

1 [Amended and Restated Land Disposition and Acquisition Agreement - Exchange of 639
2 Bryant Street for 2000 Marin Street]

3 **Ordinance approving an Amended and Restated Land Disposition and Acquisition**
4 **Agreement with 2000 Marin Property, L.P. for the City’s transfer of real property at 639**
5 **Bryant Street (Assessor’s Parcel Block No. 3777, Lot No. 052) under the jurisdiction of**
6 **the San Francisco Public Utilities Commission in exchange for real property at 2000**
7 **Marin Street (Assessor’s Parcel Block No. 4346, Lot No. 003), subject to several**
8 **conditions, including the reimbursement of certain transaction costs; waiving the**
9 **Administrative Code, Section 23.3, appraisal and fair market value requirements;**
10 **making findings of consistency with the General Plan, and the eight priority policies of**
11 **Planning Code, Section 101.1; and adopting findings under the California**
12 **Environmental Quality Act, including the adoption of a Mitigation Monitoring and**
13 **Reporting Program.**

14 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
15 **Additions to Codes** are in *single-underline italics Times New Roman font*.
16 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
17 **Board amendment additions** are in double-underlined Arial font.
18 **Board amendment deletions** are in ~~strikethrough Arial font~~.
19 **Asterisks (* * * *)** indicate the omission of unchanged Code
20 subsections or parts of tables.

21 Be it ordained by the People of the City and County of San Francisco:

22 Section 1. Background and Findings.

23 (a) The City and County of San Francisco (“City”), under the jurisdiction of the San
24 Francisco Public Utilities Commission (“SFPUC”), owns certain real property known as 639
25 Bryant Street, Assessor’s Parcel Block No 3777, Lot No. 052 (“City Property”), an approximately
1.37-acre parcel improved with a warehouse and parking lot, that is used for heavy equipment
and materials storage, parking, construction staging, and other related SFPUC purposes.

1 (b) The City, through the SFPUC, leases adjacent property at 651 Bryant Street,
2 Assessor's Parcel Block No. 3777, Lot No. 050 ("City Leased Premises"), for related office and
3 warehouse purposes pursuant to a written lease ("651 Lease"), lease that expires on October
4 18, 2029.

5 (c) 2000 Marin Property, L.P., a Delaware limited partnership ("Developer"), owns
6 certain real property known as 2000 Marin Street, Assessor's Parcel Block No. 4346, Lot 003
7 ("2000 Marin"), an approximately 7.98-acre parcel with a 74,000 square foot building built in
8 1989.

9 (d) The Developer proposes to acquire the City Property in exchange for 2000 Marin
10 and other consideration to be provided by the Developer to the SFPUC (together, the
11 "Exchange Transaction"), and seeks to develop a mixed-use project on the City Property, the
12 City Leased Premises, and other adjacent parcels with approximately 923,000 square feet of
13 office space, 60,500 square feet of retail/PDR space, 5,546 gross square feet of institutional
14 (child care) space, and an approximately 40,000 square foot public park ("Development
15 Project").

16 (e) On August 2, 2018, the City adopted Resolution No. 248-18 (Board of
17 Supervisors File No. 180550), approving a Conditional Land Disposition and Acquisition
18 Agreement between the City and the Developer ("Original Exchange Agreement"), which, upon
19 the satisfaction of certain conditions, provided for (a) the exchange of the City Property for 2000
20 Marin; (b) the SFPUC's obligation to reimburse the Developer for the costs of new temporary
21 utility yard facilities ("Temporary SFPUC Facility") to be constructed by the Developer for the
22 SFPUC on a portion of 2000 Marin; and (c) the Developer's obligations to (1) relocate the
23 SFPUC's personal property, at the Developer's cost, from the City Property and the City Leased
24 Premises to 2000 Marin; (2) relocate a SFPUC hydrogen peroxide tank (HP Tank) from the City
25 Property to a nearby location at the Developer's cost; (3) construct or place the new "Temporary

1 SFPUC Facility” for the SFPUC on a portion of 2000 Marin, with the SFPUC to reimburse the
2 Developer for the costs of such construction or placement; and (4) pay the SFPUC for certain
3 transactional costs the SFPUC has incurred in connection with the proposed Exchange
4 Transaction.

