

AMENDMENT OF THE WHOLE – 11/5/03

FILE NO. 031319

RESOLUTION NO.

1 [Approving ground lease to Music Concourse Community Partnership in connection with the
2 ~~financing~~, construction and operation of an underground parking facility and amending the
3 designation of the jurisdiction of the Golden Gate Park Concourse Authority. ~~in Golden Gate Park.~~]

4 **Resolution approving and authorizing the execution and delivery of a ground lease**
5 **between the City and Music Concourse Community Partnership relating to the Golden**
6 **Gate Park Music Concourse underground parking facility project; amending the**
7 **designation of the jurisdiction of the Golden Gate Park Concourse Authority; and requiring Music**
8 **Concourse Community Partnership to provide or cause the provision of a guarantee of the**
9 **remaining uncollected pledges.**

10
11 WHEREAS, At the June 2, 1998, special election the voters of the City and County of
12 San Francisco (the “City”) approved Proposition J, now codified in Appendix 41 of the City’s
13 Administrative Code (“Proposition J”); and

14 WHEREAS, Proposition J is an initiative measure which, among other things,
15 authorized the creation of the Golden Gate Park Concourse Authority (the “Authority”) and the
16 construction, by or on behalf of the Authority, of an underground parking facility (the “Facility”)
17 containing approximately 800 parking spaces in Golden Gate Park (the “Project”); and

18 WHEREAS, Proposition J also authorized the City’s Board of Supervisors (the “Board
19 of Supervisors”) to grant administrative jurisdiction over certain lands in or near the area of the
20 Golden Gate Park Music Concourse (the “Concourse”) to the Authority to facilitate the Project;
21 and

22 WHEREAS, In its Resolution No. 715-98, the Board of Supervisors designated certain real
23 property in or near the area of the Concourse to be under the administrative jurisdiction of the
24 Authority, and that such designation may be amended by the Board of Supervisors, by resolution; and
25

1 WHEREAS, The Board of Supervisors now wishes to amend such designation to reflect the
2 actual plan of construction of the Facility; and

3 WHEREAS, Music Concourse Community Partnership (“MCCP”), is a nonprofit public
4 benefit corporation organized and existing under the laws of the State of California, formed
5 and existing for the primary purpose of funding, designing, constructing and operating the
6 Facility; and

7 WHEREAS, Representatives from the Authority and the Recreation and Park
8 Department and other City staff have participated in the drafting and negotiation of a ground
9 lease (the “Lease”) between MCCP, as tenant, and the City, acting through the Authority and
10 the Recreation and Park Commission (the “Commission”), as landlord, which governs the
11 relationship between the parties with respect to the construction and operation of the Facility;
12 and

13 WHEREAS, Under the terms of the Lease, MCCP is granted a long-term leasehold
14 interest in lands beneath the Concourse and the right to construct the Facility at its own
15 expense, and as such shall be deemed the owner of the physical improvements constituting
16 the Facility until expiration or termination of the Lease, at which time title to such
17 improvements shall be transferred to the City at no cost; and

18 WHEREAS, Under the terms of the Lease, MCCP is permitted to apply the revenues of
19 the Facility to help finance the costs of constructing the Facility pursuant to the Bonds (as
20 defined below); and

21 WHEREAS, The Lease also provides that MCCP shall have the authority, subject to
22 certain budgetary approvals of the City, to further apply the revenues of the Facility (i) to pay
23 expenses relating to the ongoing operation and maintenance of the Facility, (ii) to pay
24 expenses relating to repair or replacement of the Facility and (iii) to fund certain reserves, all
25 as more particularly described in the Lease; and,

1 WHEREAS, The Lease provides that the revenues of the Facility received in any fiscal
2 year in excess of the amounts required to satisfy the requirements enumerated above (“Net
3 Revenues”) shall be transferred to the City and applied as required under Proposition J; and

