

1 [Agreement to Exchange of Property and Settlement of Lawsuit]

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3 **Ordinance authorizing an agreement to exchange vacant land uphill from Edgehill Park**
4 **for the City’s property on Portola Drive; adopting findings that the exchange agreement**
5 **is categorically exempt from environmental review and is consistent with the City’s**
6 **General Plan and Eight Priority Policies of City Planning Code Section 101.1;**
7 **authorizing the Director of Property to execute documents, make certain modifications**
8 **and take certain actions in furtherance of the exchange agreement; and authorizing**
9 **settlement of the lawsuit entitled City and County of San Francisco v. William F. Spiers**
10 **dba Spiers Construction Company, filed on November 29, 2001 in San Francisco**
11 **Superior Court, Case No. 401-800, for an injunction requiring removal of Spiers’ fence**
12 **blocking access to Edgehill Park, for dismissal of Spiers’ cross-complaint for quiet**
13 **title, and for the exchange agreement.**

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

16 Section 1. Findings.

17 (a) The City and County of San Francisco (the “City”) owns unimproved real
18 property located at the corner of Portola Drive and Clipper Street, San Francisco, California,
19 known as Block No. 2870, Lot No. 48 (the “Portola Property”).

20 (b) Spiers Construction Company, a California general partnership, and
21 Forest View LLC, a California limited liability company (collectively, “Spiers”) own unimproved
22 real property on Edgehill Way, San Francisco, California, known as Block No. 2934, Lots 10,
23 11, 12, 13, and 21, and Block No. 2923, Lot Nos. 72 and 73 (collectively, the “Edgehill
24 Property”).

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1 (c) The City desires to acquire the Edgehill Property in order to combine it
2 with adjacent open space owned by the City, under the jurisdiction of its Recreation and Park
3 Department.

4 (d) Spiers has obtained the City's approval for the development of two lots
5 for single-family houses on the Edgehill Property, but is willing to suspend the approvals and
6 convey the Edgehill Property to the City in exchange for the Portola Property, provided that
7 Spiers first obtains development approvals for the Portola Property.

8 (e) The City and Spiers have negotiated an agreement for the exchange of
9 the Portola Property and the Edgehill Property (the "Exchange Agreement"), a copy of which
10 is on file with the Clerk of the Board of Supervisors.

11 (f) Under the Exchange Agreement, (i) Spiers shall seek development
12 approvals to permit construction of twenty-four (24) or more dwelling units on the Portola
13 Property; (ii) Spiers shall not construct any improvements on the Edgehill Property during the
14 term of the Exchange Agreement; and (iii) City shall use reasonable efforts to remove a fence
15 encroachment currently existing on the Portola Property. In the event that Spiers obtains
16 development approvals on the Portola Property to its satisfaction, the encroaching fence on
17 the Portola Property is removed, and the other conditions for closing set forth in the Exchange
18 Agreement are satisfied within twenty-four (24) months following the effective date of the
19 Exchange Agreement, then the City shall convey the Portola Property to Spiers and Spiers
20 shall convey the Edgehill Property to the City.

21 (g) The City has retained full and absolute discretion to grant or deny any
22 and all development approvals on the Portola Property following completion of environmental
23 review and nothing in the Exchange Agreement shall affect or diminish the right or discretion
24 of the Planning Department or any City official to grant, deny, or condition any development
25 application relative to the Portola Property.

1 (h) The Director of Property has determined that the fair market value of the
2 Edgehill Property is Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00), and
3 the fair-market value of the Portola Property, with the proposed development approvals, is not
4 less than Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00).

5 (i) Under the Exchange Agreement, Spiers will be required to pay the City
6 additional consideration in the event that the value of the Portola Property, following the
7 procurement of the development approvals and after deducting Spiers' entitlement costs,
8 exceeds Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00) pursuant to a
9 formula set forth in the Exchange Agreement, but in no event shall the City be required to pay
10 Spiers any consideration for the contemplated property exchange.

11 (j) A portion of the Portola Property is used as a public right-of-way (the
12 "Roadway"), although the Roadway has not been designated by the City as a public street. At
13 the time of the property exchange, if completed, the City shall convey the entire Portola
14 Property to Spiers, and Spiers shall dedicate and the City shall accept the Roadway as a
15 public street (including, without limitation, all maintenance obligations with respect thereto).

16 (k) Under the Exchange Agreement, Spiers and City each release and
17 indemnify the other party with respect to any environmental condition that may exist with
18 respect to the property that it acquires, unless and except to the extent the environmental
19 condition was caused by the active negligence or willful misconduct of the indemnifying party.

