

1 [Amended and Restated Property Exchange Agreement.]

2

3 **Resolution approving an amended and restated property exchange agreement**
4 **substituting City property located at the corner of Portola Drive and Burnett Avenue for**
5 **property located at the corner of Gough and Grove Streets; adopting findings that the**
6 **amended and restated exchange agreement is categorically exempt from**
7 **environmental review and is consistent with the City’s General Plan and Eight Priority**
8 **Policies of City Planning Code Section 101.1; and authorizing the Director of Property**
9 **to execute documents, make certain modifications and take certain actions in**
10 **furtherance of this resolution.**

11

12 WHEREAS, The City and County of San Francisco initiated a lawsuit against Spiers
13 Construction Company, Forest View, LLC (“Spiers”), relative to Spier’s interference with public
14 access to an auto pathway leading to City’s Edgehill Mountain Park (San Francisco Superior
15 Court Case No. CPF-02-501831); and,

16 WHEREAS, In settlement of the litigation, Spiers and City entered into a property
17 exchange agreement dated as of December 30, 2003 (the “Property Exchange Agreement”),
18 which was approved by the Board of Supervisors by Ordinance No. _____ on _____,
19 2003. Following the execution and delivery of the Property Exchange Agreement, the City
20 and Spiers filed a Stipulation for Entry of Judgment and Permanent Injunction of judgment
21 with the San Francisco Superior Court to dismiss the lawsuit (the “Stipulation”); and,

22 WHEREAS, Under the Property Exchange Agreement, the City was to transfer certain
23 property owned by the City at Portola Drive, Clipper Street and Burnett Avenue (the “Portola
24 Property”) in exchange for certain property owned by Spiers on Edgehill Way (the “Edgehill
25

1 Property”) upon the satisfaction of certain conditions set forth in the Property Exchange
2 Agreement; and,

3 WHEREAS, The City desires to acquire the Edgehill Property in order to combine it
4 with adjacent open space owned by the City, under the jurisdiction of its Recreation and Park
5 Department; and,

6 WHEREAS, The City, acting through the Recreation and Park Department, wishes to
7 substitute the Portola Property for certain property owned by the City at the southwest corner
8 of Gough and Grove Streets (the “Gough Property”); and,

9 WHEREAS, The Gough Street Property is under the jurisdiction of the Department of
10 Public Works, which must use the proceeds from the sale of the Gough Property for
11 transportation purposes; and,

12 WHEREAS, The Director of Property has determined that the fair market value of the
13 Edgehill Property is Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000), and the
14 fair market value of the Gough Property is Three Million Five Hundred Thousand Dollars
15 (\$3,500,000); and

16 WHEREAS, The City and Spiers have agreed to amend and restate the Property
17 Exchange Agreement (the “Amended and Restated Agreement”) to substitute the Gough
18 Property for the Portola Property. In the Amended and Restated Agreement, Spiers will
19 acquire the Gough Property for \$3.5 million in cash at closing, and the City will purchase an
20 option to acquire the Edgehill property upon the following terms: (i) a 3 year option term; (ii) a
21 purchase price of \$2.95 million plus the Portola Entitlement Costs, as defined in the Amended
22 and Restated Agreement (or approximately \$3.2 million); (iii) City’s payment of \$1 million in
23 option consideration at the closing of the Gough Street Property transfer; (iv) if City exercises
24 the option during the first 12 months of the option term, then all of the option consideration will
25 be credited against purchase price, (v) if City exercises the option during months 13-24 of the

**Supervisor Dufty **

BOARD OF SUPERVISORS

1 option term, then \$800,000 of the option consideration will be credited against the purchase
2 price, (vi) if City exercises the option during months 25-36 of the option term, then \$600,000 of
3 the option consideration will be credited against the purchase price, and (vii) Spiers will not be
4 permitted to develop the Edgehill property at any time during the option term.

5 WHEREAS, Except as set forth above, the Amended and Restated Agreement
6 includes all of the terms and provisions of the Property Exchange Agreement, including a
7 mutual release and indemnity with respect to any environmental conditions that may exist with
8 respect to the property each party is to acquire; and,

9 WHEREAS, The General Manager of the Recreation and Park Department and the
10 Director of Public Works have determined that it is in the best interests of the City to enter into
11 the Amended and Restated Agreement, and that the public interest demands or will not be
12 inconvenienced by the Amended and Restated Agreement; and,

13 WHEREAS, the Amended and Restated Agreement was approved by the Recreation
14 and Park Commission by Resolution No. ____ on _____, 2004; and,

15 WHEREAS, the Recreation and Park Department intends to make payments of option
16 consideration, lease payments, and the purchase price for the Edgehill Property using Open
17 Space Funds; and,

18 WHEREAS, The Director of Planning found that the proposed property exchange under
19 the Amended and Restated Agreement is categorically exempt from environmental review
20 under CEQA and is consistent with the City's General Plan and with the Eight Priority Policies
21 of City Planning Code Section 101.1, and a copy of these findings have been placed in the file
22 with the Clerk of the Board and are incorporated herein by this reference; now, therefore, be it

23 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
24 hereby finds that the City's execution and performance of the Amended and Restated
25 Agreement is consistent with the City's General Plan and with the Eight Priority Policies of

Supervisor Dufty

BOARD OF SUPERVISORS

Page 3
7/27/2011

d:\insite\files\sfm\attachments\12425.doc

1 City Planning Code Section 101.1, and is categorically exempt under CEQA for the same
2 reasons as the Director of Planning, and hereby incorporates such findings by reference as
3 though fully set forth in this resolution; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Amended
5 and Restated Agreement and the transactions contemplated thereby in substantially the form
6 submitted to the Clerk of the Board of Supervisors, and authorizes the Director of Property
7 and the General Manager of the Recreation and Parks Department to execute and deliver the
8 Amended and Restated Agreement and to take the actions required to be performed by the
9 City in the Exchange Agreement.

10

11 Recommended:

12

13

14 Yomi Agunbiade

15 Acting General Manager, Recreation and Park Department

16

17 Recommended:

18

19

20 Edwin Lee

21 Director, DPW

22

23

24

25

**Supervisor Dufty **

BOARD OF SUPERVISORS

Page 4

7/27/2011

d:\insite\files\sfm\attachments\12425.doc