

1 [Amended and Restated Property Exchange Agreement.]

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3 **Resolution approving an amended and restated property exchange agreement**
4 **substituting City property located at the corner of Portola Drive and Burnett Avenue for**
5 **property located at the corner of Gough and Grove Streets; adopting findings that the**
6 **amended and restated exchange agreement is categorically exempt from**
7 **environmental review and is consistent with the City’s General Plan and Eight Priority**
8 **Policies of City Planning Code Section 101.1; and authorizing the Director of Property**
9 **to execute documents, make certain modifications and take certain actions in**
10 **furtherance of this resolution.**

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12 WHEREAS, The City and County of San Francisco initiated a lawsuit against Spiers
13 Construction Company, Forest View, LLC (“Spiers”), relative to Spier’s interference with public
14 access to an auto pathway leading to City’s Edgehill Mountain Park (San Francisco Superior
15 Court Case No. CPF-02-501831); and,

16 WHEREAS, In settlement of the litigation, Spiers and City entered into a property
17 exchange agreement dated as of December 30, 2003 (the “Property Exchange Agreement”),
18 which was approved by the Board of Supervisors by Ordinance No. 263-03 on November 18,
19 2003 and signed by the Mayor on November 26, 2003. Following the execution and delivery
20 of the Property Exchange Agreement, the City and Spiers filed a Stipulation for Entry of
21 Judgment and Permanent Injunction of judgment with the San Francisco Superior Court to
22 dismiss the lawsuit (the “Stipulation”); and,

23 WHEREAS, Under the Property Exchange Agreement, the City was to transfer certain
24 property owned by the City at Portola Drive, Clipper Street and Burnett Avenue (the “Portola
25 Property”) in exchange for certain property owned by Spiers on Edgehill Way (the “Edgehill

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1 Property”) upon the satisfaction of certain conditions set forth in the Property Exchange
2 Agreement; and,

3 WHEREAS, The City desires to acquire the Edgehill Property in order to combine it
4 with adjacent open space owned by the City, under the jurisdiction of its Recreation and Park
5 Department; and,

6 WHEREAS, The City, acting through the Recreation and Park Department, wishes to
7 substitute the Portola Property for certain property owned by the City at the southwest corner
8 of Gough and Grove Streets (the “Gough Property”); and,

9 WHEREAS, The Gough Street Property is part of the area formerly occupied by the
10 Central Freeway, and the City acquired the property from the State of California, Department
11 of Transportation, pursuant to Section 72.1 of the California Streets and Highways Code and
12 Board of Supervisors Resolution No. 000667; and,

13 WHEREAS, Section 72.1 of the California Streets and Highways Code requires that the
14 City use all proceeds from disposition of the former Central Freeway parcels acquired from
15 the State to finance the City's replacement of the former Central Freeway with a ground-level
16 boulevard along Octavia Street from Market to Fell Street, as described in that certain
17 Cooperative Agreement between the City and the State dated November 29, 2000 (the
18 "Octavia Boulevard Project") and, upon full funding of the Octavia Boulevard Project, for
19 transportation and related purposes authorized under Article XIX of the California Constitution;
20 and,

21 WHEREAS, in Ordinance No. 271-03, this Board created the Octavia Boulevard
22 Special Fund, San Francisco Administrative Code Section 10-100.369, to receive any and all
23 revenues from the sale of any of the former Central Freeway parcels, including the proceeds
24 from the sale of the Gough Property; and,

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1 WHEREAS, 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), and the
3 fair market value of the Gough Property is Three Million Five Hundred Thousand Dollars
4 (\$3,500,000); and

