

1 [Real Property Sale Agreement - State of California - Portions of SFPUC Parcel Nos. 57 and
2 65 - State Route 84 / Niles Canyon Safety Improvement Project in Alameda County - \$11,970]

3 **Resolution 1) approving and authorizing the General Manager of the San Francisco**
4 **Public Utilities Commission (“SFPUC”) and/or the Director of Property, on behalf of the**
5 **City and County of San Francisco (“City”), to sell fee and easement interest in certain**
6 **real property located along State Route 84 in the City of Fremont and in unincorporated**
7 **Alameda County to the State of California, acting through its California Department of**
8 **Transportation (“Caltrans”); 2) approving and authorizing an Agreement for Sale of**
9 **Real Estate, Temporary Construction Easement, and Utility Easement (“Sale**
10 **Agreement”) for the sale of the Property, as defined herein, to Caltrans; 3) authorizing**
11 **the SFPUC General Manager and/or City’s Director of Property to execute the Sale**
12 **Agreement, make certain modifications, and take certain actions in furtherance of this**
13 **Resolution and the Sale Agreement, as defined herein; 4) adopting findings declaring**
14 **that the real property is “surplus land” and “exempt surplus land” pursuant to the**
15 **California Surplus Land Act; 5) determining that a competitive bidding process for the**
16 **conveyance of the Property is impractical and not in the public interest, in accordance**
17 **with Administrative Code, Section 23.3; 6) adopting responsible agency findings under**
18 **the California Environmental Quality Act (“CEQA”) and Section 15091 of the CEQA**
19 **Guidelines; and 7) adopting the Planning Department’s findings that the Sale**
20 **Agreement, and the transaction contemplated therein, is consistent with the General**
21 **Plan, and the eight priority policies of Planning Code, Section 101.1.**

22
23 WHEREAS, The City owns certain real property under the jurisdiction of the SFPUC
24 located along State Route 84 (“SR-84”) spanning from the City of Fremont to Interstate 680 in
25 the unincorporated Town of Sunol, Alameda County, consisting of underutilized, unimproved

1 portions of SFPUC Parcel 57, also designated as portions of Assessor’s Parcel No. 507-761-
2 2-4 in the City of Fremont in Alameda County, and underutilized, unimproved portions of
3 SFPUC Parcel 65, also designated as portions of Assessor’s Parcel Nos. 96-375-7-5 and 96-
4 375-12-2 in unincorporated Alameda County; and

5 WHEREAS, Caltrans proposes to construct safety improvements and address
6 structural and operational deficiencies at spot locations along SR-84 on Niles Canyon Road
7 and Paloma Way (“Project”); and

8 WHEREAS, As a component of the Project, Caltrans desires to acquire from City
9 approximately 17,832 square feet of unimproved, agricultural land in fee, and approximately
10 16,150 square feet of temporary construction easement area; and

11 WHEREAS, As another Project component, Caltrans desires to purchase
12 approximately 1,583 square feet of electrical utility easement area to convey to Pacific Gas &
13 Electric Company (“PG&E”) to accommodate new PG&E electrical utilities; and

14 WHEREAS, The fee interests and easement areas that City proposes to sell to
15 Caltrans are collectively referred to herein as the “Property;” and

16 WHEREAS, Caltrans has the authority to exercise the power of eminent domain and
17 compel City to sell the Property; and

18 WHEREAS, Caltrans and City recognize the expense, time, effort, and risk to both
19 parties in determining the compensation for acquiring the Property by eminent domain
20 litigation, and to avoid such litigation, Caltrans and City desire to enter into the Sale
21 Agreement; and

22 WHEREAS, The SFPUC has no utility use for the unimproved Property, which was
23 deemed underutilized per an SFPUC statement of underutilization for the Real Property dated
24 May 18, 2021, and signed by the Assistant General Managers of the Water, Wastewater, and
25 Power Enterprises; and

1 WHEREAS, On September 13, 2022, by Resolution No. 22-0159, the SFPUC
2 Commission declared the Property surplus to its utility needs pursuant to Charter Section
3 8B.121(e), and approved the terms and conditions of the Sale Agreement, subject to approval
4 by the Board of Supervisors; and

5 WHEREAS, On September 13, 2022, by Resolution No. 22-0159, the SFPUC
6 Commission declared the Property as “surplus land,” as defined in California Government
7 Code Section 54221(b), because it is owned in fee simple by City and not necessary for City’s
8 use; and

9 WHEREAS, On September 13, 2022, by Resolution No. 22-0159, the SFPUC
10 Commission declared the Property as “exempt surplus land,” as defined in California
11 Government Code, Section 54221(f)(1)(D), because it is surplus land that the City is
12 transferring to a state agency for the agency’s use; and