20 (l) Within ten (10) days following the Effective Date of the Exchange
21 Agreement, the City and Spiers shall file with San Francisco Superior Court a Stipulation for
22 Entry of Judgment and Permanent Injunction, a copy of which is attached to the Exchange
23 Agreement, requesting (a) entry of a permanent injunction in San Francisco Superior Court
24 Case No. 401-800 (the "Stipulation") requiring Spiers to remove the fence blocking access
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1 from Shangri-La Way to Edgehill Park and enjoining Spiers from interfering with access to the
2 park, and (b) dismissal of Spiers' cross-complaint for quiet title without prejudice.

3 (m) The General Manager of the Recreation and Park Department, the
4 Director of Public Works, and the Director of Property have determined that it is in the best
5 interests of the City to enter into the Exchange Agreement, and that the public interest
6 demands or will not be inconvenienced by the proposed property exchange.

7 (n) The Director of Planning found that the proposed property exchange is
8 categorically exempt from environmental review under CEQA and is consistent with the
9 City's General Plan and with the Eight Priority Policies of City Planning Code
10 Section 101.1, and a copy of these findings have been placed in the file with the Clerk of
11 the Board and are incorporated herein by this reference.

12 Section 2. General Plan Findings. The Board of Supervisors of the City and County of
13 San Francisco hereby finds that the City's execution and performance of the Exchange
14 Agreement is consistent with the City's General Plan and with the Eight Priority Policies of
15 City Planning Code Section 101.1, and the proposed property exchange is categorically
16 exempt from environmental review under CEQA, and agrees with and incorporates the
17 Director of Planning's findings by reference as though fully set forth in this ordinance.

18 Section 3. Approval of Settlement and Exchange Agreement. In accordance with
19 the recommendations of the General Manager of the Recreation and Park Department, the
20 Director of Public Works, and the Director of Property, the Board of Supervisors hereby
21 approves the Exchange Agreement, the Stipulation and the transactions contemplated
22 thereby in substantially the form of the Exchange Agreement and the Stipulation, and
23 authorizes the Director of Property to execute and deliver the Exchange Agreement and to
24 take the actions required to be performed by the City in the Exchange Agreement. The
25 Board of Supervisors authorizes the City Attorney to execute and deliver the Stipulation.

1 Section 4. Amendments. The Board of Supervisors authorizes the Director of
2 Property to enter into any additions, amendments or other modifications to the documents
3 (including, without limitation, the attached exhibits) that the Director of Property determines
4 are in the best interests of the City, that do not materially increase the obligations or
5 liabilities of the City, and are necessary or advisable to complete the property exchange,
6 such determination to be conclusively evidenced by the execution and delivery by the
7 Director of Property of the documents and any amendments thereto.

8 Section 5. General Authorization. The Director of Property is hereby authorized, in the
9 name and on behalf of the City and County of San Francisco, to take any and all steps
10 (including, but not limited to, the execution and delivery of any and all certificates,
11 agreements, notices, consents, escrow instructions, closing documents and other instruments
12 or documents) as the Director of Property deems necessary or appropriate in order to
13 consummate the property exchange in accordance with the terms of the Exchange
14 Agreement, or to otherwise effectuate the purpose and intent of this ordinance, such
15 determination to be conclusively evidenced by the execution and delivery by the Director of
16 Property of any such documents.

17 Section 6. Approving Settlement. The City Attorney is hereby authorized to settle with
18 defendant and cross-complainant William F. Spiers dba Spiers Construction Company in the
19 action entitled "City and County of San Francisco v. William F. Spiers dba Spiers Construction
20 Company," San Francisco Superior Court, Court No. 401-800, filed in San Francisco Superior
21 Court on November 29, 2001, for (a) the filing of a permanent injunction against Spiers
22 requiring Spiers to remove Spiers' fence blocking access from Shangri-La Way to Edgehill
23 Park and enjoining Spiers from interfering with access to the park, (b) dismissal without
24 prejudice of Spiers' cross-complaint for quiet title, and (c) the Exchange Agreement.

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APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney

ANDREW W. SCHWARTZ
Deputy City Attorney

APPROVED:
RECREATION & PARK DEPARTMENT

ELIZABETH GOLDSTEIN
General Manager

RECOMMENDED:

REAL ESTATE DEPARTMENT

KENNETH WINTERS
Director of Property

APPROVED:
DEPARTMENT OF PUBLIC WORKS

EDWIN LEE
Director