5 (f) Subsequent to the adoption of Resolution No. 248-18, the Developer and the City
6 negotiated certain amendments to the Original Exchange Agreement (“Amended Agreement”).
7 In addition to providing for the Exchange Transaction, the Amended Agreement also requires
8 the Developer to provide the SFPUC with the following additional consideration (“Additional
9 Developer Consideration”):

10 (i) **Tenant Improvements for the SFPUC at Port Leased Premises.** The
11 SFPUC is currently negotiating with the Port for a four-year lease of the Port’s Pier 23 and the
12 Roundhouse Two facilities in San Francisco (“Port Leased Premises”) starting March 1, 2020
13 to allow the SFPUC to relocate the Power Enterprise operations currently on the City Property
14 and the City Leased Premises. Upon finalization and approval of two proposed Memoranda
15 of Understanding between the Port and the SFPUC providing for the SFPUC’s lease of the
16 Port Leased Premises, the Developer will pay up to \$2,700,000 to construct and install tenant
17 improvements for the SFPUC at the Port Leased Premises. The SFPUC desires such
18 improvements to be temporary to give the SFPUC time (A) to undertake a long-term facility
19 master planning process to determine the optimal use of 2000 Marin and other SFPUC
20 property in San Francisco and the scope of improvements necessary for such use, including
21 improvements for the expanding Power Enterprise operations, and (B) to identify adequate
22 funding for such improvements. The City will reimburse the Developer for any tenant
23 improvement costs above \$2,700,000; and

24 (ii) **Power Enterprise Moving Costs.** The Developer will provide all services
25 necessary to move the Power Enterprise’s personal property and equipment from the City

1 Property and the City Leased Premises to the Port Leased Premises on a date mutually
2 agreeable to the parties (“Moving Date”) following completion of the tenant improvements at
3 the Port Leased Premises. The Developer’s third-party costs incurred in such move will be
4 reimbursed from the City’s Transaction Costs payment discussed below; and

5 **(iii) Reimbursement for City Leased Premises Rent Due.** The Developer
6 has an option to purchase the real property and improvements at the City Leased Premises.
7 The Developer has stated that it will not close escrow on its purchase of the City Leased
8 Premises before the Moving Date. Because it is expected that the SFPUC’s obligation to pay
9 rent to the Port for the Port Leased Premises will commence on March 1, 2020 (“Port
10 Commencement Date”), pursuant to the Amended Agreement, the Developer will either waive
11 or reimburse the SFPUC for any rent or other payments required under the 651 Lease on or
12 after the Port Commencement Date in order to prevent the SFPUC from having to
13 simultaneously pay rent for both the City Leased Premises and the Port Leased Premises.
14 The Amended Agreement provides that (A) if the Developer acquires the City Leased Premises
15 prior to the close of escrow with respect to the Exchange Transaction (“Close of Escrow”) and
16 therefore becomes the City’s landlord, the Developer will allow the SFPUC to occupy the City
17 Leased Premises free of charge from the Port Commencement Date through the Moving Date
18 and (B) if the Developer does not acquire the City Leased Premises prior to Close of Escrow,
19 the Developer will pay or reimburse the City for, and indemnify and hold the City harmless
20 from, all rent and other sums payable under the 651 Lease with respect to the period from and
21 after the earlier of the Moving Date or the Port Commencement Date otherwise payable by the
22 City to the landlord of the City Leased Premises; and

23 **(iv) City’s Transaction Costs.** The Developer will deposit into escrow at the
24 closing of the Exchange Transaction a flat sum of \$1,000,000 (“Transaction Costs”) to
25 compensate the City for certain of its expenses arising from the Exchange Transaction. After

