase and sale of

permanent easements over, in and upon real property in
San Francisco, California

_____, 2010

* To view full document
Request file # 100687

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

(Easements Over, On and In
Portions of APN 4991/24 and 4991/65)

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (this "Agreement") dated for reference purposes only as of _____, 2010, is by and between UNIVERSAL PARAGON CORPORATION and its affiliated entities, (the "Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Public Utilities Commission ("Buyer" or "City").

IN CONSIDERATION of the respective agreements set forth below, Seller and City agree as follows:

1. PURCHASE AND SALE

1.1 Purchase and Sale of Easements

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions set forth below, permanent subsurface easements (the "Easements") over, across, in and upon portions of Seller's real property in the City and County of San Francisco ("County"), California, identified as follows (each a "Parcel", and collectively, "Seller's Property"):

- (i) Assessor's Parcel Number 4991/24 ("Parcel A"); and
- (ii) Assessor's Parcel Number 4991/65 ("Parcel B").

Such portions of Parcel A and Parcel B are referred to herein collectively as the "Easement Area."

1.2 Easement Area; Nature of Easements

The Easement Area consists of those portions of Seller's Property described in the easement deed attached as Exhibit A (the "Deed"). The purpose of the Easements will be for the City to construct, install, maintain, operate, use and repair a subsurface sewer tunnel (the "Project"). Restrictions on the Seller's development of the Seller's Property as a result of the Easements shall be set forth in the attached Deed, the terms of which are incorporated herein by this reference.

2. PURCHASE PRICE

2.1 Purchase Price

The total purchase price for the Easements (the "Purchase Price") shall be Six Hundred Fifty Four Thousand Dollars (\$654,000).

2.2 Payment

On the Closing Date (as defined in Section 5.3 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 6 [Expenses], and reduced by any credits due City hereunder.

2.3 Funds

All payments made by any party hereto shall be in legal tender of the United States of America, paid by Controller's warrant or in cash or by wire transfer of immediately available funds. Unless the parties elect to close the transaction without an escrow, payments shall be made to Escrow Holder, as the escrow agent.

3. CONVEYANCE OF EASEMENTS

3.1 Easement Deed

At the Closing, Seller shall convey to City marketable and insurable title to the Easements, by duly executed and acknowledged Deed in the form attached hereto as Exhibit A, free and clear of all exceptions, liens and encumbrances except solely for the Accepted Conditions of Title (as defined in Section 3.2 [State of Title]).

3.2 State of Title

"Accepted Conditions of Title" shall mean only (i) the lien of real property taxes, not yet due or payable; and (ii) exceptions to title which are acceptable to City. As a condition precedent to City's obligation to purchase the Easements, quitclaim deeds, lender's consents or subordinations, or similar consents or releases sufficient to clear or subordinate any possessory rights over the Easement Area may be required, at City's election, in form approved by City. Seller agrees to secure any such waiver, quitclaim deeds, consents, subordinations or releases.

4. CONDITIONS TO CLOSING

4.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Easements (collectively, "**Conditions Precedent**"):

(a) The physical condition of the Easement Area shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Article 8 [Risk of Loss]), and as of the Closing Date there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing could materially adversely affect the value of the Easements or the ability of City to use the Easement Area for its intended use, and no proceedings shall be pending or threatened that could or would cause the change, re-designation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Easement Area.

(b) Seller shall have delivered signed originals of any documents required under Section 3.2, and, unless the parties elect to consummate the transaction without an escrow, Escrow Holder shall be committed at the Closing to issue to City a CLTA owner's policy of title insurance (the "**Title Policy**") in the amount of the Purchase Price, insuring title to the Easements vested in City free of all exceptions, liens and encumbrances except only the Accepted Conditions of Title, defined in Section 3.2 [State of Title]. The Title Policy shall contain such special endorsements as City may reasonably request.

(c) The transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the Public Utilities Commission, in their respective sole discretion, within sixty (60) days after Seller executes and delivers this Agreement to City.

(d) If required by City's Charter, the City's Mayor and the Board of Supervisors, in the sole discretion of each, shall have enacted a resolution approving, adopting and authorizing this Agreement and the transactions, within ninety (90) days after Seller executes and delivers this Agreement to City.

(e) Seller shall have delivered the items described in Section 5.4 below [Seller's Delivery of Documents] on or before the Closing.

The Conditions Precedent contained in the foregoing subsections (a) through (e) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase (provided that the Conditions Precedent described in items (c) and (d) above may not be waived except insofar as City elects to extend the deadline for satisfying such item) or, in the alternative, terminate this Agreement. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. In addition, the Closing Date may be extended, at City's option, for a reasonable period of time specified by City, to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if any such Conditions Precedent remain unsatisfied.

