

1 [Public Trust Exchange Agreement - California State Lands Commission - Exchange of
2 Certain Streets in the Vicinity of the Millennium Tower and Transbay Terminal for Certain
3 Fisherman’s Wharf Streets]

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4 **Resolution approving and authorizing a Trust Exchange Agreement with the California**
5 **State Lands Commission that would remove the public trust from certain Transbay**
6 **Streets in the vicinity of the Millennium Tower and Transbay Terminal and impress the**
7 **public trust on certain Fisherman’s Wharf Streets; adopting environmental findings and**
8 **findings of consistency with the General Plan, and the eight priority policies of City**
9 **Planning Code, Section 101.1; and authorizing the Port’s Executive Director and the**
10 **Director of Property to execute documents and take certain actions in furtherance of**
11 **this Resolution, as defined herein.**

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13 WHEREAS, Pursuant to Chapter 1333 of the Statutes of 1968 (the “Burton Act”), the
14 State of California granted to the City and County of San Francisco (“City”) certain current and
15 former tide and submerged lands, including a number of public streets, to be held under the
16 jurisdiction of the San Francisco Port (the “Port”) subject the public trust for commerce
17 navigation and fisheries (“Public Trust”); and

18 WHEREAS, The granted lands include (a) a portion of Beale Street, bounded by
19 Mission Street and Howard Street; (b) a portion of Mission Street, bounded by Beale Street
20 and First Street; and (c) a portion of Fremont Street, bounded by Mission Street and Howard
21 Street (collectively, the “Trust Termination Streets”); and

22 WHEREAS, The Trust Termination Streets are situated in the vicinity of the Salesforce
23 Transit Center (“Transit Center”), are distant from the City’s present waterfront, are not

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1 needed to ensure public access to the water, and are longer needed to serve the purposes of
2 the Public Trust or the Burton Act (collectively, the “Trust”); and

3 WHEREAS, The recently completed Transit Center occupies the airspace and
4 subsurface of a portion of the Trust Termination Streets, and the City has previously agreed to
5 convey title to the occupied areas to the Transbay Joint Powers Authority, which owns and
6 operates the Transit Center in Ordinance No. 43-11 on file with the Clerk of the Board of
7 Supervisors in File No. 110019; and

8 WHEREAS, A proposed structural upgrade for the Millennium Tower at 301 Mission
9 Street, if approved, may occupy a portion of the surface and subsurface of the Trust
10 Termination Streets adjacent to the Tower, and the City may wish convey a permanent
11 easement in the occupied areas to the owners of the Tower to provide for the installation of
12 and occupation related to the structural upgrade; and

13 WHEREAS, The City is not permitted to convey any permanent easement or title in the
14 Trust Termination Streets unless the Trust is terminated therein; and

15 WHEREAS, Certain public streets owned by the City in or near Fisherman’s Wharf are
16 landward of the historic shoreline and therefore are not presently within the Port’s jurisdiction
17 or subject to the Trust, but are near the water and have high value for the Trust; and

18 WHEREAS, These streets include (a) a portion of Beach Street bounded by
19 Leavenworth Street and Van Ness Avenue; (b) a portion of Hyde Street bounded by Beach
20 Street and Jefferson Street; and (c) a portion of Bay Street, bounded by Kearney Street and
21 Stockton Street (collectively, the “Trust Addition Streets”); and

22 WHEREAS The Trust Addition Streets serve important Trust purposes by providing
23 public access along and to the water and the City’s waterfront, including access to Aquatic
24 Park, the Maritime Museum, Hyde Street Pier and Maritime National Historic Park, historic
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1 waterfront buildings such as the Cannery and Ghirardelli Square, and The Embarcadero
2 waterfront from Pier 35 to Pier 39; and

3 WHEREAS, On November 20, 2019, the Planning Department published a Preliminary
4 Mitigated Negative Declaration (“PMND”) for the 301 Mission Street, Millennium Tower
5 Perimeter Pile Upgrade Project (the “Project”); and

6 WHEREAS, The PMND found that although the Project could have potentially
7 significant impacts on the environment, such impacts will be reduced to a less than significant
8 level because Millennium Tower Association (the “Project Sponsor”) will implement all
9 mitigation measures identified in the PMND; and

10 WHEREAS, The Planning Department prepared and publicized the PMND in
11 compliance with the provisions of the California Environmental Quality Act (California Public
12 Resources Code, Sections 21000 et seq., “CEQA”), the State CEQA Guidelines (California
13 Code of Regulations, Title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco
14 Administrative Code (“Chapter 31”); and

15 WHEREAS, On December 27, 2019, following the required notice and appeal period,
16 the Planning Department published a Final Mitigated Negative Declaration (“FMND”); and

17 WHEREAS, In a letter dated December 27, 2019 (the “General Plan Referral Letter”),
18 the City Planning Department determined that the Trust Exchange is, on balance, consistent
19 with the General Plan, and with the eight priority policies of City Planning Code, Section
20 101.1; and