4 WHEREAS, Pursuant to the terms of Proposition J and Section 2.109 of the City
5 Charter, the Lease requires that the Board of Supervisors shall set the schedule of parking
6 rates and charges by ordinance; and

7 WHEREAS, Concurrently with the submission of this Resolution, an ordinance setting
8 the initial schedule of rates and charges for the Facility has been submitted to the Clerk of the
9 Board of Supervisors (the “Clerk of the Board”) in File No. _____; and

10 WHEREAS, The Lease contains a covenant on the part of the City to set the parking
11 rates and charges at levels necessary to allow MCCP to make the payments it is obligated to
12 make in connection with the repayment of the Bonds and the operation of the Facility, as such
13 obligations are more particularly described in the Lease; and

14 WHEREAS, In the event that the City fails to set the parking rates and charges for the facility at
15 the levels required under the rate covenant described above, the Lease provides that the City shall be
16 liable for the actual damages to MCCP resulting from such failure; and

17 WHEREAS, MCCP has initiated and executed a campaign to raise philanthropic
18 donations to finance the construction of the Facility and under such campaign has received
19 pledges in the approximate amount of ~~\$36,000,000~~ \$35,000,000 (the “Pledges”); and

20 WHEREAS, MCCP plans to issue a series of tax-exempt bonds (the “Bonds”) to assist
21 it in ~~leveraging the Pledges to finance~~ financing the construction of the Facility (the “Project”); and

22 WHEREAS, The Bonds would be issued on a conduit basis by the Association of Bay
23 Area Governments (or other conduit issuer) (the “Issuer”) pursuant to an indenture and are to
24 be secured by the obligations of MCCP to make payments under a loan agreement between
25 MCCP and the Issuer, ~~such payments to be made from the Pledges, combined with interest thereon,~~

1 ~~and the parking revenues resulting from MCCP's ownership and operation of the improvements~~
2 ~~constituting the Facility~~; and

3 WHEREAS, Copies of the current draft of the indenture and loan agreement relating to
4 the Bonds are on file with the Clerk of the Board in File No. _____; and

5 WHEREAS, ~~in~~ Resolution No. _____-03, ~~this Board of Supervisors affirmed the~~
6 ~~Planning Commission's certification of the Final Environmental Impact Report for the Project as~~
7 ~~adequate and complete. A copy of said resolution is on file with the Clerk of the Board in File No.~~
8 ~~_____;~~ and

9 ~~WHEREAS, In said resolution,~~ this Board of Supervisors adopted findings in connection
10 with its consideration of this Resolution authorizing and approving the execution and delivery
11 of the Lease under California Environmental Quality Act ("CEQA") (California Public
12 Resources Code Section 21000 et seq.), the State CEQA Guidelines (California Code of
13 Regulations Title 14 Sections 15000 et seq.), and Chapter 31 of the San Francisco
14 Administrative Code and adopted a mitigation monitoring program, which findings and
15 program are hereby incorporated by reference herein. A copy of said resolution is on file with the
16 Clerk of the Board in File No. _____; and

17 WHEREAS, In said resolution, this Board of Supervisors also adopted findings of
18 consistency with the General Plan, Planning Code Section 101.1 and the Golden Gate Park
19 Master Plan which findings are hereby incorporated by reference herein; now, therefore, be it

20 RESOLVED, By the Board of Supervisors of the City and County of San Francisco, that
21 the Board of Supervisors hereby approves the Lease and authorizes the Executive Director of
22 the Authority and the General Manager of the ~~Department of~~ Recreation and Parks Department
23 to execute and deliver the Lease on the City's behalf, in substantially the form hereby
24 approved, with such changes as may be made pursuant to the terms of this Resolution; and,
25 be it