If the sale of the Easements is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either to (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City, and neither party shall have any further rights or obligations hereunder, or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

4.2 Seller's Conditions to Closing

Seller's obligation to sell the Easements shall be conditioned on the prior approval by Seller's Board of Directors of the transactions contemplated hereunder.

4.3 Cooperation with City

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Conditions Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

5. CLOSING AND POSSESSION

5.1 "Closing" Defined

The consummation of the purchase and sale contemplated hereby (the "Closing") shall occur as provided in this Article 5.

5.2 Escrow; Closing Without an Escrow

(a) Unless the parties agree to consummate the purchase and sale without an escrow as provided in subparagraph (b) below: (i) On or before the Effective Date (as defined in

Section 11.17 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Chicago Title Company at its offices at 455 Market Street, 21st Floor, San Francisco, California 94105 ("Escrow Holder"); (ii) this Agreement shall serve as instructions to Escrow Holder as the escrow holder for consummation of the purchase and sale contemplated hereby; (iii) Seller hereby authorizes City to prepare and submit supplemental escrow instructions in accordance with this Agreement on behalf of both parties, as needed, for review and approval of Seller; and (iv) the Closing shall be held and delivery of all items to be made at the Closing under this Agreement shall be made at Escrow Holder's offices.

(b) Notwithstanding the foregoing, the parties may elect by mutual agreement to consummate the purchase and sale without an escrow, in which event the Closing shall occur as described in Section 5.7(b).

5.3 Closing Date

The Closing shall occur no later than thirty (30) days after the Effective Date (as defined in Section 11.17) or on such earlier date as City and Seller may mutually agree (the "Closing Date"), subject to the provisions of Article 4 [Conditions Precedent]. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date and the parties have deposited documents or funds in escrow, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) business days after the Closing Date, return such items to the depositor thereof.

5.4 Seller's Delivery of Documents

(a) At or before the Closing, Seller shall deliver or cause to be delivered to City the following:

(i) the duly executed and acknowledged Deed;

(ii) such resolutions, authorizations, or other documents as City may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(iii) any documents needed in order to eliminate title exceptions other than Accepted Conditions of Title; and

(iv) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City, countersigned by Seller, if the parties elect to consummate the transaction without an escrow).

Seller shall also deliver a properly executed California Franchise Tax Board Form 590 certifying that Seller has a permanent place of business in California or is qualified to do business in California, or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the California Revenue and Taxation Code. Seller acknowledges and agrees that if Seller fails at Closing to deliver to City such certificate, City may be required to withhold and remit to the appropriate tax authority a portion of the Purchase Price pursuant to Section 18662 of the California Revenue and Taxation Code. Any amount properly so withheld and remitted shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

(b) Seller shall deliver such items to Seller through escrow, unless the parties elect to close the transaction without an escrow in which event Seller shall deliver the items directly to City for a Closing in accordance with Section 5.7(b).

5.5 City's Delivery of Documents and Funds

(a) At or before the Closing, City shall deliver to Seller the following:

(i) a certificate of acceptance, executed by City's Director of Property, to be attached to each Deed before recording;

(ii) a closing statement in form and content satisfactory to City and Seller (which may be in the form of a letter or memorandum from City to Seller if the parties elect to consummate the transaction without an escrow);

(iii) funds sufficient to pay City's share of expenses under Article 6;

and

(iv) the Purchase Price, as provided in Article 2 hereof.

(b) City shall deliver such documents and funds through escrow; however, if the parties elect to consummate the transaction without an escrow, City shall deliver the funds and documents as provided in Section 5.7(b).

5.6 Other Documents; Cooperation

Seller and City agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

5.7 Closing

(a) **Closing through Escrow.** Subject to Section 5.7(b), at Closing, provided all the conditions to the parties' obligations have been satisfied or waived as provided and permitted by this Agreement, Escrow Holder shall perform the following acts in the following order:

(i) Perform such acts as are necessary in order to deliver title to City subject only to the Accepted Conditions of Title, including recording any deed of reconveyance, subordination agreement or other documentation as specified in supplemental escrow instructions submitted by City before Closing.

(ii) Record the Deed in the Office of the County's Recorder and obtain endorsed copies thereof for each party;

(iii) Deliver to Seller, or as Seller may instruct, the Purchase Price, less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations under Article 6;

(iv) Issue the Title Policy to City, if requested to do so by City; and

(v) Deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(b) **Closing without Escrow.** If the parties elect to consummate the purchase and sale without an escrow, City shall effect the Closing on the Closing Date as follows:

(i) City shall: (I) deliver to Seller, or as Seller may instruct, the Purchase Price (less any amount necessary to satisfy any liens, bond demands, delinquent taxes, and Seller's share of expenses and prorations, if applicable, under Article 6), and (II) cause the certificate of acceptance in each Deed to be executed, when:

(A) City has received Seller's documents in accordance with Section 5.4, and

(B) City is in a position to record the Deed conveying the Easements to City subject only to the Accepted Conditions of Title, obtain the Title Policy (if City elects to do so), and deliver to the appropriate party any other documents, instruments, and sums required by this Agreement.