1 the Developer moves the SFPUC from the City Property and the City Leased Premises, the
2 Developer's agreed-upon moving costs will be disbursed to the Developer from the sums
3 deposited in escrow and the balance of funds held in escrow will be disbursed to the City. The
4 City's Transaction Costs include (A) the City's attorney's fees for negotiation and preparation
5 of the Exchange Transaction documents; (B) the City's costs incurred to investigate the
6 physical condition, title, and suitability of 2000 Marin for the City's use; (C) the City's appraisal
7 fees; (D) the City's personnel, consultant, and other environmental review costs and fees; and
8 (E) the City's title insurance, escrow costs, and other closing costs to acquire 2000 Marin. The
9 Developer's obligation to pay the \$1,000,000 will survive the termination or cancellation of the
10 Amended Agreement; and

11 **(v) Caltrans Authorization.** The SFPUC will de-commission the existing HP Tank located
12 on the City Property at its sole cost by abandoning it in place prior to Close of Escrow.
13 The SFPUC has not determined if, where, or when a replacement hydrogen peroxide
14 tank will be installed. The SFPUC may seek to place a new hydrogen peroxide tank on
15 land owned by the California Department of Transportation (Caltrans) which is located
16 on or adjacent to Harrison Street, in San Francisco between Merlin Street and Morris
17 Street ("Merlin Morris Site"), or another suitable nearby site. If the SFPUC seeks to place
18 a new hydrogen peroxide tank on or adjacent to the Merlin Morris Site or another suitable
19 site owned by Caltrans, as further consideration to the SFPUC, and at the Developer's
20 sole expense, the Developer will use commercially reasonable efforts to obtain from
21 Caltrans its authorization for the SFPUC's placement of a new hydrogen peroxide tank
22 on the Merlin Morris Site or another suitable nearby site owned by Caltrans. The City
23 would conduct any environmental review required by the California Environmental
24 Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") prior to making
25 such decisions. If the SFPUC determines not to place a new hydrogen peroxide tank on

1 or adjacent to the Merlin Morris Site or another suitable site owned by Caltrans, or if the
2 Developer is not able to obtain Caltrans' authorization to placement of a new hydrogen
3 peroxide tank on Caltrans land selected by the SFPUC within 18 months of the closing
4 of the Exchange Transaction, then the Developer shall pay the City the sum of \$150,000.

5 (g) The City's obligation to complete the Exchange Transaction under the Amended
6 Agreement is conditioned on, among other things, (a) the City's approval of the Exchange
7 Transaction following review of the survey, title, and physical condition of 2000 Marin; (b) the
8 SFPUC's de-commissioning of the HP Tank by abandoning it in place at the City Property; and
9 (c) the SFPUC Commission's confirmation of the City's willingness to proceed with the
10 Exchange Transaction after the SFPUC's review of assessments of the environmental condition
11 of 2000 Marin, including the Phase II Report (defined below).

12 (h) 2000 Marin has soil contamination stemming from former uses and is subject to
13 regulation by the State of California Department of Toxic Substance Control.

14 (i) In May 2019, the environmental consulting firm Ramboll completed a Phase II site
15 investigation and report of 2000 Marin ("Phase II Report") based upon a proposed early
16 conceptual scope of work that the SFPUC is considering for a potential use for the site.

17 (j) The SFPUC Commission reviewed the Phase II Report and environmental
18 remediation cost estimate for a potential use of 2000 Marin on file with the Commission
19 Secretary and found that the additional consideration being provided by the Developer and the
20 opportunity to acquire one of the last available large industrial parcels in San Francisco justifies
21 proceeding with the Exchange Transaction notwithstanding the potential substantial cost of
22 future hazardous materials remediation at 2000 Marin, and acknowledged that such costs will
23 ultimately depend upon the SFPUC's plans for its future use of 2000 Marin, which is to be
24 determined and approved by the SFPUC's Commission at a later date following completion of
25 environmental review for any such project.

1 (k) The Developer's obligation to complete the Exchange Transaction is conditioned
2 on, among other things, the receipt of all governmental approvals necessary for the Developer
3 to proceed with the Developer Project.

