

1 [Transfer of Administrative Jurisdiction - Pier 27]

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3 **Resolution facilitating a lease-back for Certificates of Participation by authorizing**
4 **transfers of administrative jurisdiction over Pier 27 from the Port Commission to the**
5 **General Services Agency, Real Estate Division, and from the City back to the Port**
6 **Commission, upon full payment of debt; approving a Memorandum of Understanding**
7 **between the Port Commission and the City Controller regarding obligations arising**
8 **from the Certificates of Participation; incorporating findings under the California**
9 **Environmental Quality Act by reference; and adopting findings of consistency with the**
10 **General Plan and the eight priority policies of Planning Code, Section 101.1.**

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12 WHEREAS, The City and County (the "City") is the owner of San Francisco harbor
13 consisting of approximately 7 miles of waterfront, which is under the jurisdiction of the San
14 Francisco Port Commission (the "Port") and is held subject to the trust imposed by the Burton
15 Act (statutes of 1968, chapter 1333) and the public trust for commerce, navigation, and
16 fisheries (together, the "Public Trust"); and

17 WHEREAS, The Port has completed the first phase of the new James R. Herman
18 Cruise Terminal and Northeast Wharf Plaza project (the "Cruise Terminal Project"), consisting
19 in part of the construction of the core and shell of a new cruise terminal building at Pier 27 (the
20 "Cruise Terminal Building"); and

21 WHEREAS, The Cruise Terminal Project was fully analyzed under the California
22 Environmental Quality Act ("CEQA") in the Final Environmental Impact Report that the
23 Planning Commission certified on December 15, 2011, which action the Board of Supervisors
24 affirmed by Motion No. M12-11 at a hearing on January 24, 2012; and

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1 WHEREAS, The Port Commission adopted CEQA Findings and a Mitigation Monitoring
2 and Reporting Program and approved the Cruise Terminal Project by Resolution No. 11-75 on
3 December 16, 2011, a copy of which is on file with the Clerk of the Board in File No. 130736
4 and incorporated into this Resolution by this reference; and

5 WHEREAS, The San Francisco Controller (the "Controller") and the Director of Public
6 Finance recommended that the City issue certificates of participation ("COPs") to finance
7 certain capital improvements to Port property, including the Cruise Terminal ("Port
8 Improvements"), and authorize a supplemental appropriation ordinance allocating COPs in an
9 amount not to exceed \$45 million; and

10 WHEREAS, The Port Commission by Resolution No. 12-37 adopted on April 24, 2012,
11 a copy of which is on file with the Clerk of the Board in File No. 130736 and incorporated into
12 this Resolution by this reference, identified capital sources to finance a portion of the Port
13 Improvements from existing Port funds and:

14 (1) authorized a Memorandum of Understanding with the Controller, acting through
15 the City's Director of Public Finance (the "MOU"), to govern obligations arising from the
16 issuance of the COPS, including: (a) the City's issuance of the COPS for Port Improvements;
17 (b) the Port's agreement to include in each fiscal year budget while the COPS are outstanding
18 amounts sufficient to pay directly or reimburse the City for all COP obligations and the City's
19 agreement to appropriate funds sufficient to meet the Port's budgeted COP obligations under
20 the MOU; (c) the priority of the Port's revenue bond obligations over its obligations under the
21 MOU; (d) the Port's agreement to request a jurisdictional transfer Pier 27, subject to the Public
22 Trust, to the City's General Services Agency, Real Estate Division (the "Real Estate Division"),
23 and consent for the City to enter into a property lease of the Cruise Terminal Building to the
24 trustee under the COP trust agreement (the "Trustee") and for the City to enter into a project
25 lease with the Trustee under the COP trust agreement (the "lease/lease-back"), subject to

1 conditions specified in the MOU; and (e) the Port's agreement to be responsible for all costs
2 to operate and maintain the Cruise Terminal Building for the duration of the lease/lease-back
3 term; and

4 (2) authorized Port staff to take actions necessary to cause the City to issue the
5 COPs; and

6 WHEREAS, The Board of Supervisors by Resolution No. 152-12 on May 8, 2012:

7 (1) authorized the issuance of COPs in an amount not to exceed \$45 million for the
8 Port Improvements;

9 (2) approved the form of a property lease under which the City will lease to the
10 Trustee all or a portion of the Laguna Honda Hospital and all or a portion of the Cruise
11 Terminal Building; and

12 (3) approved a form of project lease under which the Trustee will lease the City and
13 the Port property back to the City; and