(ii) City shall provide Seller with a recordation conformed copy of the recorded Deed.

5.8 Possession and Use Prior to Closing Date

The right of possession and use of the Easement Area by City and/or its designees for the purposes set forth in Section 1.2, shall commence on the date City's contractor first enters the Easement Area (the "**Possession Date**"), which may occur before the Closing Date. The Purchase Price includes but is not limited to full payment for such possession and use, including interest and damages if any from such date, notwithstanding any other provision of this Agreement. City shall provide Seller with at least five (5) days' advance written notice of the Possession Date. Commencing on the Possession Date until the Closing Date, Seller shall afford City and its Agents reasonable access to the Seller's Property for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the drilling of test wells and the taking of soil borings if necessary. City hereby agrees to indemnify and hold Seller harmless from any damage or injury to persons or property caused by the active negligence or willful misconduct of City or its Agents during any such entries onto the Seller's Property prior to the Closing, except to the extent such damage or injury is caused by the acts or omissions of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Seller's Property, including any improvements thereon. In the event this Agreement is terminated for any reason other than Seller's default hereunder, City shall restore the Seller's Property to substantially the condition it was found subject to applicable laws.

6. EXPENSES

6.1 City's Expenses

City shall pay all escrow fees, the recording fees for the Deed and title insurance charges, if any.

6.2 Seller's Expenses

Seller shall pay all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured in whole or part by the Easement Area including, without limitation, any prepayment or delinquency fees, penalties or charges. Seller shall also pay any delinquent taxes that may have become a lien against Seller's Property, at the Closing.

6.3 Other Expenses

Any other costs and charges of the escrow not otherwise provided for in this Article or elsewhere in this Agreement shall be allocated in accordance with the closing customs for the County, as determined by Escrow Holder.

7. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to and covenants with City as follows:

(a) **Ownership of Property.** Seller is the sole fee owner of Seller's Property, and will own it at the time of the Closing, free and clear of all liens, leases, occupancy agreements, claims, encumbrances, easements and rights of way of any nature (whether disclosed in the public record or not), except only the Accepted Conditions of Title.

(b) **Signing Authority.** Seller and the signatories represent and warrant that the signatories to this Agreement are authorized to enter into this Agreement to convey real property and that no other authorizations are required to implement this Agreement on behalf of Seller.

(c) **No Leases.** There are now, and will be at the Closing, no oral or written leases, occupancy agreements, licenses or easements affecting the Easement Area or that would affect City's access to or use of the Easement Area.

(d) **No Property Defects or Legal Violations.** To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical defects of the Easement Area, and no violations of any laws, rules or regulations applicable to the Easement Area.

(e) **No Impediments to Use.** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using the Easement after Closing in the normal manner in which it is intended.

(f) **No Lawsuits.** There are no lawsuits or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting Seller, the Property or its use that would affect Seller's ability to consummate the sale contemplated by this Agreement or City's use and enjoyment of the Easement after the Closing.

(g) **Good Standing.** Seller is a California limited liability company duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(h) **No Known Hazardous Materials.** Seller hereby represents and warrants to and covenants with City that the following statements are true and correct and will be true and correct as of the Closing Date: (i) except as otherwise disclosed to the City in writing, neither the Easement Area nor to the best of Seller's knowledge any real estate in the vicinity of the Easement Area is in violation of any Environmental Laws; (ii) except as otherwise disclosed to the City in writing, the Easement Area is not now, nor to the best of Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit,

transportation or disposal of any Hazardous Material; (iii) except as otherwise disclosed to the City in writing, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Easement Area; (iv) there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Easement Area, or if there have been or are any such tanks or wells located on the Easement Area, their location, type, age and content has been specifically identified and disclosed to the City, they have been properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) except as otherwise disclosed to the City in writing, the Easement Area does not consist of any landfill or of any building materials that contain Hazardous Material; and (vi) the Easement Area is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Easement Area, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

(i) "Environmental Laws" shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

(ii) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

(iii) "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Easement Area. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to

locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

8. RISK OF LOSS

If any of the Easement Area is damaged or destroyed before the Closing Date, then the rights and obligations of Seller and City hereunder shall be as follows: City shall have the right, at its election, to terminate this Agreement in its entirety or terminate it only as to that portion of the Easement Area damaged or destroyed. City shall have thirty (30) days after Seller notifies City that an event described in this Article 8 has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Article 8, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Easement Area affected by such termination. If City elects not to terminate this Agreement in its entirety, Seller shall give City a credit against the Purchase Price at the Closing in an amount proportionate to the percentage reduction, if any, of the square footage of the Easement Area, and this Agreement shall remain in full force and effect.

