

File No. 181054

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 15, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

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|-------------------------------------|--------------------------|----------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>SPAC Resolution</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Streetlight License</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
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Completed by: Linda Wong

Date November 9, 2018

Completed by: Linda Wong

Date _____

1 [Real Property License - Gerald Sullivan - Streetlight Facilities On and Near 10 Rockaway
2 Avenue]

3 **Resolution authorizing the General Manager of the Public Utilities Commission to enter**
4 **into a revocable license with Gerald Sullivan as licensor for new streetlight facilities on**
5 **Assessor's Parcel Block No. 2916, Lot No. 15, and in rock columns in Rockaway**
6 **Avenue and Laguna Honda Boulevard with no license fee.**

7
8 WHEREAS, Through the Rockaway Avenue Streetlight Project, the San Francisco
9 Public Utilities Commission (SFPUC) Power Enterprise desires to install, operate, and
10 maintain two new streetlights on existing rock columns located on Rockaway Avenue and
11 Laguna Honda Boulevard in San Francisco (Rock Columns); and

12 WHEREAS, Gerald F. Sullivan (Licensor) owns the Rock Columns and adjacent
13 property at 10 Rockaway Avenue, Assessor's Parcel Block No. 2916, Lot No. 15 (Licensor's
14 Property); and

15 WHEREAS, Installation, operation, and maintenance of the two new streetlights on the
16 Rock Columns will require a license (License) from Licensor to use a portion of Licensor's
17 Property and the Rock Columns (License Area) for streetlights and electrical service facilities;
18 and

19 WHEREAS, Licensor has agreed to grant the City and County of San Francisco (City),
20 acting through the SFPUC, the License for no license fee, on the terms and conditions stated
21 in the Streetlight License on file with the Clerk of the Board of Supervisors in File No.
22 _____; and

23 WHEREAS, The License will run with the land until terminated by either Licensor upon
24 one year's notice, or by the City upon thirty days' notice, except in an emergency; and
25

1 WHEREAS, On October 23, 2018, the SFPUC, by its Commission Resolution No. 18-
2 0177, authorized the General Manager to execute the Streetlight License, subject to approval
3 by the Board of Supervisors; and

4 WHEREAS, On July 24, 2018, the Planning Department determined that approval of
5 this license is categorically exempt from the California Environmental Quality Act (CEQA) and
6 the CEQA Guidelines under Section 15301, Class 1 (Existing Facilities); now, therefore, be it

7 RESOLVED, That the SFPUC General Manager is hereby authorized and urged, in the
8 name and on behalf of the City, to execute the Streetlight License, and to take all steps
9 (including, but not limited to, the execution and delivery of all certificates, agreements, notices,
10 consents, and other instruments or documents) as the SFPUC General Manager deems
11 necessary or appropriate pursuant to the Streetlight License, or to otherwise effectuate the
12 purpose and intent of this Resolution, such determination to be conclusively evidenced by the
13 execution and delivery of any such instrument by the SFPUC General Manager; and, be it

14 FURTHER RESOLVED, That the SFPUC General Manager is hereby authorized to
15 enter into any amendments or modifications to the Streetlight License, including without
16 limitation, the exhibits, that the SFPUC General Manager determines, in consultation with the
17 City Attorney, are in the best interest of the City, do not materially increase the obligations or
18 liabilities of the City, are necessary or advisable to effectuate the purposes and intent of the
19 License or this Resolution, and are in compliance with all applicable laws, including the City
20 Charter.

RECORDING REQUESTED BY AND
WHEN RECORDED SEND TO:

Real Estate Director
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

WITH A CONFORMED COPY TO:

Director of Property
San Francisco Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

Space above this line for Recorder's use only

STREETLIGHT LICENSE

This STREETLIGHT LICENSE ("**License**"), effective as of _____, 2018, is made between **GERALD F. SULLIVAN**, an individual ("**Licensor**"), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (the "**City**"), by and through its **PUBLIC UTILITIES COMMISSION** (the "**SFPUC**").