1 FURTHER RESOLVED, That the Executive Director of the Authority, the General
2 Manager of the Recreation and Parks Department and the City's Director of Public Finance,
3 upon consultation with the City Attorney, are hereby authorized to make such modifications to
4 the Lease that hereafter become necessary or desirable in the interests of the City, which
5 modifications do not materially affect the substance of the Lease, or materially increase the
6 obligations of the City, including without limitation the attachment to the Lease of such items,
7 exhibits and documents as required by the terms of the Lease, with approval of such
8 modifications to be conclusively evidenced by the execution of such Lease by the parties
9 thereto; and, be it

10 FURTHER RESOLVED, That the property, which includes the surface area of the Concourse,
11 designated as the "Golden Gate Park Concourse Authority Area of Jurisdiction" on the map which is
12 on file with the Clerk of the Board in File No. _____, shall be set aside and under the
13 administrative jurisdiction of the Authority, without the payment of consideration for such property,
14 pursuant to Section 3 of Proposition J, that such designation shall supercede any and all previous
15 designations of such jurisdiction, and that such designation of real property may be amended by the
16 Board of Supervisors, by resolution; and be it

17 FURTHER RESOLVED, That within a reasonable period of time after the passage of this
18 Resolution, the Director of Property shall prepare or cause to be prepared a legal description of the
19 Golden Gate Park Concourse Authority Area of Jurisdiction consistent with the map on file with the
20 Clerk of the Board and file a copy of such legal description with the Board of Supervisors; and be it

21 FURTHER RESOLVED, That MCCP shall provide, or cause one or more of its donors to
22 provide, a guarantee, in form and substance satisfactory to the City Attorney and the Director of Public
23 Finance, of the contribution of approximately \$15 million in uncollected pledges, which, when
24 combined with the approximately \$20 million amount of contributions already collected, will equal
25 approximately \$35 million in total contributions; and be it

1 FURTHER RESOLVED, That the traffic circulation plan for the area of the Concourse
2 shall be subject to the separate review and approval of this Board of Supervisors prior to its
3 implementation and after all necessary review that may be required under the California
4 Environmental Quality Act; and be it

5 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Department
6 of Parking and Traffic to monitor the intersection at Ninth Avenue and Irving Street during
7 peak hours once the Facility is completed, compare such findings to traffic conditions existing
8 at the Ninth/Irving intersection prior to the completion of the Facility, and implement such
9 changes to the Ninth Avenue approach to the Park and the Facility as such Department
10 deems appropriate, receiving such financial assistance as would be available from the
11 Authority for such activities at such time under the terms of Proposition J; and be it

12 FURTHER RESOLVED, That the Board of Supervisors hereby requests the San
13 Francisco Municipal Transportation Agency and the Recreation and Park Department to
14 include in each fiscal year's budget submission a plan for spending monies in such fiscal year,
15 in an amount equal to the amount of parking tax revenues generated by the Facility and
16 available for use by such department in such fiscal year, in furtherance of transit and park
17 improvement and service projects directly related to the Concourse area; and be it

18 FURTHER RESOLVED, That Section 6.1 of the Lease shall be revised to provide for
19 an annual base rent payment of \$200,000 during the first two years of the Lease, with annual
20 base rent payments of \$100,000 for each year thereafter; and be it

21 FURTHER RESOLVED, That Section 5.2 of the Lease be amended to require that, in
22 the event that the principal amount of the initial issuance of Bonds is in excess of
23 \$54,000,000, such issuance shall be subject to the prior written consent of the City's
24 Controller and Director of Public Finance; and be it

1 FURTHER RESOLVED, That the Executive Director of the Authority, the General
2 Manager of the Recreation and Parks Department, the City Controller, the City's Director of
3 Public Finance and the City Attorney are hereby authorized and directed in the name and on
4 behalf of the City to take any and all steps and to issue and deliver any and all certificates,
5 agreements, notices, consents, memorandum, opinions and other documents which they or
6 any of them might deem necessary or appropriate in order to consummate the execution and
7 delivery of the Lease and the transaction contemplated thereby.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25