

AMENDED IN COMMITTEE

5/15/13

FILE NO. 130385

RESOLUTION.

1 [Airspace Lease - State of California - Property under Highway 101 near Duboce Street,
2 between Valencia Street and Stevenson Street - SoMa West Dog Park - Initial Term of
3 Twenty Years - Total Base Rent \$2,335,343]

4 **Resolution approving the execution of an airspace lease for a portion of property**
5 **commonly known as Lot 074, Block 3513 and located under Highway 101 near Duboce**
6 **Street, between Valencia Street and Stevenson Street, by and between the City and**
7 **County of San Francisco (City), and the State of California, acting by and through its**
8 **Department of Transportation, for an initial term of twenty years and a total base rent of**
9 **\$2,335,343; adopting environmental findings and other findings that the actions set**
10 **forth in this Resolution are consistent with the City's General Plan and eight priority**
11 **policies; and authorizing other actions in furtherance of this Resolution.**

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13 WHEREAS, A portion of the former Central Freeway damaged by the 1989 Loma
14 Prieta earthquake was replaced with a ground-level boulevard along Octavia Street from
15 Market to Fell Streets; and

16 WHEREAS, The State of California, acting by and through its Department of
17 Transportation (State) transferred certain real property formerly occupied by the Central
18 Freeway (the "Central Freeway Parcels") to the City pursuant to Section 72.1 of the California
19 Streets and Highways Code and a Cooperative Agreement between the City and the State
20 dated November 29, 2000 ("Cooperative Agreement"), which transfer was authorized by
21 Board Resolution No. 469-00, adopted by the City's Board of Supervisors on May 22, 2000,
22 and signed by the City's Mayor on June 2, 2000. A copy of the Cooperative Agreement and
23 Board Resolution No. 469-00 is on file with the Clerk of Board of Supervisors in File No.
24 130385 and incorporated herein by reference; and

1 WHEREAS, Section 72.1 of the California Streets and Highways Code and the
2 Cooperative Agreement require City to use the proceeds from the disposition of the excess
3 Central Freeway parcels for transportation and related purposes authorized under Article XIX
4 of the California Constitution; and

5 WHEREAS, In November of 1999, the voters of the City and County of San Francisco
6 approved Proposition I, which required City to use the proceeds from the sale or disposition of
7 excess Central Freeway Parcels for the Octavia Boulevard Plan, as defined in Proposition I, a
8 copy of which is on file with the Clerk of Board of Supervisors in File No. 130385 and
9 incorporated herein by reference; and

10 WHEREAS, Following completion of the Octavia Boulevard Plan, Proposition I required
11 the City to utilize any remaining proceeds from the sale or disposition of excess Central
12 Freeway Parcels (the “Remaining Proceeds”) for transportation improvements to corridors on
13 or ancillary to Octavia Boulevard, and directed the San Francisco Transportation Authority
14 (“SFCTA”) to allocate the Remaining Proceeds for such transportation improvements with
15 advice from its Central Freeway Citizens Advisory Committee and its Technical Working
16 Group and based on specified minimum criteria; and

17 WHEREAS, The SFCTA adopted the Central Freeway Replacement Project Ancillary
18 Projects Study on February 28, 2006, a copy of which is on file with the Clerk of Board of
19 Supervisors in File No. 130385 and incorporated herein by reference (the “Ancillary Projects
20 Study”); and

21 WHEREAS, The Ancillary Projects Study identified twelve transportation projects (the
22 “SoMa West Improvement Projects”), estimated to have a total cost of \$5,400,000, to be
23 funded from the Remaining Proceeds, which were estimated to be \$5,750,000 in 2006; and

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1 WHEREAS, One of the SoMa West Improvement Projects called for developing
2 recreational uses under the portion of the Central Freeway structure restored by the State
3 after the 1989 Loma Prieta earthquake; and

4 WHEREAS, Residents of the neighborhood impacted by the restoration of the
5 damaged Central Freeway and the implementation of the Octavia Boulevard Plan have long
6 expressed a desire for a dog park and open space amenities for recreational use within the
7 neighborhood; and

8 WHEREAS, The City has identified a suitable State property under the Central
9 Freeway under Highway 101 near Duboce Street, between Valencia Street and Stevenson
10 Street (Lot 074, Block 3513) (the "Property"), which is currently used for parking and is
11 capable of accommodating the proposed dog park; and

12 WHEREAS, The State has agreed to lease the Property to the City, and the City has
13 agreed to lease the Property from Caltrans, pursuant to the form of lease on file with the Clerk
14 of Board of Supervisors in File No. 130385 and incorporated herein by reference (the
15 "Lease"); and