21 WHEREAS, The Board of Supervisors adopts these findings as its own; and

22 WHEREAS, As part of its determination on the General Plan, the Planning Department
23 reviewed and considered the FMND; and

1 WHEREAS, As part of the General Plan Referral Letter, the Planning Department
2 adopted CEQA Findings and the proposed mitigation monitoring and reporting program
3 (collectively, “CEQA Findings”) as required by State and local law; and

4 WHEREAS, Copies of the General Plan Referral Letter, FMND, CEQA Findings, and
5 the mitigation monitoring and reporting program are on file with the Clerk of the Board in File
6 No. 191286 and incorporated herein by reference; and

7 WHEREAS, The Board of Supervisors finds that the actions proposed herein are within
8 the scope of the Project analyzed in the FMND and subject to the CEQA Findings; and

9 WHEREAS, The Board of Supervisors hereby adopts and incorporates by reference
10 the CEQA Findings; and, in so doing, the Board of Supervisors approves and endorses the
11 mitigation monitoring and reporting program for implementation by other City departments;
12 and

13 WHEREAS, The Board of Supervisors further finds that (a) no substantial changes are
14 proposed in the Project and no substantial changes have occurred with respect to the
15 circumstances under which this Project will be undertaken that would cause new significant
16 environmental effects or a substantial increase in the severity of previously identified effects
17 and (b) there is no new information of substantial importance showing that the Project would
18 have any significant effects not discussed in the FMND, that significant effects would be
19 substantially more severe, or that new or different mitigation measures or alternatives would
20 substantially reduce one or more significant effects of the Project; and

21 WHEREAS, The City seeks to enter into an agreement with the Port and the California
22 State Lands Commission (“State Lands”) authorizing a Trust exchange (the “Trust Exchange”)
23 pursuant to Section 5 of Chapter 310, Statutes of 1987 (“Chapter 310”) whereby the Trust will
24 be lifted from the Trust Termination Streets in exchange for impressing the Trust on the Trust
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1 Addition Streets, all as depicted and described on documents on file with the Clerk of the
2 Board of Supervisors in File No. 191286; and

3 WHEREAS, Port and City staff have negotiated with the State Lands staff an exchange
4 agreement (the "Trust Exchange Agreement") that would authorize the conveyances
5 necessary to effectuate the Trust Exchange; and

6 WHEREAS, As required by Chapter 310, the Board of Supervisors makes the following
7 findings with respect to the Trust Termination Streets based on the recommendation of the
8 Port Commission as referenced below in this resolution:

9 (a) The Trust Termination Streets have been filled and reclaimed.

10 (b) The Trust Termination Streets are cut off from access to the waters of the San
11 Francisco Bay. The Trust Termination Streets consist of City streets in the Transbay area that
12 are several blocks from the waterfront. No immediate access to the waters of San Francisco
13 Bay exists from the Trust Termination Streets.

14 (c) The Trust Termination Streets comprise a relatively small portion of the Port's trust
15 grant. The total area of the Trust Termination Streets is approximately 143,000 square feet
16 (approximately 3.28 acres). The total amount of granted lands (exclusive of lands presently
17 submerged) held by the Port is approximately 725 acres, of which the Trust Termination
18 Streets represents 0.45%.

19 (d) The Trust Termination Streets are no longer needed or required for the promotion
20 of the Trust. The streets comprising the Trust Termination Streets are physically cut-off from
21 the water, serve no purpose in furthering maritime commerce, navigation or fisheries, and are
22 no longer needed or required for the promotion of the Trust. As public streets, the Trust
23 Termination Streets do not allow for the feasible development of uses that would further Trust
24 goals such as useable or desirable open space or park use or Trust-consistent commercial
25 use, such as hotel or retail. The primary use of the Trust Termination Streets is public access,

1 but the streets are distant from the waterfront and are not required to provide access to the
2 water.

3 (e) The Trust Termination Streets can be removed from the Trust without causing
4 substantial interference with Trust uses and purposes. The use of Trust Termination Streets
5 for non-Trust purposes would not impede any Trust use on the granted lands or otherwise
6 interfere with any Trust purpose. In addition, in exchange for the lifting of the Trust from the
7 Trust Termination Streets, the Port will receive streets into the Trust that have a greater
8 square footage and linear footage than the Trust Termination Streets, and have substantial
9 utility to the Trust. The area of the Trust Addition Streets comprises approximately 153,000
10 square feet in comparison to the total area of the Trust Termination Streets that is
11 approximately 143,000 square feet; and

12 WHEREAS, The Director of Property (“Director of Property”) has conveyed to Port staff
13 that based on an independent MAI draft appraisal from the City’s appraiser John Clifford that
14 the Trust Addition Streets have an appraised value that is equal to or greater than the value of
15 the Trust Termination Streets and the Port staff further found that the Trust Addition Streets
16 have a greater square footage and linear footage and substantial utility to the Trust in contrast
17 to the Trust Termination Streets; and

