

1 [Memorandum of Agreement - Issuance of Revocable Licenses and Easements Agreements -
2 City of Mountain View - Waiver of Administrative Code Appraisal Requirements]

3 **Ordinance approving the terms and conditions of, and authorizing the General Manager**
4 **of the San Francisco Public Utilities Commission (SFPUC) to seek approval from the**
5 **Board of Supervisors and Mayor to execute, a Memorandum of Agreement (MOA) with**
6 **the City of Mountain View, California with a term of up to 20 years, providing for the**
7 **SFPUC’s issuance to Mountain View of eight revocable licenses (New Licenses) for the**
8 **use of SFPUC lands for public recreational purposes in exchange for Mountain View’s**
9 **grant to the SFPUC of nine easements (Proposed Easements) and Mountain View’s**
10 **agreement to perform other services, subject to Board of Supervisors approval**
11 **pursuant to Charter, Section 9.118; exempting the MOA, the New Licenses, and the**
12 **Proposed Easements from the appraisal requirements of San Francisco Administrative**
13 **Code, Sections 23.3 and 23.30; affirming the SFPUC’s determination under the**
14 **California Environmental Quality Act; and making findings, including findings of**
15 **consistency with the General Plan, and the eight priority policies of Planning Code,**
16 **Section 101.1(b).**

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19 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
20 **Additions to Codes** are in *single-underline italics Times New Roman font*.
21 **Deletions to Codes** are in *~~strikethrough italics Times New Roman font~~*.
22 **Board amendment additions** are in double-underlined Arial font.
23 **Board amendment deletions** are in ~~strikethrough Arial font~~.
24 **Asterisks (* * * *)** indicate the omission of unchanged Code
25 subsections or parts of tables.

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

25 Section 1. Background and Findings.

1 (a) The City and County of San Francisco (City), under the jurisdiction of the San
2 Francisco Public Utilities Commission (SFPUC), owns in fee certain real property in the City of
3 Mountain View, California (Mountain View) that contains the SFPUC's Bay Division Pipelines
4 3 and 4.

5 (b) The SFPUC lacks documentation of permanent rights in nine parcels of real
6 property (Gap Parcels) that constitute portions of the SFPUC's pipeline right-of-way that lie
7 beneath the following street crossings located in Mountain View: Crisanto Avenue, Fayette
8 Drive, Moffett Boulevard, Ortega Avenue, Rengstorff Avenue, San Antonio Road, Stierlin
9 Road, Tyrella Avenue, and Whisman Road.

10 (c) The City, through the SFPUC, also owns a parcel of real property located between
11 Stierlin Road and Moffett Boulevard in Mountain View (Maintenance Parcel) identified as
12 SFPUC Parcel 199-A that consists of a vacant unlicensed parcel.

13 (d) To perfect the SFPUC's rights in, and use of, the Gap Parcels and the SFPUC's
14 pipelines and related appurtenances within, across, and under the Gap Parcels for the benefit
15 of its constituents and rate payers, the SFPUC desires to obtain from Mountain View
16 permanent easement rights under and across the Gap Parcels pursuant to nine easement
17 deeds (Proposed Easements) to avoid the potential risk and huge costs of being forced to
18 relocate its infrastructure located in the Gap Parcels.

19 (e) The SFPUC has identified 29 trees located on certain parcels of City property
20 located in Mountain View that pose hazards or unacceptable risks to the SFPUC pipelines
21 and appurtenances and should be removed in accordance with the SFPUC Right of Way
22 Encroachment Policy and the SFPUC Right of Way Integrated Vegetation Management
23 Policy.

24 (f) In addition to its desire to acquire such permanent easement rights pursuant to the
25 Proposed Easements, the SFPUC seeks Mountain View's agreement to perform the following

1 services (Additional Services): the removal of the identified 29 trees, maintenance of the
2 Maintenance Parcel, and assistance with community outreach in the SFPUC's ongoing efforts
3 to remove existing and future encroachments by adjoining third-party landowners upon City
4 property within Mountain View.