RECITALS

- A.** Licensor owns the property commonly known as 10 Rockaway Avenue (Block 2916, Lot 15) in San Francisco ("**Licensor's Property**").
- B.** There are two rock columns in, or partially in, the Rockaway Avenue and Laguna Honda Boulevard public rights-of-way that Licensor owns. One is in the Laguna Honda Boulevard public right-of-way and the other is halfway in Licensor's Property and halfway in the Rockaway Avenue public right-of-way as shown on attached **Exhibit B** (the "**Rock Columns**").
- C.** Licensor and other community members requested that City install streetlights in the Rock Columns. City agrees to do so subject to the terms and conditions contained in this License.

LICENSE

NOW, THEREFORE, in consideration of the foregoing covenants, promises and undertakings, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Licensor agree as follows:

1. Permission to Enter and Use. City may:

a. Enter and use the portion of Licensor's Property described on **Exhibit A** and shown on **Exhibit B** (the "**License Area**") to construct, reconstruct, operate, maintain, repair, inspect, remove, and replace, from time to time, underground electric power facilities and all necessary or desirable substructures, accessories and appurtenances thereto, including without limitation, wires, fibers, cables, conductors, conduits, switches and vaults (collectively, the "**Facilities**");

b. Place electrical facilities and equipment aboveground in the License Area when needed in connection with any emergency or repair work, as needed to maintain street lighting service ("**Temporary Facilities**"), provided that any such temporary aboveground facilities or equipment may be maintained only so long as needed to address the emergency or perform the repair work;

c. Install streetlight facilities in the Rock Columns;

d. Install streetlight facilities in a future rock column or install a streetlight pole in accordance with the terms of Section 7 (Future Streetlights and Rock Columns); and

e. Access the License Area and Rock Columns for all such purposes.

2. Ownership of the Facilities. City will own the Facilities and Temporary Facilities; and Licensor will have no right to use or connect to them, except in accordance with Section 10 (Surrender).

3. Exercise of City's Rights. City's rights under this License may be exercised by City's agents, contractors, subcontractors, suppliers, consultants, employees, or representatives, or by other authorized persons acting for or on behalf of City ("**City's Agents**"). Except in the event of an emergency, City will notify Licensor not less than ten (10) days before performing any work in the License Area that will disturb or remove surface improvements. If City must disturb or remove surface improvements during an emergency (as determined by City at its sole discretion), City will notify Grantor of such fact as soon as reasonably possible under the circumstances.

4. Term. The term of this License will commence as of the date first written above and will terminate upon either (a) minimum one (1) year's notice by Licensor; (b) upon thirty (30) days' notice by City; or (c) immediately upon notice by City in case of an emergency (as determined by City at its sole discretion). Without limiting any of its rights hereunder, City has the right to terminate this License in accordance with this Section, without cause and without any obligation to pay any consideration to Licensor.

5. No Obligation to Continue City's Use of Rock Columns. By entering into this License, or by exercising its rights under this License, City is not obligated to continue using the Rock Columns for streetlight purposes. City's lighting needs and policies may change over time.

6. Maintenance; Repair of Damage. City is not responsible to maintain the Rock Columns. Notwithstanding Section 8 (Liability; Indemnity), if a Rock Column is damaged or destroyed to a point that it becomes unusable (determined at City's sole discretion) for street lighting purposes, City has no obligation to repair or rebuild it. In case of such damage or destruction, City may install a new streetlight on a pole within the License Area or on a future rock column, in accordance with Section 7 (Future Streetlights and Rock Columns) to continue providing street lighting service. City will repair sidewalks to City

Department of Public Works standard paving in the public right-of-way following installation of, or other work on, the Facilities.

7. Future Streetlights and Rock Columns. City is not obligated to install a new streetlight in or near the License Area. Instead of installing a new streetlight on a pole within the License Area, City may install a streetlight in a future rock column constructed by or on behalf of Licensor. City will not be obligated to use a future rock column, but agrees to consider it. Any future rock column that Licensor proposes City use for streetlight purposes would need to meet City's design standards and be installed in a reasonable time after damage to or destruction of the relevant Rock Column (or any subsequent rock column). City's rights and responsibilities for the Rock Columns described in this License extend to any future rock columns in which City installs streetlight facilities.

