

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 17-0087

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) approved the Bay Division Pipeline Reliability Upgrade-Tunnel Project (Tunnel Project) through Resolution Number 09-0176 on October 27, 2009; and

WHEREAS The Tunnel Project required the acquisition of a sub-surface tunnel easement (Tunnel Easement) under lands owned by the Midpeninsula Regional Open Space District (District)), and Resolution 09-0176 authorized the SFPUC General Manager to undertake the process, in compliance with Government Code Section 7260 et seq., with the San Francisco Charter and all applicable laws, for acquisition of interests in real property including the Tunnel Easement on the District's property, and to work with the Director of Real Estate to seek Board of Supervisors' approval of, and if approved, to accept and execute final agreements to consummate the acquisition in such form, approved by the City Attorney; and

WHEREAS, By Resolution Number 491-10 adopted effective as of October 22, 2010, the Board of Supervisors and Mayor approved an Agreement to Exchange Interests in Real Property (Exchange Agreement) to acquire the Tunnel Easement in exchange for a 50-foot wide open space easement on SFPUC lands (Open Space Easement) located in East Palo Alto known as the Ravenswood Property on Assessor's Parcels No. 093-590-030, 093-590-050 and 093-590-060 (SFPUC Property), and the SFPUC and the District entered into the Exchange Agreement on November 17, 2010; and

WHEREAS, On January 31, 2011, the District and the SFPUC closed escrow for the SFPUC's acquisition of the Tunnel Easement in exchange for conveying the Open Space Easement to the District; and

WHEREAS, The Exchange Agreement contemplated that the District would study the feasibility of a future public trail located on the SFPUC Property; and

WHEREAS, The District has conducted feasibility studies and has worked with SFPUC staff to identify a mutually acceptable alignment for the proposed Trail Easement and negotiate the terms and conditions of a Second Amendment to the Exchange Agreement (Exchange Agreement Amendment) and a Public Trail Easement agreement (Trail Easement Agreement), in the forms on file with the Commission Secretary, and now desires to obtain an easement for a 20-foot wide public trail (Trail Easement) in accordance with the Exchange Agreement Amendment and the Trail Easement Agreement; and

WHEREAS, The benefit and value of the Tunnel Easement, an essential link in the Bay Tunnel right of way, exceeded the value of the Open Space Easement and Trail Easement, and therefore, the parties did not contemplate the exchange of any monetary consideration in the Exchange Agreement or Exchange Agreement Amendment; and

WHEREAS, San Francisco Charter Section 8B.121(a) grants this Commission the exclusive charge of the real property assets under the Commission's jurisdiction and provides that the Commission may transfer real property interests declared to be surplus to the needs of any utility; and

WHEREAS, SFPUC real estate staff, in coordination with engineering, watershed, and operations staff, negotiated provisions in the Trail Easement Agreement to ensure the compatibility of the Trail Easement with SFPUC's use of its service road, and determined that given those provisions the Trail Easement interest was surplus to the needs of any utility; and

WHEREAS, The District completed its study and obtained all regulatory and District Board approvals required to exchange the Open Space Easement for the proposed Trail Easement as provided for in District Board Resolution number 16-60; and

WHEREAS, SFPUC staff now seeks approval to enter into the Exchange Agreement Amendment whereby the SFPUC will convey the Trail Easement to the District via the Trail Easement Agreement and in exchange, the District will quitclaim to the City all right, title and interest in the Open Space Easement; and

WHEREAS, The proposed Second Amendment to Agreement to Exchange Interests in Real Property with Midpeninsula Regional Open Space District (District), whereby the SFPUC will grant a new 20-foot wide easement to District for a public trail on property under the SFPUC's jurisdiction in East Palo Alto, and where the District would quitclaim all right, title and interest in an existing open space easement on the Ravenswood Property that the SFPUC granted to District pursuant to the Exchange Agreement, and that would construct a new segment of the Bay Trail connecting University Avenue to the Ravenswood Open Space Preserve, would result in temporary and permanent environmental impacts for which mitigation measures were identified in the November 2016 Initial Study/Mitigated Negative Declaration (2016 IS/MND) prepared by the District in connection with approval of the Bay Trail Connection at Ravenswood Open Space Project; and