5 WHEREAS, The City and Spiers have agreed to amend and restate the Property
6 Exchange Agreement (the “Amended and Restated Agreement”) to substitute the Gough
7 Property for the Portola Property. In the Amended and Restated Agreement, Spiers will
8 acquire the Gough Property for \$3.5 million in cash at closing, and the City will purchase an
9 option to acquire the Edgehill property upon the following terms: (i) a 3 year option term; (ii) a
10 purchase price of \$2.95 million plus the Portola Entitlement Costs, as defined in the Amended
11 and Restated Agreement (or approximately \$3.2 million); (iii) City’s payment of \$1 million in
12 option consideration at the closing of the Gough Street Property transfer; (iv) if City exercises
13 the option during the first 12 months of the option term, then all of the option consideration will
14 be credited against purchase price, (v) if City exercises the option during months 13-24 of the
15 option term, then \$800,000 of the option consideration will be credited against the purchase
16 price, (vi) if City exercises the option during months 25-36 of the option term, then \$600,000 of
17 the option consideration will be credited against the purchase price, and (vii) Spiers will not be
18 permitted to develop the Edgehill property at any time during the option term; and,

19 WHEREAS, in Resolution No. 791-01, this Board approved a development strategy for
20 the former Central Freeway parcels that identified the Gough Property for development of
21 market rate housing with the requirement that a minimum of 15 percent of the housing units
22 be affordable housing, and Spiers has agreed to develop the Gough Property for housing and
23 to include 15 percent affordable housing units, pursuant to the terms of the Declaration of
24 Covenants, Conditions and Restrictions on Property on file with the Clerk of the Board of
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1 Supervisors in File No. 04-0953, which is hereby declared to be a part of this resolution as if
2 set forth fully herein; and,

3 WHEREAS, Except as set forth above, the Amended and Restated Agreement
4 includes all of the terms and provisions of the Property Exchange Agreement, including a
5 mutual release and indemnity with respect to any environmental conditions that may exist with
6 respect to the property each party is to acquire; and,

7 WHEREAS, The General Manager of the Recreation and Park Department and the
8 Director of Public Works have determined that it is in the best interests of the City to enter into
9 the Amended and Restated Agreement, and that the public interest demands or will not be
10 inconvenienced by the Amended and Restated Agreement; and,

11 WHEREAS, the Amended and Restated Agreement was approved by the Recreation
12 and Park Commission by Resolution No. 0407-007 on July 15, 2004; and,

13 WHEREAS, the Recreation and Park Department intends to make payments of option
14 consideration, lease payments, and the purchase price for the Edgehill Property using Open
15 Space Funds; and,

16 WHEREAS, The Director of Planning found that the proposed property exchange under
17 the Amended and Restated Agreement is categorically exempt from environmental review
18 under CEQA and is consistent with the City's General Plan and with the Eight Priority Policies
19 of City Planning Code Section 101.1, and a copy of these findings have been placed in the file
20 with the Clerk of the Board and are incorporated herein by this reference; now, therefore, be it

21 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
22 hereby finds that the City's execution and performance of the Amended and Restated
23 Agreement is consistent with the City's General Plan and with the Eight Priority Policies of
24 City Planning Code Section 101.1, and is categorically exempt under CEQA for the same
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1 reasons as the Director of Planning, and hereby incorporates such findings by reference as
2 though fully set forth in this resolution; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby approves the Amended
4 and Restated Agreement and the transactions contemplated thereby in substantially the form
5 submitted to the Clerk of the Board of Supervisors, and authorizes the Director of Property
6 and the General Manager of the Recreation and Parks Department to execute and deliver the
7 Amended and Restated Agreement and to take the actions required to be performed by the
8 City in the Exchange Agreement, including but not limited to an exercise of the option for the
9 Edgehill Property and acceptance of the deeds for the Edgehill Property when funds are
10 available for such acquisition; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors hereby directs that the
12 proceeds for the Gough Property, following the payment of any transaction costs, be
13 deposited in the Octavia Boulevard Special Fund at the closing of escrow for this transaction.
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15 Recommended:

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18 Yomi Agunbiade

19 Acting General Manager, Recreation and Park Department

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21 Recommended:

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24 Edwin Lee

25 Director, DPW

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