5 (g) Mountain View has long occupied and used for recreational uses several SFPUC
6 parcels located in Mountain View (collectively, SFPUC Parcels) pursuant to seven existing,
7 outdated SFPUC revocable permits (Existing Permits). The recreational uses include a
8 garden, pedestrian and bicycle trails, public parks and playgrounds, and landscaping.

9 (h) Under the terms of the Existing Permits, Mountain View pays no fee to the SFPUC
10 for its use of the SFPUC Parcels, although some of the Existing Permits obligate Mountain
11 View to reimburse the SFPUC for Mountain View's pro rata share of property taxes and
12 assessments.

13 (i) In exchange for the Proposed Easements across the Gap Parcels and Mountain
14 View's performance of the Additional Services, the SFPUC is willing to grant Mountain View
15 seven new revocable licenses to replace the outdated Existing Permits. The new revocable
16 licenses will have an initial term of 10 years, with two five-year extension terms which will
17 become automatically effective unless (1) the license is previously terminated or (2) Mountain
18 View is in default under the terms of the license. Each license has a total potential term of 20
19 years.

20 (j) The seven replacement revocable licenses are as follows: (1) a license for
21 approximately 13,504 square feet of SFPUC Parcel No. 214, designated by Mountain View as
22 Klein Park; (2) a license for approximately 35,806 square feet of SFPUC Parcel No. 210,
23 designated by Mountain View as Rengstorff Park; (3) a license for approximately 14,350
24 square feet of SFPUC Parcel No. 208A, designated by Mountain View as Senior Garden; (4)
25 a license for approximately 70,132 square feet of SFPUC Parcel N. 203-A, designated by

1 Mountain View as Rex Manor Park; (5) A license for approximately 3,750 square feet of
2 SFPUC Parcel No. 201A, designated by Mountain View as the Stierlin Road Sidewalk
3 Connector; and (6) a license for approximately 122,000 square feet of SFPUC Parcel No.
4 194, 195-A, and 196-A, designated by Mountain View as the Stevens Creek Trail and
5 Whisman Park.

6 (k) The SFPUC is also willing to grant Mountain View one new revocable license for the
7 use of approximately 57,500 square feet of SFPUC Parcels No. 227, 228, and 229, located
8 between El Camino Real and Fayette Drive in Mountain View where Mountain View desires to
9 construct a new public park to be designated Fayette Park. The new Fayette Park license will
10 also have a total potential term of 20 years.

11 (l) The SFPUC and Mountain View and the City have negotiated and prepared a
12 proposed Memorandum of Agreement (MOA), a copy of which is on file with the Clerk of the
13 Board of Supervisors in File No. 190703, which provides for the SFPUC's issuance of seven,
14 revocable modern licenses to replace the seven outdated Existing Permits on the SFPUC
15 Parcels and issuance of a new revocable license to allow Mountain View to construct and
16 operate Fayette Park for public use, for a total of eight revocable licenses (New Licenses).

17 (m) As consideration for the eight New Licenses, pursuant to the MOA, Mountain View
18 shall provide the following: (1) the grant pursuant to the Proposed Easements of permanent,
19 subsurface easement rights to SFPUC, at no cost, to perfect the SFPUC's rights in, and use
20 of, the Gap Parcels; (2) Mountain View's removal of 29 trees that present pipeline hazards
21 located on certain City property within Mountain View in accordance with the SFPUC's Right
22 of Way Encroachment Policy and the SFPUC's Right of Way Integrated Vegetation
23 Management Policy; (3) Mountain View's maintenance of the Maintenance Parcel throughout
24 the term of the MOA; (4) Mountain View's assistance in the SFPUC's ongoing efforts under
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1 these policies to remove encroachments by adjoining third-party landowners upon certain
2 other portions of the SFPUC's pipeline right-of-way within Mountain View; and (5) Mountain
3 View's reimbursement of the SFPUC's costs of mitigation and removal of Mountain View's
4 improvements if the SFPUC needs to disrupt Mountain View's improvements on the SFPUC
5 Parcels.