8. Liability; Indemnity. City does not own the Rock Columns and does not accept any liability for them beyond liability for damage caused directly and solely by City or City's Agents' gross negligence or willful misconduct. Licensor will indemnify, defend, and hold harmless City, City's Agents, and each of them, from and against all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind (collectively, "**Losses**"), arising in any manner out of **(a)** any injury to or death of any person or damage to or destruction of any property occurring in, on, or about or in any way relating to the Rock Columns, or any part of them; **(b)** any failure by Licensor to faithfully observe or perform any of the terms, covenants, or conditions of this License; **(c)** the use of the License Area or Rock Columns by, or any activities conducted by, Licensor, its agents, its invitees, guests, or business visitors (collectively, "**Invitees**"), or third persons; or **(d)** any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Licensor, its agents, or Invitees, on, in, under, or about the License Area, any improvements on the License Area, or into the environment; except solely to the extent of Losses resulting directly and solely from City's gross negligence or willful misconduct. The foregoing indemnity includes, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties. Licensor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim that actually or potentially falls within this indemnity provision even if the allegation is or may be groundless, fraudulent, or false, which obligation arises at the time the claim is tendered to Licensor by City and continues at all times thereafter. Licensor's obligations under this Section will survive the expiration or other termination of this License.

9. Restoration of License Area. City will exercise due care in accordance with industry custom and will use commercially reasonable efforts to minimize any disturbance to the License Area. If the surface is disturbed by City's use of the License Area, City will restore native backfill or the cost equivalent. Except as stated in Section 6 regarding sidewalk restoration, Pavingpaving, special finishes, structures, and surface improvements (including irrigation lines) removed or damaged in connection with City's activities performed in accordance with the terms of this License will not be replaced by City. City will not be held liable for any damage to plants or any other surface improvement aside from restoring native backfill or the cost equivalent in the License Area that may occur as a result of City's activities performed in accordance with the terms of this License.

10. Surrender. Upon termination of this License by either Licensor or City, City will not be obligated to remove the Facilities or Temporary Facilities from the License Area or Rock Columns. If City elects to leave the Facilities (or Temporary Facilities) within, on,

or under the License Area or within or on the Rock Columns, Licensor shall own and be responsible for such Facilities (or Temporary Facilities). However, City would have no obligation to provide electrical service to the Facilities.

11. Noninterference. Licensor must keep the License Area open and free from structures of any kind except hardscape and simple landscaping. Only City Department of Public Works standard paving or basic landscaping may be installed on the surface of the License Area, unless the SFPUC's General Manager or his or her designee approves an exception in writing. Low shrubs may be planted in the License Area, provided that their roots or underground growth will not damage the Facilities. No trees or tall plants may be planted, or otherwise permitted to grow, in the License Area. As part of City's initial installation of the Facilities, City may not remove, or require Licensor to remove, any tree existing on Licensor's Property as of the date of this License. However, City may later remove or require Licensor to remove trees or their roots from the License Area if City deems it necessary for repair, replacement or protection of the Facilities. The License Area may not be used for any purpose that would damage or interfere with the proper use, function, maintenance, repair, or replacement of the Facilities. The underground Facilities require a minimum 18" depth of cover. Licensor must not decrease the depth of cover over the underground Facilities.

12. No Joint Ventures or Partnership; No Authorization. This License does not create a partnership or joint venture between City and Licensor as to any activity conducted by the SFPUC on, in or relation to the License Area or Rock Columns. This License does not constitute authorization or approval by the SFPUC of any activity conducted by Licensor on, in, around or relating to the License Area or Rock Columns.

13. Notices. Except as otherwise expressly provided in this License, any notices given under this License will be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such alternative address as may be provided in writing):

City or the SFPUC: General Manager
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102

With a copy to: Real Estate Director
Re: Rockaway Streetlights
Real Estate Services Division
San Francisco Public Utilities Commission
525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

and to: Real Estate and Finance Team
San Francisco City Attorney's Office
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

Licensor: Mr. Gerald Sullivan
10 Rockaway Avenue
San Francisco, CA 94127

Correctly addressed notices given by a method that provides confirmation of delivery shall be deemed given on the earlier of confirmed delivery or confirmed attempted delivery.