9. MAINTENANCE; CONSENT TO NEW CONTRACTS

9.1 Maintenance of the Easement Area

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain Seller's Property in its current condition and shall make, at Seller's expense, all repairs necessary to maintain Seller's Property such condition. Seller shall make no changes to the Easement Area without City's prior written consent, which shall not be unreasonably withheld or delayed.

9.2 Contracts Affecting the Easement Area

Except as otherwise provided herein or by express written permission granted by City, Seller shall not, after the date of execution of this Agreement, alienate, lien, encumber or otherwise transfer Seller's Property or any portion thereof or allow the same to occur, or enter into any lease or contract with respect to Seller's Property or any portion thereof that would survive the Possession Date and impair City's access to or use of the Easement Area.

10. INTENTIONALLY OMITTED

11. GENERAL PROVISIONS

11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, and addressed as follows (or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above):

City:

To:

San Francisco Public Utilities Commission
1155 Market Street, 6th Floor
San Francisco, California 94103
Attention: Manfred Wong
Facsimile No.: (415) 551-4695

with copy to:

Evan A. Gross
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Facsimile No.: (415) 554-4755

Claudine O. Venegas
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102-4682
Facsimile No.: (415) 552-9216

Seller:

To:

Jonathan Scharfman
General Manager/Development Director
Universal Paragon Corporation
150 Executive Park Boulevard Suite 1180
San Francisco, California 94134

Facsimile No.: (415) 468-6678_____

with a copy to:

David P. Cincotta
Of Counsel
Jeffer, Mangels, Butler & Marmaro
2 Embarcadero Center, Fifth Floor
San Francisco, California 94111-
3824_____

Facsimile No.: (415) 398-5584_____



Amy L. Brown
Director of Real Estate



May 21, 2010

Through Edwin Lee, City Administrator

File 100687

Honorable Board of Supervisors
City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2010 MAY 24 AM 11:42
BY *RC*

Re: Resolution to approve Purchase and Sales Agreements for various permanent subsurface easements and temporary License Agreements to Enter and Use Property for the Sunnydale Sewer System Improvement Project from Universal Paragon Corporation and its affiliated entities

Dear Board Members:

The San Francisco Public Utilities Commission (SFPUC) has developed the Sunnydale Sewer System Improvement Project, also known as Project No. CENMSMSC12362 (the "Project"). It includes the construction of new and replacement sewer facilities in the San Francisco Visitation on Valley-Sunnydale neighborhood to address conditions that have led to past flooding.

On behalf of the SFPUC, enclosed for your consideration is a Resolution authorizing the acquisition of property for the Project totaling \$2,459,664. An independent MAI appraisal was obtained by the City to determine the fair market value of the following property rights, which was approved by the Director of Property:

(1) Permanent subsurface sewer easements over portions of San Francisco APN 4991/24/65 from EP Associates, LLC, an affiliate entity of Universal Paragon Corporation (UPC) comprising 11,677.7 s.f. at a purchase price of \$654,000,

(2) permanent subsurface sewer easements over portions of San Francisco APN 5100/3, 5101/7 and 5102/9 from Visitation Development, LLC, an affiliate entity of UPC comprising 24,468 s.f. at a purchase price of \$1,020,000, which consists of the fair market value of the easements at \$345,000 together with \$675,000 approved by SFPUC as full compensation for the Seller's expected costs of foundation modifications associated with the future development of the property,

(3) a temporary 18-month License Agreement to Enter and Use Property with a 6-month option term over San Francisco APN 4991/24/61/65 from Universal Paragon and its affiliate entities, comprising 47,568 s.f., together with 22,215 s.f. over the contiguous Brisbane APN 005-153-030 at a purchase price of \$639,212, and

4) a temporary 18-month License Agreement to Enter and Use Property with a 6-month option term over portions of San Francisco APN 5100/3 and 5107/1 from Visitation Development, LLC, an affiliate entity of UPC comprising 24,613.7 s.f. at a purchase price of \$146,452.

In addition to the Resolution, enclosed find copies of the above-described documents, SFPUC Resolution No. 10-XXX approving the acquisition of all the property interests required for this Project, City Planning's letter dated May 13, 2010, stating that the proposed acquisition of both the temporary and permanent property rights for the Project is in conformity with the General Plan and the Final Mitigated Negative Declaration approved by City Planning on April 8, 2010. Also enclosed is form SFEC-126: Notification of Contract Approval.

We are advised funds are available in index code CWPX5CCPFCP1.

If you have any questions or require further information, please contact Claudine O. Venegas of my staff at 554-9872.

Very truly yours,



Amy L. Brown
Director of Property

cvh:sunndaleupcbos

Enclosures as stated

cc: Evan Gross, Deputy City Attorney
Manfred Wong, SFPUC