

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 15-0156

WHEREAS, The City and County of San Francisco (City), through its Public Utilities Commission (SFPUC) owns certain real property consisting of a portion of SFPUC Parcel 656 adjacent to its intersection with State Highway 108 (also known as McHenry Avenue) between Claratina and Grecian Avenues (SFPUC Property) in the City of Modesto (Modesto), in Stanislaus County, California; and

WHEREAS, The SFPUC maintains two electrical transmission towers, overhead power lines, valve boxes, and three subsurface water transmission pipelines (San Joaquin Pipeline Nos. 1, 2, and 3); and

WHEREAS, JWG McHenry, LLC (Developer) owns approximately 6.17 acres (McHenry Property) that the SFPUC Property bisects; and

WHEREAS, As a condition of its approval of Developer's plans to develop the McHenry Property (Project), Modesto required Developer to widen McHenry Avenue between Claratina and Grecian Avenues, including installing street, curb, gutter, and sidewalk improvements (Improvements) within an approximately 3,627 square foot portion of the SFPUC Property (Easement Area); and

WHEREAS, San Francisco Charter Section 8B.121(a) grants the 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, The SFPUC is willing to allow the Developer to construct the Improvements within the Easement Area at the Developer's expense and to approve and recommend that the City convey an easement to Modesto for roadway and sidewalk use (Easement), provided that (i) the Improvements include a protective bridge or cap (Bridge) over the SFPUC's subsurface water transmission pipelines; (ii) the Easement is conveyed in an agreement in form acceptable to City, reserving the SFPUC's right to use the Easement Area for uses that are compatible with the Easement; (iii) Modesto accept ownership of the Improvements and responsibility for maintenance and repair; and (iv) City receive payment for the fair market value of the Easement; and

WHEREAS, Modesto maintains McHenry Avenue under an agreement with the California Department of Transportation (Caltrans), Modesto is willing to accept ownership and responsibility for maintenance of the Improvements, and such arrangement is acceptable to Caltrans; and

WHEREAS, The SFPUC received an appraisal for the Easement prepared by Giomi, Inc., dated July 22, 2014, which was updated on June 4, 2015 and approved by the City's Director of Real Property, in the amount of \$35,000 (Appraisal); and

WHEREAS, The fair market value of the Easement was established based on the appraised value set forth in the Appraisal; and

WHEREAS, SFPUC staff and Developer have negotiated proposed terms and conditions of an Agreement for Sale of Real Estate (Sale Agreement) that is part of the record before this Commission, by which Developer agrees to pay as the purchase price for the Easement the appraised value, and City agrees to convey the Easement to Modesto; and

WHEREAS, SFPUC staff and Modesto have negotiated proposed terms and conditions of an easement agreement that is part of the record before this Commission, by which Modesto accepts ownership of the Improvements, including the Bridge, and responsibility for operation, maintenance and repair of the Improvements, and City conveys to Modesto an easement for such purposes (Easement Agreement); and

WHEREAS, by Resolution No. 2015-166 adopted on May 26, 2015, Modesto's City Council approved the Easement Agreement, and Modesto's City Manager has executed the Easement Agreement on behalf of Modesto; and

WHEREAS, The Project could result in temporary and permanent impacts for which mitigation measures were identified in the City of Modesto Urban Area General Plan Update Master Environmental Impact Report (Modesto General Plan EIR) which was certified by the Modesto City Council on October 14, 2008; and

WHEREAS, To implement the Project the City of Modesto must implement the mitigation measures identified in the Modesto General Plan EIR and the mitigation measures and conditions of approval adopted on December 10, 2013 by the City of Modesto Director of Community and Economic Development to mitigate impacts to a less than significant level, and some of the mitigation measures would be implemented on SFPUC Right of Way land; and

WHEREAS, The Modesto General Plan EIR has been made available for review by this Commission and the public and are a part of the record of this approval by this Commission. The SFPUC, as a responsible agency under CEQA, has considered the Modesto General Plan EIR, including the environmental effects of the Project and the mitigation measures to reduce the significant adverse environmental impacts of the project to a less than significant level. The Modesto General Plan EIR and the other materials that are part of the record of this approval are available for public review at the SFPUC Real Estate Services Division, 525 Golden Gate Avenue, 10th Floor, which is the custodian of records for the requested permanent Easement; and

WHEREAS, No new information has come to light that would affect the conclusions of the Modesto General Plan EIR with respect to the Project, or the conclusions of the Modesto General Plan EIR; now, therefore, be it

RESOLVED, That the SFPUC has reviewed and considered the City of Modesto General Plan EIR and finds that this approval is within the scope of the Project and of the mitigation measures evaluated in the Modesto General Plan EIR, and that these documents are adequate for its use in granting the permanent easement; and be it

FURTHER RESOLVED, That since the Modesto General Plan EIR was finalized, there have been no substantial changes in the Project and no substantial changes in the Project circumstances that would require major revisions to the General Plan EIR 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 Modesto General Plan EIR; and be it

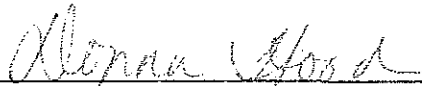
FURTHER RESOLVED, That the City of Modesto has already adopted the mitigation measures recommended in the Modesto General Plan EIR, and has authority to implement the mitigation measures or to seek any required approvals for the mitigation measures, and the SFPUC has no direct authority or responsibility to implement the mitigation measures other than the City of Modesto; and be it

FURTHER RESOLVED, That this Commission has determined that the Easement is surplus to the needs of any of the utilities under its jurisdiction, provided that the conditions set forth above are satisfied, and authorizes the General Manager to recommend to the Board of Supervisors approval of the conveyance of this Easement to Modesto for \$35,000 paid by Developer; and be it

FURTHER RESOLVED, That this Commission finds that offering the Easement for sale by competitive bidding is impractical given that Modesto has the power of eminent domain, Developer is willing to pay full appraised value for the Easement, Modesto, Developer and Caltrans are the only potential purchasers of the Easement for roadway and sidewalk purposes, and Caltrans has declined to acquire the Easement; and be it

FURTHER RESOLVED, That this Commission approves the terms and conditions of the Sale Agreement and Easement Agreement and authorizes the General Manager of the SFPUC and/or the City Director of Property, following Board of Supervisors approval of conveyance of the Easement, to execute the Sale Agreement and Easement Agreement and enter into any amendments or modifications to the Sale Agreement and Easement Agreement, including without limitation, modification, addition, or deletion of exhibits and to enter into any related documents, instruments, memorandum, or other agreements reasonably necessary to consummate the transaction contemplated in the Sale Agreement and Easement Agreement, that the General Manager determines, in consultation with the City Attorney, are in the best interests of the City; do not materially increase the liabilities or obligations of the City or materially diminish the benefits to the City; are necessary or advisable to effectuate the purposes and intent of the Easement Agreement or this Resolution; and comply with all applicable laws, including the City Charter.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of July 14, 2015.



Secretary, Public Utilities Commission

