

1 [Public Trust Exchange Agreement - California State Lands Commission - Pier 70 Project]

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3 **Resolution approving the Compromise Title Settlement and Land Exchange Agreement**
4 **for Pier 70 between the City and the California State Lands Commission in furtherance**
5 **of the Pier 70 Mixed Use Project located at Pier 70; and adopting findings under the**
6 **California Environmental Quality Act.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections
13 or parts of tables.

14 WHEREAS, California Statutes of 1968, Chapter 1333 (“Burton Act”) and Charter,
15 Sections 4.114 and B3.581, empower the City and County of San Francisco, acting through
16 the San Francisco Port Commission (“Port”), with the power and duty to use, conduct,
17 operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction;
18 and

19 WHEREAS, The Port owns approximately 72 acres along San Francisco’s Central
20 Waterfront, roughly bounded by Mariposa Street, Illinois Street, and 22nd Streets and the San
21 Francisco Bay, known as Pier 70; and

22 WHEREAS, Pier 70 includes approximately 61.29 acres of land and approximately
23 10.42 acres of submerged lands; and

24 WHEREAS, Under the Burton Act and the City Charter, certain State lands granted to
25 the City subject to the public trust for commerce, navigation and fisheries (“Public Trust”) were
placed within the administration and control of the City acting by and through the Port
Commission; and

1 WHEREAS, Pier 70 consists of lands granted under the Burton Act and adjacent lands
2 later acquired by the Port; and

3 WHEREAS, Under the agreement between the City and the State of California
4 transferring the granted lands to the City (“Transfer Agreement”), the City agreed that lands
5 later acquired by the Port would be held as assets of the Public Trust subject to the Burton
6 Act; and

7 WHEREAS, The Port along with its development partners and interested stakeholders
8 have been working for more than two decades to develop a land use plan to facilitate the
9 beneficial development of Pier 70 and generate substantial revenue for the Port as part of a
10 proposed mixed-use project (“Pier 70 Mixed Use Project”); and

11 WHEREAS, The Pier 70 area consists of five sub-areas including: 1) the ship repair
12 yard, 2) the 20th Street Historic Core, 3) Crane Cove Park, 4) the 28-acre Waterfront Mixed
13 Use Special Use District area, and 5) other development opportunities; and

14 WHEREAS, The extent to which the Public Trust covers lands at Pier 70 is subject to
15 dispute, and the State and the Port disagree as to the existence of the Public Trust on certain
16 of those lands; and

17 WHEREAS, The existing configuration of trust and non-trust lands at Pier 70 is such
18 that the purposes of the Public Trust cannot be fully realized, and the Pier 70 Mixed Use
19 Project cannot be developed due to the current trust configuration; and

20 WHEREAS, The California legislature, through Chapter 477 of the Statutes of 2011
21 (Assembly Bill 418) (“AB 418”) authorized the Port, subject to applicable laws, to enter into an
22 exchange agreement with the California State Lands Commission (“State Lands”) to
23 effectuate a Public Trust exchange in accordance with the terms of the statute, and to
24 transfer, convey or otherwise grant interests in or rights to use or occupy all or any portion of
25 the Pier 70 areas removed from the Public Trust pursuant to the exchange; and

1 WHEREAS, The exchange authorized under AB 418 would resolve the Public Trust
2 title uncertainties and reconfigure the Public Trust at Pier 70 in a manner that furthers the
3 purposes of the Public Trust and provides a more useful configuration of Public Trust lands by
4 placing the Public Trust along the entire shoreline of Pier 70 and on other lands of high value
5 to the Public Trust, while removing the Public Trust from lands in the interior of Pier 70 that
6 are cut off from the water, thereby removing impediments to their productive reuse and
7 development; and

8 WHEREAS, To implement development of Pier 70, the Port and its development
9 partners have negotiated, among other agreements, a Compromise Title Settlement and Land
10 Exchange Agreement for Pier 70 (the “Exchange Agreement”) between the Port and State
11 Lands, a copy of which is in Board File No. 170987 and incorporated in this resolution by
12 reference; and

13 WHEREAS, The Exchange Agreement implements the exchange through
14 conveyances by which State Lands will take title to the lands from the Port and convey them
15 back to the Port either subject to or free of the Public Trust; and

16 WHEREAS, Following these conveyances, the Port would hold the Public Trust lands
17 as trustee, subject to the terms and conditions of the Burton Act and AB 418, and would hold
18 the Trust termination lands as assets of the Public Trust, but free of the use and alienability
19 restrictions of the Public Trust, the Burton Act and the Transfer Agreement; and,

