Resolution authorizing the General Manager of the Public Utilities Commission to enter into a quarry lease for a 308.5 acre parcel located in unincorporated Alameda County in the Sunol Valley with Oliver de Silva, Inc., as tenant, through June 1, 2021, pursuant to San Francisco Charter Section 9.118, with rights to extend the term for two years to complete reclamation and with potential expansion and extension rights subject to further environmental review and regulatory approvals.

WHEREAS, The City and County of San Francisco (the "City") owns watershed property in the Sunol Valley in unincorporated Alameda County that is held under the jurisdiction of the San Francisco Public Utilities Commission ("SFPUC"), portions of which are leased to private operators for sand and gravel quarrying operations; and

WHEREAS, The Sunol Valley watershed lands include a 308.5 acre parcel (the "Sunol Valley Site") which has been mined since the 1960s and currently is being mined pursuant to an existing month-to-month tenancy under Surface Mining Permit number 30 ("Surface Mining Permit 30") issued by Alameda County after completion of environmental review and in accordance with the provisions of the State Surface Mining and Reclamation Act (Public Resources Code section 2710) and the Alameda County Surface Mining Ordinance (Alameda County General Code Chapter 6.80); and

WHEREAS, Pursuant to its current terms, Surface Mining Permit 30 is in effect until June 1, 2021, or upon completion of reclamation, whichever occurs first; and

WHEREAS, In 1992, the SFPUC commenced a planning process for a watershed management plan for watershed lands held under its jurisdiction in Alameda County, which
included the development of a Sunol Valley Resources Management Plan and selection by
the SFPUC of a preferred alternative for the Sunol Valley Resources Management Plan; and
WHEREAS, On September 26, 2000, the SFPUC, after certification of a Final Program
Environmental Impact Report, adopted the final Alameda Watershed Management Plan (the
"Watershed Management Plan") under Resolution No. 00-0229;
WHEREAS, The preferred alternative for the Sunol Valley Resources Management
Element of the Watershed Management Plan called for expanded mining at the Sunol Valley
Site in furtherance of reclaiming the site upon completion of mining and developing it as a
water storage asset; and
WHEREAS, In December 2005 the SFPUC issued a Request For Proposals (the
"RFP") for the lease and operation of the Sunol Valley Site and an exclusive right to negotiate
for future mining expansion as set forth under the preferred alternative of the Sunol Valley
Resources Management Element of the Watershed Management Plan; and
WHEREAS, On March 22, 2007, a RFP Review Panel comprised of staff from the
SFPUC, San Francisco Department of Real Estate, and the Port of San Francisco selected
Oliver de Silva, Inc. ("Tenant") as the highest ranked respondent to the RFP; and
WHEREAS, On May 8, 2007, the SFPUC adopted its Resolution No. 07-0082,
authorizing the General Manager of the SFPUC (the "General Manager") to enter into
negotiations with Tenant for a lease of the Sunol Valley Site; and
WHEREAS, The SFPUC and Tenant have negotiated the terms of the proposed lease
(the "Lease"); and
WHEREAS, On June 9, 2009, the SFPUC, by its Resolution No. 09-0095 (the "SFPUC
Resolution"), approved the Lease and authorized the General Manager to submit the Lease
for consideration by the Board of Supervisors under Charter Section 9.118; and
WHEREAS, The Lease provides that upon its effective date Tenant shall promptly
apply to Alameda County for, and diligently pursue, the transfer of the existing Surface Mining Permit 30 from the existing operator to Tenant, with no change proposed in the existing permit or the activities authorized thereunder in connection with the transfer; and

WHEREAS, Upon the transfer of Surface Mining Permit 30, Tenant shall have the right to harvest sand and gravel from the Sunol Valley Site to the 140-foot depth permitted under such permit, subject to the terms and conditions of such permit, through the permit’s current expiration date of June 1, 2021, or the date the Sunol Valley Site is finally reclaimed, whichever comes first; and