18 WHEREAS, A letter from the City’s independent MIA appraiser John Clifford regarding
19 the status of the appraisal is on file with the Clerk of the Board of Supervisors in File No.
20 191286, and incorporated herein by reference; and

21 WHEREAS, The Board of Supervisors further finds that the Trust Addition Streets are
22 useful for the particular purposes specifically authorized by the Burton Act, for the reasons set
23 forth in these recitals; and

24 WHEREAS, In order to accomplish the proposed Trust Exchange, the Board of
25 Supervisors intends to approve the Trust Exchange on the material terms set forth in the Port

1 Commission Memorandum presented at the Port Commission meeting on January 14, 2020,
2 2020 (the “Port Commission Memorandum”) and in substantially the form of the Trust
3 Exchange Agreement; and

4 WHEREAS, The Port Commission, at its regular public meeting on January 14, 2020,
5 2020, by Resolution No. 20-01, adopted findings regarding the Trust Exchange, including
6 CEQA Findings, and took other related actions; and

7 WHEREAS, The Port Commission, at this same meeting, by Resolution No. 20-01,
8 approved the Trust Exchange Agreement and determined that the Trust Addition Streets have
9 a value that is equal to or greater than the value of the Trust Termination Streets and are
10 useful for the particular trust purposes specifically authorized by the Burton Act; and

11 WHEREAS, Copies of the Trust Exchange Agreement, Port Commission
12 Memorandum, and the Port Commission Resolution are on file with the Clerk of the Board of
13 Supervisors in File No. 191253 and incorporated herein by reference; and

14 WHEREAS, The Board of Supervisors finds that the Trust Exchange Agreement
15 conforms to all local laws and regulations and is not prohibited by the City’s Charter; now,
16 therefore, be it

17 RESOLVED, The Board of Supervisors finds that the Trust Exchange is in
18 conformance with the Burton Act and Chapter 310, subject to approval by State Lands; and,
19 be it

20 FURTHER RESOLVED, That for reasons set forth herein, the Board of Supervisors
21 finds that the Trust Termination Streets (a) have been filled and reclaimed, and are cut off
22 from access to the waters of the Bay, (b) comprise a relatively small portion of the Port’s trust
23 grant, (c) are no longer needed or required for the promotion of the Trust, (d) can be removed
24 from the Trust without causing substantial interference with Trust uses and purposes; and, be
25 it

1 FURTHER RESOLVED, That the Trust Addition Streets have a value that is equal to or
2 greater than the value of the Trust Termination Streets, and are useful for the particular trust
3 purposes specifically authorized by the Burton Act; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Trust
5 Exchange and the Trust Exchange Agreement including all attachments and exhibits thereto,
6 and the transactions which such agreement contemplates, materially on the terms and
7 conditions set forth in the Port Commission Memorandum and in such final form as is
8 approved by the City Attorney; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors authorizes and directs the
10 Director of Property and the Port’s Executive Director (“Executive Director”) to execute the
11 Trust Exchange Agreement in substantially the form presented to this Board, and in such final
12 form as if approved by the Executive Director in consultation with the City Attorney; and, be it

13 FURTHER RESOLVED, That the Director of Property and the Executive Director are
14 hereby authorized and urged, on behalf of the City and the Port, to (a) execute and deliver
15 any and all conveyance deeds and instruments, including the deeds to the Trust Termination
16 Streets and the Trust Addition Streets to the State, (b) accept from the State a Trust patent for
17 the Trust Addition Streets (c) accept from the State a Trust termination patent for the Trust
18 Termination Streets, and (d) to take any and all steps (including, but not limited to, the
19 execution and delivery of any and all certificates, agreements, notices, consents, escrow
20 instructions, closing documents and other instruments or documents) as they deem necessary
21 or appropriate in order to consummate the conveyances that comprise Trust Exchange in
22 accordance with the terms of the Trust Exchange Agreement, or to otherwise effectuate the
23 purpose and intent of this Resolution, such determination to be conclusively evidenced by the
24 execution and delivery by the Director of Property and Executive Director of any such
25 documents; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
2 Property, the Executive Director and any other appropriate officers, agents or employees of
3 the City to take any and all steps (including the execution and delivery of any and all
4 certificates, agreements, notices, consents, escrow instructions, closing documents and other
5 instruments or documents) as they or any of them deems necessary or appropriate, in
6 consultation with the City Attorney, in order to consummate the transactions contemplated by
7 the Trust Exchange Agreement, in accordance with this resolution, or to otherwise effectuate
8 the purpose and intent of this Resolution, such determination to be conclusively evidenced by
9 the execution and delivery by any such person or persons of any such documents.

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