4 (l) On November 26, 2019, the SFPUC, by Commission Resolution No. 19-0227,
5 authorized the General Manager of the SFPUC to execute the Amended Agreement, subject to
6 approval by the Board of Supervisors.

7 (m) Entering into the Amended Agreement with the Developer is in the City's best
8 interest, and the SFPUC has found in Resolution No. 19-0227 that (1) the existing space at the
9 City Property and other SFPUC property in San Francisco will not meet the SFPUC's
10 anticipated future utility yard and operational needs, so either expansion of the existing facilities
11 or securing replacement facilities will be necessary in the near future; (2) 2000 Marin presents
12 an extremely rare opportunity for the SFPUC to acquire industrial property with a sufficient area
13 to meet its critical utility yard needs, particularly as the population in San Francisco increases,
14 and the three SFPUC enterprises (water, wastewater, and power) expand their operations to
15 meet increased utility demand; and (3) 2000 Marin is expected to result in improved and more
16 integrated SFPUC utility operations on a site that is five times larger than the City Property, with
17 excellent access to transportation routes, and therefore, after all of the conditions for the
18 proposed Exchange Transaction are satisfied, the City's acquisition of 2000 Marin would render
19 the City Property surplus to the SFPUC's utility needs.

20 (n) The proposed use of the City Property by the Developer will yield more
21 appropriate land uses within the Central SoMa Plan Area.

22 (o) After close of escrow on the Exchange Transaction when the SFPUC acquires
23 2000 Marin, the City Property will be surplus to the SFPUC's utility needs.

1 Section 2. Environmental and General Plan Consistency Findings.

2 (a) On November 19, 2019, the Planning Department determined that the relocation
3 of SFPUC's Power Enterprise Utility Field Services to the Port Leased Premises is categorically
4 exempt from CEQA under CEQA Guidelines Section 15301, Class 1 (Existing Conditions).

5 (b) The Development Project is located within the boundaries of the Central SoMa
6 Plan area. On May 10, 2018, after a duly noticed public hearing, the Planning Commission
7 certified the Final Environmental Impact Report ("EIR") for the Central SoMa Area Plan by
8 Motion No. 20182; and recommended the Central SoMa Plan to the Board of Supervisors for
9 approval by Resolution Nos. 20185, 20186, 20187, and 20188.

10 (c) On December 7, 2018, the City enacted legislative amendments implementing
11 the Central SoMa Area Plan by Ordinance Nos. 280-18, 281-18, 282-18, and 283-18.

12 (d) In approving the Central SoMa Plan, the Planning Commission adopted findings
13 as required by CEQA in its Resolution No. 20183, and the Board of Supervisors adopted CEQA
14 Findings in Ordinance No. 280-18.

15 (e) On May 29, 2019, the Department determined that the Development Project,
16 which includes the Exchange Transaction, did not require further environmental review under
17 Section 15183 of the CEQA Guidelines and California Public Resources Code Section 21083.3,
18 finding that the Development Project is consistent with the adopted zoning controls in the
19 Central SoMa Area Plan and was encompassed within the analysis contained in the EIR, and
20 finding further that since the EIR was finalized, there have been no substantive changes to the
21 Central SoMa Area Plan and no substantive changes in circumstances that would require major
22 revisions to the EIR due to the involvement of new significant environmental effects or an
23 increase in the severity of previously identified significant impacts, and there is no new
24 information of substantial importance that would change the conclusions set forth in the Final
25 EIR. The Department therefore prepared a Community Plan Evaluation ("CPE") certificate for

1 the Development Project. The file for this project, including the Central Soma Area Plan EIR
2 and the CPE certificate, is available for review at the Planning Department, 1650 Mission Street,
3 Suite 400, San Francisco, California.

4 (f) The Planning Commission also adopted CEQA findings in its Motion No. 20459,
5 including a Mitigation Monitoring and Reporting Program (“MMRP”) applicable to the
6 Development Project, when it approved the Development Project.