16 WHEREAS, The City has agreed to improve the Property with a dog park and a
17 parking area designed in concert with the neighborhood, with the improvements funded from
18 the Remaining Proceeds; and

19 WHEREAS, Once the improvements are installed at the Property, the City will maintain
20 the Property through a interdepartmental Memorandum of Understanding ("Park MOU") by
21 and among the Real Estate Division of the General Services Agency ("DRE"), Department of
22 Public Works, Recreation and Parks Department ("RPD"), and the Office of Economic and
23 Workforce Development, a copy of which is on file with the Clerk of Board of Supervisors in
24 File No. 130385 and incorporated herein by reference; and

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1 WHEREAS, To facilitate RPD's maintenance and operation of the dog park for DRE
2 pursuant to the Park MOU, this Board is considering a pending ordinance that would extend
3 the requirements of the San Francisco Park Code to the public use of the dog park at the
4 Property during the term of the Lease, a copy of which is in the Clerk of Board of Supervisors
5 File No. 130226 and incorporated herein by reference; and

6 WHEREAS, Although the proposed dog park will provide recreational use of the
7 Property, it will be subject to the term of the Lease and the impacts of being directly below the
8 Central Freeway, and neither this Board's approval of the Lease nor adoption of Park
9 Ordinance are intended to convert the Property into such a significant "park" or "recreational
10 area" as those terms are used in 23 United States Code Section 138 and 49 United States
11 Code Section 303; and

12 WHEREAS, The Lease will have an initial twenty-year term and a total base rent of
13 \$2,335,343 paid at the commencement of the Lease, and State will need to issue an
14 encroachment permit to the City before the installation of dog park and parking improvements
15 at the Property, as further described in Exhibit B of the Lease; and

16 WHEREAS, The Lease grants the City a ten-year option to extend the term of the
17 Lease at a rate to be negotiated pursuant the Lease; and

18 WHEREAS, The City's Planning Department determined that the Lease is exempt from
19 environmental review under the California Environmental Quality Review Act, as evidenced in
20 a Certificate of Determination issued for Case No. 2011.0645E on October 21, 2011, a copy
21 of which is on file with the Clerk of the Board of Supervisors in File No. 130385 and is
22 incorporated herein by reference; and

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1 WHEREAS, In a General Plan Referral dated March 6, 2013, for Case No.
2 2011.0645R, the City's Planning Department found that the proposed project described in this
3 Resolution is consistent with the City's General Plan pursuant to Section 4.105 of the Charter
4 and Section 2A.53 of the Administrative Code, with a copy of such General Plan Referral on
5 file with the Clerk of the Board of Supervisors in File No. 130385 and incorporated herein by
6 reference. The Board of Supervisors finds that the project contemplated in this Resolution is
7 consistent with the City's General Plan and with the Charter Section 4.105 and Administrative
8 Code Section 2A.53 for the reason set forth in said letter; now, therefore, be it

9 RESOLVED, That in accordance with the recommendation of the Director of Property,
10 the Director of Property is hereby authorized to enter into the Lease and take all actions on
11 behalf of the City and County of San Francisco necessary to effect the Lease and perform
12 City's obligations under the Lease; and, be it

13 FURTHER RESOLVED, That the Lease shall include a clause with City indemnifying,
14 holding harmless, and defending the State and its officers, employees, and agents from and
15 against any and all claims, suits, actions, injury, damage, and liability incurred as a result of
16 any acts or omissions by City in the performance of its obligations under the Lease or any
17 allegedly dangerous condition of public property based upon the condition of the Property,
18 excluding those incurred as a result of the highway structure above the Property or the use of
19 or activities on the Property by State or its officers, employees, or agents; and be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
21 Property to enter into any amendments or modifications to the Lease (including, without
22 limitation, the exhibits) that the Director of Property in consultation with the City Attorney,
23 determines are in the best interest of the City, do not materially increase the obligations of the
24 City or materially decrease the benefits of the City, are necessary or advisable to

1 consummate the performance of the purposes and intent of this Resolution, and comply with
2 all applicable laws, including the City's Charter, including any modifications or amendments to
3 the Lease; and be it

4 FURTHER RESOLVED, That the Lease shall be subject to certification as to funds by
5 the Controller, pursuant to Section 105 of the City Charter.

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\$2,335,343.00 Available
BUF Index Code: _____
Project Code: _____

CONTROLLER

RECOMMENDED:

JOHN UPDIKE
DIRECTOR OF PROPERTY