6 (n) On February 2, 2016, as a Lead Agency under the California Environmental Quality
7 Act (CEQA), Mountain View determined that the proposed MOA, including the New Licenses
8 and Proposed Easements, is categorically exempt under Sections 15332, 15321, and
9 15301(h) ("Infill Development Projects," "Enforcement Actions by Regulatory Agencies," and
10 "Existing Facilities") of the CEQA Guidelines. On February 3, 2016, Mountain View issued a
11 Notice of Exemption (NOE).

12 (o) On May 28, 2019, the SFPUC adopted SFPUC Resolution No. 19-0099 by which
13 the SFPUC approved the transactions contemplated by the MOA and, as a Responsible
14 Agency under CEQA, made the following determinations (SFPUC CEQA Findings): (1) the
15 SFPUC reviewed the proposed MOA and reviewed and considered the categorical exemption
16 and Notice of Exemption (NOE) issued by Mountain View, and the record as a whole; (2) the
17 MOA is within the scope of Mountain View's CEQA determination; (3) the categorical
18 exemption and the NOE were adequate for SFPUC's use in approving the MOA; and (4) since
19 the categorical exemption and the Notice of Exemption were finalized, there have been no
20 project changes and no substantial changes in project circumstances that would require
21 changes to Mountain View's CEQA determinations due to the involvement of any significant
22 environmental effects, and there is no new information of substantial importance that would
23 change the conclusions set forth in the categorical exemption. Mountain View's categorical
24 exemption and the NOE are part of the record of such approval and copies of said
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1 documents, along with SFPUC Resolution 19-0099, are on file with the Clerk of the Board of
2 Supervisors in File No. 190703 and are incorporated herein by reference.

3 (p) The Board of Supervisors hereby adopts and incorporates by reference as though
4 fully set forth herein the SFPUC CEQA Findings.

5 (q) By letter to the Board of Supervisors dated June 4, 2019, the Planning Department
6 found that the proposed MOA was consistent with the City's General Plan and the eight
7 priority policies of Planning Code Section 101.1. A copy of said letter is on file with the Clerk
8 of the Board of Supervisors in File No. 190703, and is incorporated herein by reference. The
9 Board of Supervisors finds that the proposed MOA is consistent with the City's General Plan
10 and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in said
11 letter.

12 Section 2. Waiver of Administrative Code Requirement for Market Rent Determination.

13 (a) Because of the substantial non-monetary consideration to be received from
14 Mountain View in exchange for the New Licenses and the Additional Services, SFPUC has
15 determined that the appraisal requirements in Administrative Code Section 23.3 and Section
16 23.30 should not apply to the transaction between SFPUC and Mountain View.

17 (b) The Board of Supervisors hereby waives Section 23.3 and Section 23.30 of the
18 Administrative Code to the extent they apply to the MOA, the City's acquisition of the
19 Proposed Easements, and the City's issuance of the New Licenses to Mountain View.

20 Section 3. Approval of Memorandum of Agreement.

21 (a) The SFPUC's General Manager is authorized to execute and deliver the MOA and
22 the New Licenses, accept the Proposed Easements, perform all acts required of the City
23 under the MOA, the New Licenses, and the Proposed Easements, and enter into
24 amendments or other modifications to the MOA, the New Licenses, and the Proposed
25 Easements (including, without limitation, attaching and modifying any exhibits to such

1 instruments) that the General Manager, in consultation with the City Attorney, determines are
2 in the best interest of the City, do not materially decrease the City's benefits, do not materially
3 increase the City's obligations or liabilities, do not authorize any activities without pursuing all
4 required regulatory and environmental review and approvals, and are necessary or advisable
5 to complete the transactions which the New License contemplates and effectuate the purpose
6 and intent of this ordinance.

7 (b) Within 30 days of the MOA, the Proposed Easements, and the New Licenses being
8 fully executed and delivered by all parties, the SFPUC shall provide the final MOA to the Clerk
9 of the Board of Supervisors for inclusion in File No. 190703, the official file for this ordinance.

10 Section 4. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

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15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

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19 By: _____
20 RICHARD HANDEL
21 Deputy City Attorney

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