WHEREAS, As set forth in a letter from the SFPUC Bureau of Environmental Management, dated June 1, 2009 (the “BEM Letter”), no change is proposed to Surface Mining Permit 30 as reviewed and approved by Alameda County and, therefore, unless and until any expansion of the mining operation as contemplated under the Lease is approved by Alameda County and the City, there would be no change to the activities being undertaken at the property which would require environmental review prior to approval of the Lease; and

WHEREAS, The Lease provides that within six months Tenant shall submit an application to Alameda County for an amendment to Surface Mining Permit 30 to allow for expansion of mining at the Sunol Valley Site as identified in the RFP, which includes the incorporation of an adjacent 58 acre site owned by the City, consistent with the preferred alternative set forth in the Sunol Valley Resources Management Element of the Watershed Management Plan; and

WHEREAS, The proposed revision of Surface Mining Permit 30 shall be subject to all required regulatory and environmental review, and the City retains discretion to participate in the process as a responsible agency and to approve any proposed extensions or revisions to Surface Mining Permit 30 (the “City’s Retained Discretion”), all as more fully described in the
Lease and the staff report prepared in connection with this transaction (the "Staff Report");

WHEREAS, If such initial proposed revision of Surface Mining Permit 30 is approved consistent with the provisions of the Lease, then the Lease term would be extended through the expiration of the newly revised Surface Mining Permit 30, which is anticipated to include a term of thirty years from the date such revision is approved; and

WHEREAS, Tenant also holds a lease on certain ridgeline property in the vicinity of the Sunol Valley Site (the "Apperson Ridge Site") that is not owned by SFPUC but is the subject of Surface Mining Permit number 17 issued by Alameda County ("Surface Mining Permit 17"); and

WHEREAS, Surface Mining Permit 17 currently authorizes the construction and operation of sand and gravel processing facilities, including primary and secondary crushing plants, an asphalt plant, a concrete batch plant and associated industrial facilities at the Apperson Ridge Site as well as an access road between Calaveras Road and the Apperson Ridge Site to be used by trucks bringing materials to and from the Apperson Ridge Site; and

WHEREAS, Tenant has not yet commenced operations at the Apperson Ridge Site; and

WHEREAS, Tenant's response to the RFP included a proposal to pursue authorization for and construct a conveyor system to allow materials from the Apperson Ridge Site to be transported to the Sunol Valley Site for further stockpiling, processing and sale; and

WHEREAS, Such proposal is likely to have significant environmental benefits as compared to the existing terms of the Surface Mining Permit 17, including the relocation of much of the currently authorized industrial activity from the SFPUC's San Antonio Reservoir watershed to the Sunol Valley Site, which is likely to reduce the negative effects that such activities would have on water quality in the SFPUC water system; and
WHEREAS, The Lease has been negotiated to incorporate possible future
implementation of the conveyor proposal following completion of required environmental
review and approval and procurement of all required permits, provided that City and Tenant
enter into a Lease amendment and other agreements governing the terms and conditions of
the installation and operation of the conveyor system and the stockpiling and processing of
material on the Sunol Valley Site or adjacent City lands (collectively, the "Conveyor and
Processing Agreements"); and

WHEREAS, Under the Lease, within one year of the effective date of the initial revision
to Surface Mining Permit 30 to expand mining at the Sunol Valley Site, Tenant shall apply for
revisions to Surface Mining Permit 17 and Surface Mining Permit 30 that would, if approved
by Alameda County and the City, authorize the operation of the two sites using the conveyor
system as described above; and

WHEREAS, Such revisions to Surface Mining Permit 17 and Surface Mining Permit 30,
respectively, shall be subject to all required regulatory and environmental review and the
City’s Retained Discretion, all as more fully described in the Lease and the Staff Report; and

WHEREAS, If such revisions of Surface Mining Permit 17 and Surface Mining Permit
30 are approved and City and Tenant enter into the Conveyor and Processing Agreements,
the Lease for the portion of the Sunol Valley Site required to stockpile, process and sell
materials from the Apperson Ridge Site would be extended through the expiration of the
newly revised Surface Mining Permit 17, which is not expected to be extended from its current
expiration date of December 31, 2064; and

WHEREAS, The Lease also includes provisions detailing how the Sunol Valley Site will
continue to be operated if any of the proposed permit revisions are not approved; and

