

1 [Conditional Property Exchange Agreement - Kensington Way LLC - Potential Exchange of  
2 Vacant Land on Edgehill Mountain Near Kensington Way for Vacant Land Near Moraga  
3 Avenue and Noriega Avenue]

4 **Resolution authorizing an agreement for the conditional exchange of vacant land**  
5 **located on Edgehill Mountain for City's property on paper street areas near Moraga**  
6 **Avenue and Noriega Avenue; finding that the exchange agreement is a conditional land**  
7 **acquisition agreement under California Environmental Quality Act Guidelines, Section**  
8 **15004(b)(2)(A); finding City's property to be exempt surplus land under California**  
9 **Government Code, Section 54221(f)(1)(C); and authorizing the Director of Property to**  
10 **execute documents, make certain modifications, and take certain actions in**  
11 **furtherance of the exchange agreement that do not materially increase the obligations**  
12 **or liabilities to the City and are necessary to effectuate the purposes of the exchange**  
13 **agreement or this Resolution.**

14  
15 WHEREAS, The City and County of San Francisco (the "City") owns unimproved real  
16 property consisting of six lots or portions of lots located generally as follows: 1) one lot located  
17 in a paper street area of Moraga Avenue, extending east along Moraga Avenue from the  
18 intersection of Moraga Avenue with 8th Avenue; 2) one lot located in a paper street area of  
19 Noriega Avenue, extending east along Noriega Avenue from the intersection of Noriega  
20 Avenue with 8th Avenue; 3) three lots located in paper street areas of Noriega Avenue and  
21 fronting on Laguna Honda Boulevard and 7th Avenue, extending west from the intersection of  
22 Noriega Avenue with Laguna Honda Boulevard and 7th Avenue; and 4) a portion of  
23 Assessor's Parcel Block No. 2440, Lot No. 020 (collectively, the "City Property"); and

24 WHEREAS, Kensington Way LLC, a California limited liability company ("Kensington")  
25 owns unimproved real property consisting of five lots located on Kensington Way near

1 Vasquez Avenue, San Francisco, California, known as Assessor's Parcel Block No. 2934, Lot  
2 Nos. 27, 26, 25, 24, and 10A (collectively, the "Kensington Property"); and

3 WHEREAS, The City desires to acquire fee title to the Kensington Property for City use  
4 to preserve Edgehill Mountain from further destabilization, a site known to be impacted by  
5 landslides, and to conserve it as open space; and

6 WHEREAS, Kensington desires to convey the Kensington Property to the City in  
7 exchange for the City Property; and

8 WHEREAS, The City and Kensington have negotiated an agreement for the exchange  
9 of the Kensington Property and the City Property (the "Exchange Agreement"), a copy of  
10 which is on file with the Clerk of the Board of Supervisors; and

11 WHEREAS, Before the City may dispose of the City Property, the Surplus Land Act  
12 (California Government Code, Section 54220 et seq.) requires the Board of Supervisors to  
13 declare the City Property exempt surplus land, as supported by written findings; and

14 WHEREAS, Pursuant to the Exchange Agreement, the City will convey the City  
15 Property to Kensington and Kensington will convey the Kensington Property to the City,  
16 contingent upon certain conditions precedent, as set forth in the Exchange Agreement; and

17 WHEREAS, The Director of Property has determined that the fair market value of the  
18 City Property is \$3,750,000.00, and the fair market value of the Kensington Property is not  
19 less than \$3,750,000; the fair market values of the City Property and the Kensington Property  
20 have been confirmed by appraisal and appraisal review in accordance with the requirements  
21 of San Francisco Administrative Code, Section 23.3; and

22 WHEREAS, Portions of the City Property are "paper streets," which are not improved  
23 as roadways and have not been designated by the City as public streets; Kensington intends  
24 to pursue development approvals for the City Property during the escrow period and will have  
25 the obligation to initiate and bear the cost of any necessary vacations of the public right-of-

1 way, and intends to undertake such actions prior to the exchange of the City Property and the  
2 Kensington Property; at the time of the property exchange following satisfaction of the  
3 conditions precedent set forth in the Exchange Agreement, the City will convey the entire City  
4 Property to Kensington subject to any rights of the public; and

5 WHEREAS, The City has not completed environmental review under the California  
6 Environmental Quality Act (“CEQA”) (California Public Resources Code, Section 21000 et  
7 seq.) the CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.),  
8 and Chapter 31 of the San Francisco Administrative Code for the proposed development  
9 project; and

