FILE NO. 090785 RESOLUTION NO. 315-09

[Lease of Real Property at 649-651 Bryant Street, San Francisco]

Resolution authorizing the lease of property, with a first right of refusal to purchase, comprising approximately 14,000 square feet of improvements upon a lot area of approximately 19,000 square feet, located at 649-651 Bryant Street (Assessor's Block 3777, Lot 050) in San Francisco for the San Francisco Public Utilities Commission.

WHEREAS, The San Francisco Public Utilities Commission (SFPUC) wishes to secure a warehouse and storage yard to accommodate the Power Enterprise Streetlight Program; and,

WHEREAS, The SFPUC's Power Enterprise is currently located at a facility on Treasure Island which is inadequate to serve as a distribution point for equipment, supplies and support personnel due to space constraints and accessibility issues; and,

WHEREAS, The Real Estate Division has negotiated a lease (the "Lease") with William H. Banker, Jr., Successor Trustee of The Banker Trust dated April 20, 1992; Fillmore C. Marks, Trustee of The Fillmore and Barbara Marks 1992 Trust; Fillmore Douglas Marks; William C. Marks and Bradford F. Marks, ("Landlord"), as landlord, for the lease by City, as tenant, of a 14,000 square foot warehouse building with an adjacent parking lot/storage yard at 649-651 Bryant Street (the "Premises") that satisfies the requirements of the SFPUC; and

WHEREAS, The Lease provides for the City's first right of refusal to purchase the building and land comprising the Premises; and,

WHEREAS, The initial term of the Lease shall be ten years with an estimated commencement date of August 1, 2009 ; and,

WHEREAS, The monthly base rent of the Lease shall be $19,600 per month and such rent shall escalate to $20,090 per month in Year 2, $20,592 per month in Year 3, $21,107 per

month in Year 4, $21,635 per month in Year 5, $22,176 per month in Year 6, $22,730 per month in Year 7, $23,298 per month in Year 8, $23,880 per month in Year 9 and $24,477 per month in Year 10; and,

WHEREAS, The Lease provides for one extension option of an additional ten-year term subject to the terms and conditions further described in the Lease; and,

WHEREAS, The Lease requires the Landlord to construct certain leasehold improvements in the Premises at Landlord's sole cost and expense, as more particularly described in the Lease; and,

WHEREAS, The Lease includes a typical commercial lease clause indemnifying and holding harmless the Landlord from and agreeing to defend the Landlord against any and all claims, costs and expenses, including, without limitation, reasonable attorney's fees, incurred as a result of City's use of the Premises, any default by the City in the performance of any obligations under the Lease, or any negligent acts or omissions of City or its agents in, on, or about the Premises, excluding claims, costs, and expenses to the extent arising out of the negligence or willful misconduct of the Landlord or its agents or invitees; and,

WHEREAS, It was determined that the proposed Lease does not constitute a "project" under Section 21065 of the California Environmental Quality Act ("CEQA") and therefore does not require environmental review, as described in the determination contained in the SFPUC files for the Lease and Board of Supervisors Files No. 090785; and,

WHEREAS, On July 8, 2008, at a public meeting of the SFPUC, the Commission adopted Resolution No. 08-0121, a copy of which is on file with the Clerk of the Board of Supervisors under File No. 090785, approving the lease of the Premises for the term and at the rent and on specified business terms which are contained in the Lease; and,

WHEREAS, A copy of the Lease is on file with the Clerk of the Board of Supervisors under File No. 090785; now, therefore, be it

RESOLVED, That the Board of Supervisors approves the Lease and authorizes the Director of Property and/or the General Manager of the SFPUC to take all actions on behalf of the City and County of San Francisco, as tenant, to execute the Lease for the Premises in the form on file with the Clerk of the Board of Supervisors in File No. 090785; and, be it

FURTHER RESOLVED, That all actions heretofore taken by any City employee or official with respect to this Lease are hereby approved, confirmed, and ratified; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Property and/or the General Manager of the SFPUC to enter into any amendments or modifications to the Lease or consent to any matters with respect to the Lease that the Director of Property and/or the General Manager of the SFPUC determines, in consultation with the City Attorney, are in the best interest of the City, do not increase the rent or otherwise materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Lease, and are in compliance with all applicable laws, including City's Charter.

$39,200
Index Code: 326120

Controller

Recommended:

General Manager
San Francisco Public Utilities Commission

Director of Property

City and County of San Francisco

Tails

Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 090785 **Date Passed:**

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July 28, 2009 Board of Supervisors — ADOPTED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell, Mirkarimi

File No. 090785

I hereby certify that the foregoing Resolution was ADOPTED on July 28, 2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

8/6/09
Date Approved

Mayor Gavin Newsom