14. Nonexclusive. This License is nonexclusive, and Licensor may convey additional rights and install additional subsurface utility lines within the License Area provided that such additional rights and lines do not unreasonably interfere with the Facilities and this License, and provided further that any additional subsurface utility lines in the License Area meet the California Public Utilities Commission standards for separation of utilities. Prior to granting any rights to third parties across the License Area, Licensor must obtain a determination of noninterference from the SFPUC General Manager or his or her designee.

15. Run with the Land. The provisions of this License will run with the land, burden the License Area, and bind and inure to the benefit of the respective successors and assigns of City and Licensor.

16. Insurance. City shall have no insurance obligations with respect to its use of the License Area or Rock Columns.

17. Governing Law. This License shall be governed by California law and City's Charter.

18. Attorneys' Fees. If either party commences an action against the other or a dispute arises under this License, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this License and the indemnifications set forth in this License, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding City's use of its own attorneys.

[signatures on following page]

In witness whereof, this License is executed as of the date first written above.

LICENSOR:

GERALD F. SULLIVAN,
an individual

LICENSEE:

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By:

Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities
Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By:

Shari Geller Diamant
Deputy City Attorney

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO. 18-0177

WHEREAS, Through the Rockaway Avenue Streetlight Project, the San Francisco Public Utilities Commission (SFPUC) Power Enterprise desires to install, operate, and maintain two new streetlights on existing rock columns located on Rockaway Avenue and Laguna Honda Boulevard in San Francisco (Rock Columns); and

WHEREAS, Gerald F. Sullivan (Licensor) owns the Rock Columns and adjacent property at 10 Rockaway Avenue in San Francisco, Assessor's Block 2916, Lot 15 (Licensor's Property); and

WHEREAS, Installation, operation, and maintenance of the two new streetlights on the Rock Columns will require a license (License) from Licensor to use a portion of Licensor's Property and the Rock Columns (License Area) for streetlights and electrical service facilities; and

WHEREAS, Licensor has agreed to grant the City and County of San Francisco (City), acting through the SFPUC, the License for no license fee, on the terms and conditions stated in the Streetlight License on file with the Commission Secretary; and

WHEREAS, SFPUC staff has negotiated the Streetlight License, on file with the Commission Secretary, with Licensor to grant the License to the City; and

WHEREAS, The License will run with the land until terminated by either Licensor upon one year's notice, or by the City at any time; and

WHEREAS, Construction and installation of the Rockaway Avenue Streetlight Project will cost \$160,000 and funds are available from the Power Enterprise Decorative Lights Project, 10025177; and

WHEREAS, On July 24, 2018, the Planning Department determined that approval of this license is categorically exempt from the California Environmental Quality Act (CEQA) and the CEQA Guidelines under Section 15301, Class 1 (Existing Facilities); now, therefore, be it

RESOLVED, That this Commission hereby ratifies, approves, and authorizes all actions heretofore taken by any City official regarding the License; and, be it

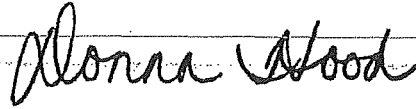
FURTHER RESOLVED, That this Commission hereby approves the License on the terms and conditions stated in the Streetlight License on file with the Commission Secretary, subject to the approval of the Board of Supervisors and Mayor; and, be it

FURTHER RESOLVED, That, upon approval by City's Board of Supervisors and the Mayor of the License, this Commission hereby authorizes the General Manager to execute the Streetlight License and further authorizes SFPUC General Manager to enter into any amendments or modifications to the Streetlight License, 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 License 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 of the License, this Commission authorizes the General Manager of the SFPUC to take 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 October 23, 2018.



Secretary, Public Utilities Commission

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2018 OCT 30 PM 3:41
Time stamp
or meeting date

BY AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Yee

Subject:

Real Property License - Gerald Sullivan - Streetlight Facilities on and near 10 Rockaway Avenue

The text is listed:

[]

Signature of Sponsoring Supervisor:



For Clerk's Use Only