10 WHEREAS, The Exchange Agreement is a conditional land acquisition agreement as  
11 described in CEQA Guidelines, Section 15004(b)(2)(A) that designates preferred sites for  
12 future use on the terms and conditions set forth in the Exchange Agreement and subject to  
13 compliance with CEQA, including the conditions of CEQA Guidelines, Section 15004(b)(2)(A)  
14 and Section 15004(b)(4); and

15 WHEREAS, The City does not commit to any definite course of action with regard to  
16 any future use prior to CEQA compliance and further, retains its absolute discretion to: a)  
17 make modifications it deems necessary to mitigate significant adverse environmental impacts,  
18 b) select feasible alternatives that avoid significant adverse impacts, including the “no project”  
19 alternative, 3) balance the benefits of any proposed project against the unavoidable significant  
20 impacts prior to taking final action, or 4) determine not to proceed with the closing; and

21 WHEREAS, Nothing in the Exchange Agreement or this Resolution affects or  
22 diminishes the right or discretion of the Planning Department, the Board of Supervisors, or  
23 any City official or department to grant, deny, or condition any development application,  
24 regulatory approval, or street vacation relative to the City Property; and

1           WHEREAS, The Director of Property, with the concurrence of the Director of Public  
2 Works, have determined that it is in the best interests of the City to enter into the Exchange  
3 Agreement, and that the public interest demands or will not be inconvenienced by the  
4 proposed property exchange; now, therefore, be it

5           RESOLVED, That the Board of Supervisors finds that the Exchange Agreement is a  
6 conditional land acquisition agreement as described in CEQA Guidelines, Section  
7 15004(b)(2)(A) and subject to the conditions of Section 15004(b)(2)(A) and Section  
8 15004(b)(4), and that closing is conditioned on completion of the environmental review and  
9 any development approval, regulatory approval, or street vacation relative to the City  
10 Property, for which the City retains its absolute discretion to grant, deny, or condition; and, be  
11 it

12           FURTHER RESOLVED, That the Board of Supervisors finds that the Kensington  
13 Property is necessary for the City’s use to preserve Edgehill Mountain from further  
14 destabilization and to conserve as open space; and, be it

15           FURTHER RESOLVED, That the Board of Supervisors declares that the exchange of  
16 the City Property for the Kensington Property is “exempt surplus land” not subject to  
17 procedures related to implementation of the Surplus Land Act, pursuant to Government Code,  
18 Section 54221(f)(1)(C); and, be it

19           FURTHER RESOLVED, That the Board of Supervisors finds that (i) the public interest  
20 or necessity demands, or will not be inconvenienced by the conveyance of the City Property,  
21 (ii) competitive bidding is impractical given the nature of the exchange of real property, and  
22 (iii) the exchange of real property will further a proper public purpose; and, be it

23           FURTHER RESOLVED, In accordance with the recommendation of the Director of  
24 Property, the Board of Supervisors approves the Exchange Agreement in substantially the  
25 form presented to the Board, and authorizes the Director of Property to accept the deed to the

1 Kensington Property upon the closing in accordance with the terms and conditions of the  
2 Exchange Agreement, and to take any and all actions (including, but not limited to, the  
3 execution and delivery of any and all certificates, agreements notices, consents, escrow  
4 instructions, closing documents and other instruments or documents) as the Director of  
5 Property, after consultation with the Office of the City Attorney, deems necessary, or  
6 appropriate in order to convey the City Property in exchange for the Kensington Property  
7 pursuant to the Exchange Agreement, or to otherwise effectuate the purpose and intent of this  
8 Resolution, such determination to be conclusively evidenced by the execution and delivery by  
9 the Director of Property of any such documents; and, be it

10           FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
11 Property to enter into any additions, amendments or other modifications to the documents  
12 (including, without limitation, the attached exhibits) that the Director of Property determines, in  
13 consultation with the City Attorney, are in the best interests of the City, do not materially  
14 increase the obligations or liabilities of the City, do not materially reduce the benefits to the  
15 City, and are necessary or advisable to complete the property exchange, such determination  
16 to be conclusively evidenced by the execution and delivery by the Director of Property of the  
17 documents and any amendments thereto; and, be it

18           FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
19 with respect to the Exchange Agreement are hereby approved, confirmed and ratified; and, be  
20 it

21           FURTHER RESOLVED, That within thirty (30) days of the Exchange Agreement being  
22 fully executed by all parties, the Director of Property shall provide the final Exchange  
23 Agreement to the Clerk of the Board for inclusion into the official file.

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RECOMMENDED:  
REAL ESTATE DEPARTMENT  
  
/s/ \_\_\_\_\_  
Director of Property

DEPARTMENT OF PUBLIC WORKS  
  
/s/ \_\_\_\_\_  
Director