13 WHEREAS, Under Section 23.3 of the Administrative Code, the City may convey the
14 Property to Caltrans without a competitive bidding process if the Board of Supervisors
15 determines a competitive process “is impractical, impossible, or is otherwise not in the public
16 interest, including, for example only and not by way of limitation, when the Real Property is
17 not capable of independent development, will be exchanged for other Real Property, or when
18 the Board determines that a negotiated direct Conveyance of the Real Property will further a
19 public purpose;” and

20 WHEREAS, On September 13, 2022, by Resolution No. 22-0159, the SFPUC
21 Commission determined that, in this case, a competitive bidding process is impractical and
22 otherwise not in the public interest because the sale of the Property to Caltrans will avoid the
23 expense, time, effort, and risk of eminent domain litigation and will support the construction of
24 public highway improvements, and because the Property’s location and dimensions makes
25 use by any other entity impractical; and

1 WHEREAS, The SFPUC intends to sell the Property to Caltrans on an “as-is with all
2 faults” basis; and

3 WHEREAS, Caltrans’ offer of fair and just compensation in the sum of \$11,970 for its
4 purchase of the Property, including electrical utility easements that will be conveyed to PG&E,
5 was made in accordance with California Government Code, Section 7267.2; and

6 WHEREAS, On June 17, 2021, City’s Director of Property reviewed and concurred with
7 Caltrans’ conclusion that the value of the Property is \$11,970; and

8 WHEREAS, Acting as the Lead Agency under California Environmental Quality Act
9 (“CEQA”) and National Environmental Policy Act (“NEPA”), Caltrans prepared the Niles
10 Canyon Safety Improvements Project Environmental Impact Report/Environmental
11 Assessment (“EIR/EA”) with Findings of No Significant Impact (“FONSI”), pursuant to the
12 provisions of CEQA and NEPA; and Caltrans certified the EIR on January 18, 2018 (State
13 Clearinghouse Number 2015092075), and a Notice of Determination has been published in
14 compliance with CEQA, and Caltrans has issued a FONSI in compliance with NEPA; and

15 WHEREAS, Following certification, design changes were incorporated into the Project,
16 which required a subsequent review and revalidation of the approved EIR/EA and FONSI; and
17 additional environmental review was conducted, necessary documentation provided, and the
18 revalidation process completed, and Caltrans provided concurrence with the previous
19 NEPA/CEQA conclusion and determined in its NEPA/CEQA Revalidation Form dated June
20 30, 2022, that the 2018 Final EIR/EA and FONSI remains valid; and

21 WHEREAS, The City is a Responsible Agency for the Project under CEQA because a
22 portion of the Project requires City consent for Caltrans’ use and purchase of SFPUC right-of-
23 way; and

24 WHEREAS, The City has reviewed the Final EIR/EA and FONSI and NEPA/CEQA
25 Revalidation Form and determined that the City’s approval of a Sale Agreement for the

1 Project is within the scope of the Project’s CEQA approval and that these documents are
2 adequate for the City’s use in approving the Sale Agreement for the Project; and the EIR/EA
3 and FONSI, the NEPA/CEQA Revalidation Form, CEQA Findings, and other Project materials
4 that are part of the record of this approval are available for public review at the SFPUC
5 offices, Real Estate Services Division, 525 Golden Gate Avenue, 10th Floor, San Francisco,
6 CA; and

7 WHEREAS, Since Caltrans approved the Project and completed the Revalidation of
8 the EIR/EA and FONSI, there have been no substantial changes in the Project or changes in
9 Project circumstances that would result in new significant environmental effects or an increase
10 in the severity of previously identified significant impacts, and there is no new information of
11 substantial importance that would change the conclusions set forth in the EIR/EA and FONSI;
12 and

13 WHEREAS, Caltrans has adopted the mitigation measures included in the EIR/EA and
14 FONSI and set forth in the mitigation program and have assumed responsibility for their
15 implementation; and the City has no direct authority over the Project other than to enable the
16 Project sponsors, through issuance of the Sale Agreement, to carry out the proposed action,
17 and has no responsibility for mitigating or avoiding any environmental effects of the project;
18 and

19 WHEREAS, The Planning Department, by letter dated April 29, 2021, which letter is on
20 file with the Clerk of the Board of Supervisors under File No. 221067 and which letter is
21 incorporated herein by this reference, found that the conveyance of the Property to Caltrans is
22 consistent with the City’s General Plan, and with the eight priority policies of Planning Code,
23 Section 101.1 and that the Project is within the scope of the CEQA/NEPA review under the
24 EIR/EA; and

25

1 WHEREAS, A copy of the Sale Agreement is on file with the Clerk of the Board of
2 Supervisors under File No. 221067, which is incorporated herein by this reference and is
3 considered part of the record before this Board; and

