

1 [Settlement of Anticipated Litigation - Bonneville Non-Exclusive Easement]

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3 **Resolution authorizing settlement of anticipated litigation to be filed by Bonneville**
4 **International Corporation against the City and County of San Francisco for a non-**
5 **exclusive easement on Bayview Hill for access to the radio tower owned by Bonneville.**

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7 WHEREAS, The Bonneville International Corporation Bonneville owns property (the
8 “Bonneville Property”) that is bordered by Bayview Hill, an undeveloped natural area
9 comprised of approximately 44 acres and under the jurisdiction of the City’s Recreation and
10 Park Department; and

11 WHEREAS, Bayview Hill was acquired by the City in piecemeal fashion over the past
12 century. The City has owned one portion of Bayview Hill since 1915 (the “1915 Parcel”) and
13 acquired another portion of Bayview Hill in 1997 (the “Donnelly Parcel”). Even before the City
14 owned the Donnelly Parcel, it had an easement over an unimproved road on the Donnelly
15 Parcel that connected Key Avenue to the 1915 Parcel (the “Temporary Road”). Under the
16 1963 document granting the City its easement over the Temporary Road (the “Original City
17 Easement”), the Original City Easement was to automatically terminate if the City extended
18 Key Avenue over adjacent City property (the “Proposed Key Avenue Extension”); and

19 WHEREAS, At the time the City acquired the Donnelly Parcel, the Bonneville Property
20 was improved with radio transmission equipment and was not served by a public street. The
21 then-owner of the Bonneville Property used the Temporary Road for access; and

22 WHEREAS, The Bonneville Property is still not served by a public street and Bonneville
23 also accesses the Bonneville Property over the Temporary Road; and

24 WHEREAS, Bonneville believes it has an easement to use the Temporary Road (the
25 “Original Bonneville Easement”) under a 1983 document between the previous owners of the

1 Bonneville Property and the Donnelly Parcel. Under that document, the Original Bonneville
2 Easement was to automatically terminate if the Original City Easement terminated or if
3 alternative access was created between the Bonneville Property and a public street; and

4 WHEREAS, Although the Proposed Key Avenue Extension was never constructed, the
5 Original City Easement automatically terminated by operation of law when City acquired the
6 entire Donnelly Parcel. The City believes the Original Bonneville Easement automatically
7 terminated at the same time, since it was to terminate when the Original City Easement
8 terminated, but Bonneville believes the Original Bonneville Easement still exists under certain
9 equitable legal principles; and

10 WHEREAS, Under established California case law, the principles cited by Bonneville
11 cannot be asserted by private parties against governmental entities. However, the City
12 acknowledges that there is a possibility that a judge could decide to waive established law to
13 allow Bonneville to assert those claims if the matter were to be litigated because, in part,
14 Bonneville would otherwise have no ready access to the Bonneville Property to maintain its
15 radio transmission equipment; and

16 WHEREAS, When Bayview Land Company transferred the 1915 Property to the City, it
17 was conditioned on the City using the majority of the 1915 Property as a public park and
18 certain portions of the 1915 Property (possibly including the 1915 Roadway) as public streets
19 (the "Proposed Streets"). Bayview Land Company inserted these conditions in anticipation
20 that adjacent property would be eventually developed as housing. Those housing plans did
21 not come to fruition, and the City never converted the Proposed Streets into public streets.
22 The City does not want to comply with the Proposed Streets condition because the housing
23 development never occurred and the City wishes to maintain Bayview Hill as an unimproved
24 natural area; and

1 WHEREAS, City has customarily allowed Bonneville to use the Temporary Road
2 Easement (and, City believes, the 1915 Road) to access the Bonneville Property. Such
3 customary usage only became a point of discussion when Bonneville asked the City to
4 confirm its easement rights in the Original Bonneville Easement as part of its planned sale of
5 the Bonneville Property; and

6 WHEREAS, If City does not enter into this settlement agreement, Bonneville's only
7 option would be to sue the City. Even if Bonneville did not sue the City, Bonneville's potential
8 claims under the Original Bonneville Easement and to the Proposed Streets currently cloud
9 the City's ownership interest in Bayview Hill, which could only be cleared by the City filing a
10 lawsuit against Bonneville; and

11 WHEREAS, In order to litigate this case, the City would incur significant survey and
12 other costs with no certainty of success; and

13 WHEREAS, Under the proposed settlement agreement, Bonneville will release all
14 claims under the Original Bonneville Easement and to the Proposed Streets, as well as any
15 claims that City is obligated to provide any public streets or highways on the City Property or
16 to the Bonneville Property; and

17 WHEREAS, In exchange for that release, the City would enter into an Easement
18 Agreement, on file with the Clerk of the Board of Supervisors in File No. , which is hereby
19 declared to be a part of this motion as if set forth fully herein; that terminates the Original
20 Bonneville Easement and provides Bonneville with access over the Temporary Road and the
21 1915 Road (together, the "Easement Road"). The proposed easement will limit Bonneville's
22 use of the Easement Road to the extent necessary to maintain, repair and replace the
23 antenna and transmitter facilities currently located on the Bonneville Property and will
24 expressly reserve the City's right to use and relocate the Easement Road. In addition, the
25 proposed easement agreement clarifies other matters that benefit the City, such as requiring

1 Bonneville to bear the maintenance costs for the Easement Road (unless damaged by City's
2 activities). Recreation and Park Department staff have determined that Bonneville's use of
3 the Easement Road under the terms of the proposed easement would not harm the unique
4 environmental characteristics of Bayview Hill at its current level of usage; now, therefore, be it

5 RESOLVED, That Board of Supervisors hereby authorizes the City Attorney to settle
6 anticipated litigation by Bonneville International Corporation, et al., against the City and
7 County of San Francisco, et al., pursuant to the terms of the proposed easement agreement.

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