14 WHEREAS, The COP lease/lease-back structure requires that the Port transfer
15 jurisdiction of Pier 27 to the City to enable the City to enter into the lease/lease-back as
16 required for the issuance of the COPs; and

17 WHEREAS, The Controller and the Port Commission have negotiated terms of the
18 proposed MOU described above, a copy of which is on file with the Clerk of the Board in File
19 No. 130736 and incorporated into this Resolution by this reference; and

20 WHEREAS, Consistent with Chapter 23 of the Administrative Code, which governs
21 interdepartmental jurisdictional transfers of real property, the following have occurred:

22 (1) The Executive Director of the Port and the Controller have submitted a joint
23 letter to the Mayor and the Director of Real Estate, a copy of which is on file with the Clerk of
24 the Board in File No. 130736 and incorporated into this Resolution by this reference,
25 requesting that the Board of Supervisors approve the jurisdictional transfer of Pier 27 from the

1 Port to the Real Estate Division for the duration of the COP lease/lease-back term subject to
2 the Public Trust and the MOU, and the jurisdictional transfer of Pier 27 back to the Port when
3 the COPs have been fully paid; and

4 (2) The Director of Real Estate has reported his opinion in a letter to the Mayor, a
5 copy of which is on file with the Clerk of the Board in File No. 130736 and incorporated into
6 this Resolution by this reference, that the jurisdictional transfer of Pier 27 from the Port to the
7 Real Estate Division for the duration of the lease/lease-back term is necessary to obtain the
8 advantage of the COPs and that, after the COPs have been fully paid, no further advantage
9 derives from retaining jurisdiction in the Real Estate Division and has recommended that the
10 jurisdictional transfers of Pier 27 be made on the terms described in the MOU without
11 additional consideration in each case; and

12 (3) The Mayor recommends the proposed jurisdictional transfers of Pier 27 on the
13 terms described above; and

14 WHEREAS, The jurisdictional transfer of Pier 27 from the Port to the Real Estate
15 Division is necessary to finance the construction of Port Improvements such as the Cruise
16 Terminal and implements the Cruise Terminal Project; and

17 WHEREAS, In a letter dated February 8, 2013, a copy of which is on file with the Clerk
18 of the Board of Supervisors in File No. 130736 and incorporated into this Resolution by this
19 reference, the Director of Planning found that the construction of the Cruise Terminal Project
20 is consistent with the City's General Plan and with the Eight Priority Policies of City Planning
21 Code Section 101.1; now, therefore be it

22 RESOLVED, That the Board of Supervisors finds that the jurisdictional transfer of
23 Pier 27 from the Port to the Real Estate Division for the duration of the lease/lease-back term
24 is necessary to obtain the advantage of the COPs that the Board of Supervisors authorized by
25 Resolution No. 152-12 and that, after the COPs have been fully paid, no further advantage

1 derives from retaining jurisdiction in the Real Estate Division and that the jurisdictional
2 transfers of Pier 27 from the Port to the Real Estate Division and from the Real Estate Division
3 back to the Port be made on the terms described above without additional consideration in
4 each case; and, be it

5 FURTHER RESOLVED, That in accordance with the recommendations of the Director
6 of Real Estate, the Mayor, the Controller, and the Executive Director of the Port, and
7 consistent with the approval of the Port Commission and this Resolution, jurisdiction of Pier 27
8 will be transferred to the Real Estate Division for the duration of the lease/lease-back term,
9 subject to the condition subsequent that jurisdiction be transferred back to the Port after the
10 COPs have been fully paid; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors hereby approves the MOU and
12 authorizes the Controller to enter into the MOU with the Port Commission in substantially the
13 form attached to this Resolution; and be it

14 FURTHER RESOLVED, That the Board of Supervisors adopts as its own and
15 incorporates by reference as though fully set forth in this Resolution the findings in the
16 Director of Planning's letter referred to above that the construction of the Cruise Terminal
17 Project conforms with the General Plan and is consistent with the Eight Priority Policies of
18 Planning Code Section 101.1; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors approves, confirms, and ratifies
20 all actions previously taken by officers of the City with respect to the proposed jurisdictional
21 transfers of Pier 27; and, be it

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FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the Clerk of the Board of Supervisors, the Director of Real Estate, the Executive Director of the Port, and any other officer of the City involved in the jurisdictional transfers to take all actions necessary or appropriate to effectuate the purpose of this Resolution.

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Joanne Sakai
Deputy City Attorney