WHEREAS, To implement the Bay Trail Connection at Ravenswood Open Space Project, the project contractor and District must implement the mitigation measures identified in the 2016 IS/MND and the mitigation measures adopted as conditions of approval in District Resolution No 16-60 on November 16, 2016 to mitigate impacts to a less than significant level, and some of the mitigation measures would be implemented on SFPUC property; and

WHEREAS, The 2016 IS/MND has been made available for review by this Commission and the public and is a part of the record of this approval by this Commission. The SFPUC, as a responsible agency under CEQA, has considered the 2016 IS/MND which cover the Bay Trail Connection at Ravenswood Open Space Project, including the environmental effects of the Bay Trail Connection at Ravenswood Open Space Project and the mitigation measures to reduce the significant adverse environmental impacts of the project to a less than significant level; and

WHEREAS, The 1994 2016 IS/MND and other materials that are part of the record of this approval are available for public review at the SFPUC offices, Real Estate Services, 525 Golden Gate Avenue, 10th Floor, which is the custodian of records for the requested MOU and construction permit approval; and

WHEREAS, No new information has come to light that would affect the conclusions of 2016 IS/MND; be it

RESOLVED, That the SFPUC has reviewed and considered the 2016 IS/MND and finds that this approval is within the scope of the Second Amendment to Agreement to Exchange Interests in Real Property with Midpeninsula Regional Open Space District and the mitigation measures evaluated in the 2016 IS/MND, and that these documents are adequate for its use in approving the Second Amendment to Agreement to Exchange Interests in Real Property with Midpeninsula Regional Open Space District; and be it

FURTHER RESOLVED, That since the 2016 IS/MND were finalized, there have been no substantial changes in the Bay Trail Connection at Ravenswood Open Space Project and no substantial changes in the Bay Trail Connection at Ravenswood Open Space Project circumstances that would require major revisions to the 2016 IS/MND due to the 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 2016 IS/MND; and be it

FURTHER RESOLVED, That the District has already adopted the mitigation measures recommended in the 2016 IS/MND, and has authority to implement the mitigation measures or to seek any required approvals for the mitigation measures, and the SFPUC has no direct authority or responsibility to implement the mitigation measures; now, therefore, be it

RESOLVED, That this Commission hereby ratifies, approves and authorizes all actions heretofore taken by any City official in connection with the Second Amendment to Agreement, and, be it

FURTHER RESOLVED, That this Commission hereby approves the terms and conditions of the Exchange Agreement Amendment and the Easement A Agreement; and, be it

FURTHER RESOLVED, That this Commission has determined that competitive bidding of the grant of a Trail Easement is impractical, because the easement area is not capable of independent development and will be exchanged for another real property interest previously acquired by the SFPUC from the same party; and, be it

FURTHER RESOLVED, That this Commission has determined that the Trail Easement under the terms and conditions of the Easement Agreement is surplus to the needs of any of the utilities under the Commission's jurisdiction, and hereby authorizes and directs the SFPUC's General Manager or Director of Property to execute the Exchange Agreement Amendment and the Easement Agreement, subject to the approval of the Board of Supervisors and Mayor; and be it

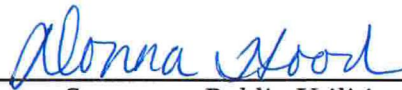
FURTHER RESOLVED, That this Commission hereby authorizes the Director of Property or the SFPUC General Manager to enter into any amendments or modifications to the Exchange Agreement Amendment and the Easement Agreement, including without limitation, the exhibits, that the General Manager determines, 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 Agreement or this

resolution; and are in compliance with all applicable laws, including the City Charter; and be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the SFPUC General Manager to execute and deliver the Easement Agreement conveying the Trail Easement to Buyer and to accept the quitclaim of the Open Space Easement; and be it

FURTHER RESOLVED, That upon approval by City's Board of Supervisors and the Mayor, this Commission authorizes the Director of Property and/or the General Manager of the SFPUC to take any and all other steps they, in consultation with the City Attorney, deem necessary and advisable to effectuate the purpose and intent of this Resolution.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of April 25, 2017.



Secretary, Public Utilities Commission