20 WHEREAS, The Exchange Agreement makes conforming amendments to the Transfer
21 Agreement to effectuate the exchange authorized by AB 418; and

22 WHEREAS, The Exchange Agreement contains provisions to ensure that public
23 access is provided to Public Trust lands; and

24 WHEREAS, On August 24, 2017, the Planning Commission (1) reviewed and
25 considered the Final Environmental Impact Report for the Pier 70 Mixed Use Project (“FEIR”)

1 (Case No. 2014-001272ENV); (2) found the FEIR to be adequate, accurate and objective,
2 thus reflecting the independent analysis and judgment of the Planning Department and the
3 Planning Commission; and (3) by Motion No. 19976, certified the FEIR as accurate, complete
4 and in compliance with the California Environmental Quality Act (“CEQA”), the CEQA
5 Guidelines, and Chapter 31 of the San Francisco Administrative Code; and

6 WHEREAS, At the same hearing, the Planning Commission approved the Pier 70
7 Mixed Use Project and in so doing, adopted approval findings under CEQA by Motion No.
8 19977, including a Statement of Overriding Considerations (the “Pier 70 CEQA Findings”),
9 and adopted a Mitigation Monitoring and Reporting Program (“MMRP”); and

10 WHEREAS, A copy of the Planning Commission Motions, the Pier 70 CEQA Findings,
11 and the MMRP are in Board File No. 170930 and may be found in the records of the Planning
12 Department at 1650 Mission Street, San Francisco, CA, and are incorporated in this resolution
13 by reference as if fully set forth herein; and

14 WHEREAS, On September 26, 2017, by Resolution 17-44, the Port Commission
15 approved the Exchange Agreement and authorized the Executive Director of the Port or her
16 designee to execute, deliver and perform the Exchange Agreement, subject to obtaining
17 Board of Supervisors approval of the Exchange Agreement; and

18 WHEREAS, The Board of Supervisors has reviewed the FEIR, the MMRP and the
19 CEQA Findings, and finds that the approvals before the Board of Supervisors are within the
20 scope of the FEIR and that no substantial changes in the Pier 70 Mixed Use Project or the
21 circumstances surrounding the Pier 70 Mixed Use Project have occurred and no new
22 information that could not have been known previously showing new significant impacts or an
23 increase in severity in impacts has been discovered since the FEIR was certified; now,
24 therefore be it

1 RESOLVED, That the Board of Supervisors adopts the Pier 70 CEQA Findings as its
2 own and adopts the MMRP and imposes its requirements as a condition to this approval
3 action; and be it

4 FURTHER RESOLVED, That in order to effectuate the beneficial development of Pier
5 70, the Board of Supervisors approves the Exchange Agreement and authorizes the
6 Executive Director of the Port or her designee to execute, deliver and perform the Exchange
7 Agreement in substantially the form in Board File No. 170987; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors finds that the lands or interests
9 in lands that will be impressed with the Public Trust will provide a significant benefit to the
10 Public Trust and are useful for the Public Trust purposes authorized by AB 418; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges the
12 Executive Director of the Port, prior to execution of the Exchange Agreement, to make
13 changes and take any and all steps, including but not limited to, the attachment of exhibits
14 and the making of corrections, as the Executive Director of the Port determines in consultation
15 with the City Attorney, are necessary or appropriate to consummate the Exchange Agreement
16 in accordance with this resolution; provided, however, that such changes and steps do not
17 materially decrease the benefits to or materially increase the obligations or liabilities of the
18 Port, and are in compliance with all applicable laws; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors authorizes and urges all
20 officers, employees, and agents of the Port and the City to take any and all steps as they
21 deem necessary or appropriate, to the extent permitted by applicable law, in order to
22 consummate the Exchange Agreement in accordance with this resolution and to implement
23 the Exchange Agreement, including execution of subsequent documents and conveyance of
24 real property to, and the acceptance of real property from, State Lands, or to otherwise
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1 effectuate the purpose and intent of this resolution and the Port's performance under the
2 Exchange Agreement; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors authorizes the Executive
4 Director of the Port or her designee to enter into any amendments or modifications to the
5 Exchange Agreement that the Executive Director of the Port or her designee determines, in
6 consultation with the City Attorney, are in the best interest of the Port, do not materially
7 decrease the benefits to or materially increase the obligations or liabilities of the Port, and are
8 in compliance with all applicable laws.

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