4 WHEREAS, The SFPUC has by its Resolution No. 22-0159, dated September 13,
5 2022, a copy of which is on file with the Clerk of the Board in File No. 221067, approved the
6 Sale Agreement and authorized the SFPUC General Manager to execute the necessary
7 conveyance documents for the sale of the Property, including the Sale Agreement, upon
8 approval from the Board of Supervisors and Mayor; now, therefore, be it

9 RESOLVED, That the Board of Supervisors hereby adopts the findings contained in the
10 recitals set forth above as if set forth here in full, and also adopts the environmental findings
11 previously adopted by Caltrans in conjunction with Caltrans' approval of the Project, in
12 compliance with Section 15091 of the CEQA Guidelines; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors hereby finds, in consideration
14 of the foregoing, that the Property is "surplus land," as defined in California Government
15 Code, Section 54221(b) because it is owned in fee simple by City and not necessary for City's
16 use; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors hereby finds, in consideration
18 of the foregoing, that the Property is "exempt surplus land," as defined in Government Code,
19 Section 54221(f)(1)(D) because it is surplus land that the City is transferring to a state agency
20 for the agency's use; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors hereby determines, in
22 accordance with Section 23.3 of the Administrative Code, that a competitive bidding process
23 for the conveyance of the Property is impractical and is otherwise not in the public interest
24 because the sale of the Property to Caltrans will avoid the expense, time, effort, and risk of
25 eminent domain litigation and will support the construction of public highway improvements

1 and because the Property's location and dimensions makes use by any other entity
2 impractical; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the
4 conveyance of the Property to Caltrans is consistent with the General Plan, and with the eight
5 priority policies of City Planning Code, Section 101.1 for the same reasons as set forth in the
6 letter of the Director of Planning dated April 29, 2021, and hereby incorporates such findings
7 as though fully set forth in this Resolution; and, be it

8 FURTHER RESOLVED, That, in accordance with the recommendation of the SFPUC,
9 the Board of Supervisors approves and authorizes the SFPUC to sell the Property to Caltrans
10 for \$11,970; and, be it

11 FURTHER RESOLVED, That, in accordance with the recommendation of the SFPUC,
12 the Board of Supervisors approves the Sale Agreement presented to the Board, and approves
13 and authorizes the SFPUC General Manager and/or City's Director of Property to take all
14 actions necessary or appropriate to sell the Property and effectuate the Sale Agreement and
15 this Resolution; and, be it

16 FURTHER RESOLVED, That the SFPUC General Manager and/or City's Director of
17 Property is hereby authorized and urged in the name and on behalf of the City and County, to
18 execute the Sale Agreement for the sale of the Property to Caltrans in accordance with the
19 terms and conditions of the Sale Agreement, and to take any all steps (including, but not
20 limited to, the execution and delivery of any and all certificates, agreements, notices,
21 consents, escrow instructions, closing documents and other instruments or documents) as the
22 SFPUC General Manager and/or City's Director of Property deems necessary or appropriate
23 pursuant to the Sale Agreement, or to otherwise effectuate the purpose and intent of this
24 Resolution, such determination to be conclusively evidenced by the execution and delivery by
25

1 the SFPUC General Manager and/or City’s Director of Property of any such documents; and,
2 be it

3 FURTHER RESOLVED, That in accordance with the recommendation of the SFPUC
4 General Manager, the Board of Supervisors hereby ratifies, approves, and authorizes all
5 actions heretofore taken by any City official in connection with the Sale Agreement and the
6 transaction contemplated thereby; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors authorizes the SFPUC General
8 Manager and/or City’s Director of Property, in consultation with the Office of the City Attorney,
9 to enter into any additions, amendments, or other modifications to the Sale Agreement
10 (including, without limitation, the exhibits and ancillary agreements attached to the Sale
11 Agreement), that the SFPUC General Manager and/or City’s Director of Property determine
12 are in the best interests of the City, do not materially decrease the benefits to the City with
13 respect to the Property, do not materially increase the obligations or liabilities of either SFPUC
14 or the City, are necessary or advisable to complete the transaction contemplated in the Sale
15 Agreement, effectuate the purpose and intent of this Resolution, such determination to be
16 conclusively evidenced by the execution and delivery by the SFPUC General Manager and/or
17 City’s Director of Property of any such additions, amendments, or other modifications, and are
18 in compliance with all applicable laws, including the City Charter; and, be it

19 FURTHER RESOLVED, That within thirty (30) days after the Closing Date (as
20 defined in the Sale Agreement), the SFPUC shall provide any applicable final contracts to
21 the Clerk of the Board for inclusion into the official file.