7 (g) On June 6, 2019, the San Francisco Planning Commission approved Office
8 Allocation and Eastern Neighborhoods Large Project Authorization entitlements for the
9 Development Project by its Motion Nos. 20459, 20460, and 20461. The Planning Commission
10 also approved a park fee waiver permitted by Planning Code Section 406(e), and authorized
11 the Planning Director to sign the waiver agreement in its Resolution No. 20461.

12 (h) The Board of Supervisors has reviewed relevant portions of the Central SoMa
13 EIR, and the CPE certificate prepared for the Development Project.

14 (i) The Board of Supervisors hereby incorporates the CEQA findings contained in
15 Ordinance No. 280-18, Planning Commission Resolution No. 20183, and Planning Commission
16 Motion No. 20459, including adoption of an MMRP for the Development Project, by this
17 reference thereto as though set forth herein in their entirety.

18 (j) The Board of Supervisors affirms the Planning Department’s November 19, 2019
19 determination that the relocation of SFPUC’s Power Enterprise Utility Field Services to the Port
20 Leased Premises is categorically exempt from CEQA under CEQA Guidelines Section 15301,
21 Class 1 (Existing Conditions).

22 (k) The Board of Supervisors finds the Amended Agreement is consistent with the
23 General Plan, and the eight priority polices of Planning Code, Section 101 for the reasons set
24 forth in Planning Commission Motion No. 20459 and hereby incorporates such findings by
25 reference as if fully set forth in this ordinance.

1 Section 3. Waiver of Administrative Code Section 23.3 Appraisal and Fair Market Value
2 Requirements.

3 (a) On May 18, 2018, in accordance with the requirements of Administrative Code
4 Section 23.3, the City obtained two appraisals (“2018 Appraisals”) in connection with the
5 proposed Exchange Transaction, one of the City Property at \$63,875,000 and one of 2000
6 Marin at \$63,600,000. On June 5, 2018, the appraised values stated in each of the 2018
7 Appraisals were confirmed by two respective appraisal reviews as required by Administrative
8 Code Section 23.3.

9 (b) Because (1) based on the 2018 Appraisals, the combined fair market value of
10 2000 Marin and the Additional Developer Consideration either equals or exceeds the appraised
11 value of the City Property and (2) even if the current combined fair market value of 2000 Marin
12 and the Additional Developer Consideration is now less than the current fair market value of the
13 City Property, the City’s acquisition of 2000 Marin will further a proper public purpose, the Board
14 of Supervisors hereby waives any provisions of Administrative Code Section 23.3 that require
15 (1) the City to obtain additional or updated appraisals or appraisal reviews in connection with
16 the Exchange Transaction and (2) that require the City to receive at least 100% of the appraised
17 value of the City Property.

18 Section 4. Approval of the Agreement.

19 The Board of Supervisors hereby approves the Amended Agreement and authorizes the
20 execution of the Amended Agreement by the Director of Property and/or the SFPUC General
21 Manager in substantially the form presented to the Board in File No. 191280, together with any
22 other documents that are necessary or advisable to effectuate the proposed Exchange
23 Transaction.

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1 Section 5. Additions, Amendments, and Modifications.

2 The Board of Supervisors hereby authorizes the SFPUC General Manager and/or the City's
3 Director of Property to enter into any amendments or modifications to the Amended Agreement,
4 including without limitation, the exhibits, that the General Manager or Director of Property
5 determines, in consultation with the City Attorney, are in the best interest of the City; do not
6 materially increase the City's obligations or liabilities; are necessary or advisable to effectuate
7 the purposes and intent of the Agreement or this ordinance; and are in compliance with all
8 applicable laws, including the City Charter.

9 Section 6. Approval and Ratification of Prior Actions.

10 All actions prior to the adoption of this ordinance by the City's officers with respect to the
11 Amended Agreement and the Exchange Transaction are hereby approved, confirmed, and
12 ratified.

13 Section 7. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By: _____
22 RICHARD HANDEL
23 Deputy City Attorney
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