

1 [Settlement of Lawsuit]
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4 **Ordinance authorizing settlement of the lawsuit filed by State of California, acting**
5 **through the Department of Transportation ("Caltrans") against the City and County of**
6 **San Francisco in exchange for the provision of an easement modification agreement**
7 **relocating certain access rights and otherwise preserving the pre-existing easement**
8 **rights of the City and County of San Francisco and making environmental findings; the**
9 **lawsuit was filed on June 29, 2006 in Alameda County Superior Court, Case No.**
10 **RG06277087, entitled State of California v. Foley, City and County of San Francisco, et**
11 **al.; other material terms of said settlement are set forth in the Stipulation For Judgment**
12 **in Condemnation and [Proposed] Judgment (and exhibits thereto), contained in Board**
13 **of Supervisors File No. 090212.**

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15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The City Attorney is hereby authorized to settle the action entitled State of
17 California v. Foley, City and County of San Francisco, et al., Alameda County Superior Court
18 Case No. RG06277087 in exchange for an easement modification agreement relocating
19 certain access rights provided to the City and County of San Francisco ("CCSF") across
20 property owned by Catherine Foley (the "Property") by an easement indenture in favor of
21 CCSF dated August 7, 1924 from Daniel Sullivan and Annie M. Sullivan (the "1924
22 Easement"). The easement modification specifically permits CCSF to use a portion of certain
23 existing private roads previously restricted under the 1924 Easement. Except as specifically
24 set forth in the agreement of the parties, CCSF's rights under the 1924 Easement, including
25 its right to a 100-foot wide easement for electrical transmission lines, are not extinguished,

1 and the 1924 Easement shall remain in full force and effect. Caltrans will pay CCSF's costs
2 associated with the litigation of this Action; the parties shall each bear their own attorney fees.
3 Additional terms of CCSF's agreement with Caltrans are contained in the Stipulation For
4 Judgment in Condemnation and [Proposed] Judgment, contained in Board of Supervisors File
5 No. 090212.

6 Section 2. The above-named action was filed in Alameda County Superior Court on
7 July 29, 2006, and the following parties were named in the lawsuit: The People of the State of
8 California (acting by and through the Department of Transportation); Catherine Foley; County
9 of Alameda; Coleman Foley; First American Title Co.; AXA equitable Life Insurance Company;
10 Wells Fargo Bank N.A.; Chevron Corporation; Pacific Gas and Electric Company and City
11 and County of San Francisco.

12 Section 3: The action was brought by Caltrans in furtherance of a Caltrans highway
13 improvement and utility project, seeking a fee interest in property located in unincorporated
14 Alameda County. The affected property, owned by Catherine Foley ("Foley"), is encumbered
15 by the 1924 Easement in favor of CCSF.

16 Section 4: Plaintiff and Foley have agreed to the terms of the Stipulation For Judgment
17 in Condemnation and [Proposed] Judgment, contained in Board of Supervisors File No.
18 090212, which terms are incorporated herein by this reference. The remaining parties to this
19 action have been dismissed, or have disclaimed any interest in the property at issue in the
20 action.

21 Section 5: By the terms of the proposed settlement, CCSF will receive improved
22 access over the Foley Property, and Caltrans will be prohibited from interfering with CCSF's
23 present or reasonable future uses of the Property.

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1 Section 6: The San Francisco Public Utilities Commission approved this settlement by
2 Resolution No. 09-0032 on February 10, 2009. A copy of that resolution is contained in Board
3 of Supervisors File No. 090212 and is incorporated herein by this reference.

4 Section 7: Environmental Findings. The Planning Department has determined that the
5 actions contemplated in this Ordinance are in compliance with the California Environmental
6 Quality Act (California Public Resources Code sections 21000 et seq.). Said determination is
7 on file with the Clerk of the Board of Supervisors in File No. 090212 and is incorporated herein
8 by reference.

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10 APPROVED AS TO FORM AND
11 RECOMMENDED:

12 DENNIS J. HERRERA
13 City Attorney

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KRISTEN A. JENSEN
16 Deputy City Attorney

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RECOMMENDED:

San Francisco Public Utilities Commission

ED HARRINGTON
General Manager
San Francisco Public Utilities Commission

APPROVED:

MICHAEL HOUSH
Secretary
San Francisco Public Utilities Commission