WHEREAS, The Lease sets the mining royalties to be paid to the SFPUC for Sunol
Valley Site materials at 15% of the revenues realized from the sale of such materials, and the
processing royalty to be paid to the SFPUC for Apperson Ridge Site materials processed at the Sunol Valley Site at 10.5% of the revenues realized from the sale of such materials; and

WHEREAS, The Lease sets base rents that are to be paid by Tenant irrespective of the royalty amounts generated from operations, which base rents are subject to increase and reduction based on royalty performance over time, all as more fully set forth in the Lease and the Staff Report; and

WHEREAS, Tenant has pursued negotiations with interested environmental groups regarding the most appropriate manner for Tenant to pursue expanded mining at the Sunol Valley Site and to establish mining operations at the Apperson Ridge Site; and

WHEREAS, Such negotiations resulted in Tenant’s agreement with the Alameda Creek Alliance and the Center for Biological Diversity regarding two conservation plans, one with respect to the Sunol Valley Site and the other with respect to the Apperson Ridge Site (together, the “Conservation Plans”); and

WHEREAS, While the City is not a party to the Conservation Plans, SFPUC staff has worked with Tenant and the other signatories to understand the relationship between the activities called for under the Conservation Plans and other environmental measures planned by the SFPUC in connection with the Lease and other SFPUC water system projects in the vicinity; and

WHEREAS, As provided in the Lease, there will be further opportunity to discuss environmental impacts, mitigation measures, stakeholder compensation and conservation programming through the environmental and regulatory review processes with respect to the expanded mining activities described above and these decisions would require SFPUC and Board of Supervisors approval; and

San Francisco Public Utilities Commission
BOARD OF SUPERVISORS
WHEREAS, SFPUC staff and Tenant have engaged Sunol Valley stakeholders in ongoing discussions regarding the appropriate manner in which to proceed with the activities contemplated under the Lease; and

WHEREAS, Based on the information provided by SFPUC staff, Tenant and other stakeholder groups regarding the proposed conservation of environmental resources in the area and based on the discretion retained by the SFPUC to review and consent to the activities under the Lease, the SFPUC determined that the transaction contemplated by the Lease is an appropriate and responsible approach to quarrying activities; and

WHEREAS, Copies of the SFPUC Resolution and the related agenda item, the proposed Lease and its exhibits, the Staff Report, the BEM Letter and the Conservation Plans are on file with the Clerk of the Board of Supervisors in File No. 11; and

WHEREAS, Charter Section 9.118(c) requires the Board of Supervisors approval of leases having a term of ten or more years or anticipated revenues of one million dollars or more; now, therefore, be it

RESOLVED, That the Board of Supervisors hereby approves the Lease, including all exhibits, and authorizes the General Manager to execute the Lease in such final form as is approved by the General Manager in consultation with the City Attorney; and be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the General Manager to enter into any additions, amendments or other modifications to the Lease (including, without limitation, preparation and attachment of, or changes to, any or all of the exhibits) that the General Manager, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits of the Lease to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the transactions which the
Lease contemplates and effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by the General Manager of the Lease and any such additions, amendments, or other modifications to that document; and be it

FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the General Manager and any other appropriate officers, agents or employees of the City to take any and all steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents and other instruments or documents), as they or any of them deems necessary or appropriate, in consultation with the City Attorney, in order to consummate the transaction under the Lease in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it

FURTHER RESOLVED, That the Board of Supervisors approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the City with respect to the Lease.
Resolution authorizing the General Manager of the Public Utilities Commission to enter into a quarry lease for a 308.5 acre parcel located in unincorporated Alameda County in the Sunol Valley with Oliver de Silva, Inc., as tenant, through June 1, 2021, pursuant to San Francisco Charter Section 9.118, with rights to extend the term for two years to complete reclamation and with potential expansion and extension rights subject to further environmental review and regulatory approvals.

November 24, 2009 Board of Supervisors - ADOPTED
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

I hereby certify that the foregoing Resolution was ADOPTED on 11/24/2009 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

Date 12-3-09