

1 [Public Trust Exchange and Title Settlement Agreement - Cole Trust - 1620-1650-1680
2 Davidson Avenue - Agreement to Sell a Portion of Port Real Property - Vicinity of Islais Creek]

3 **Resolution approving and authorizing the execution, delivery and performance of a**
4 **1) Purchase and Sale Agreement with the Cole Trust for the sale by the City, acting by**
5 **and through the San Francisco Port Commission, of unimproved real property known**
6 **as a portion of Former Custer Avenue; 2) a Public Trust Exchange and Title Settlement**
7 **Agreement for 1620-1650-1680 Davidson Avenue between the City, acting by and**
8 **through the Port Commission, the California State Lands Commission and the Cole**
9 **Trust, both agreements in furtherance of a settlement agreement between the Port**
10 **Commission and the Cole Trust; 3) affirming the Planning Department's determination**
11 **under the California Environmental Quality Act; 4) adopting findings that the**
12 **agreements are consistent with the General Plan, and the eight priority policies of**
13 **Planning Code, Section 101.1; 5) adopting findings declaring that the real property**
14 **transactions comply with the State Surplus Lands Act and City Surplus Lands**
15 **Ordinance; 6) authorizing future City acceptance from the State of a new Public Trust**
16 **Easement pending State enabling legislation; and 7) authorizing the Port's Executive**
17 **Director and the Director of Property to take certain actions in furtherance of this**
18 **Resolution, as defined herein.**

19
20 WHEREAS, Pursuant to Chapter 1333 of the Statutes of 1968 (as amended, the
21 "Burton Act") and the implementing Agreement Relating to Transfer of the Port of San
22 Francisco from the State of California to the City and County of San Francisco ("Transfer
23 Agreement"), the State of California granted to the City and County of San Francisco ("City")
24 certain current and former tide and submerged lands to be held under the jurisdiction of the
25 San Francisco Port ("Port") and subject to the common law public trust for commerce,

1 navigation, and fisheries and the statutory trust imposed by the Burton Act, (collectively, the
2 "Public Trust"); and

3 WHEREAS, The granted lands include a portion of a so called "paper street" known as
4 Custer Avenue lying generally between Islais Creek, Rankin Street, and Davidson Avenue
5 which has never been improved, with a street or otherwise, and which was vacated as a street
6 by City Ordinance in 1911 ("Former Custer Avenue"); and

7 WHEREAS, In 2020, a dispute arose regarding the underlying title and ownership of
8 Former Custer Avenue between Port and the trustees of the 2006 Murray G. and Doris M.
9 Cole Revocable Trust dated August 1, 2006 ("Cole Trust"), a private party that is the owner of
10 the surrounding lands (comprised of 1620, 1650 and 1680 Davidson Avenue, the "Davidson
11 Properties") and that claims ownership of Former Custer Avenue; and

12 WHEREAS, In May 2021, Port and the Cole Trust entered into an initial settlement
13 agreement under which the parties agreed, among other things, to refrain from filing any claim
14 or cause of action relating to the disputed title claims and to negotiate in good faith to obtain
15 approvals for and to terminate any Public Trust interest on Former Custer Avenue; the tolling
16 of claims under the initial settlement agreement expires on July 14, 2023, unless terminated
17 earlier pursuant to the terms and conditions of that agreement, subject to further extensions
18 by mutual agreement of the parties; and

19 WHEREAS, The Public Trust can only be terminated if authorized by State legislation;
20 and

21 WHEREAS, In July 2022, as further described in the Memorandum to the Port
22 Commission ("Port Memorandum") and Port Commission Resolution No. 22-35, the Port
23 Commission approved a final settlement agreement with the Cole Trust (the "Settlement
24 Agreement") that will, without any admission of liability or responsibility for any purpose,
25 resolve the parties' respective claims; and

1 WHEREAS, The Settlement Agreement, among other terms and conditions, provides
2 for the following transactions to be implemented in an orderly manner:

3 1. Pursuant and subject to California Statutes of 2007, Chapter 660 (“SB 815”)
4 Sections (1)(p)(3) and (8), the sale by the City to the Cole Trust of an approximately 2,364
5 square foot portion of Former Custer Avenue (“Sale Parcel”) free of the City’s Public Trust
6 interest in accordance with an Agreement for Sale of Real Estate for Portions of Custer
7 Avenue (“Sale Agreement”); and

8 2. As to the remainder of Former Custer Avenue, pursuant and subject to Public
9 Resources Code, Section 6307, a Public Trust Exchange and Title Settlement Agreement for
10 1620-1650-1680 Davidson Avenue among the Port, the Cole Trust, and the California State
11 Lands Commission (“State Lands”) by which the City and State will terminate their Public
12 Trust interests in the Davidson Properties in exchange for:

13 (A) the Cole Trust’s conveyance to the State of a new, undisputed, Public Trust
14 easement immediately adjacent to Islais Creek over an eighteen foot (18’) wide strip of land
15 (totaling approximately 7,082 square feet; approximately 3,924 square feet of which is within
16 the disputed title area of Former Custer Avenue), which will subsequently be transferred to
17 Port jurisdiction by a future amendment to the Burton Act (“New Public Trust Easement”); and

18 (B) the Cole Trust’s deposit of \$790,000 into the Kapiloff Land Bank Fund
19 (Public Resources Code, Section 8625(a)) which moneys can be used later by State Lands to
20 acquire additional public trust lands (“Exchange Agreement”); and

21 WHEREAS, The Sale Agreement and Exchange Agreement are subject to approval by
22 the Board of Supervisors and State Lands as required by the authorizing local and state laws
23 and their respective jurisdiction; and

1 WHEREAS, The Settlement Agreement will not become effective unless and until the
2 Sale Agreement and Exchange Agreement are approved by both the Board of Supervisors
3 and State Lands; and

4 WHEREAS, State Lands will consider approval of the Sale Agreement and Exchange
5 Agreement at a public meeting tentatively scheduled for October 25, 2022, after this
6 Resolution is considered; and

7 WHEREAS, In connection with the Sale Agreement and per Administrative Code,
8 Section 23.3, the Port Commission made the following findings in Port Commission
9 Resolution No. 22-35:

10 1. The public interest and necessity demands, and will not be inconvenienced by
11 the sale, which will, along with the other planned transactions, resolve the title dispute without
12 the delays, costs, and risks of litigation; and

13 2. A competitive bidding process is impractical, impossible, or is otherwise not in
14 the public interest and the negotiated direct conveyance will further a public purpose in
15 resolving the title dispute; and

16 3. The City’s Department of Real Estate (“RED”) obtained an Appraisal (as defined
17 by Administrative Code, Chapter 23), which determined the fair market value of the Sale
18 Parcel to be \$110/square foot for a total of \$260,040, exclusive of any title dispute regarding
19 ownership; and

20 4. RED obtained an Appraisal Review (as required and defined by Administrative
21 Code, Chapter 23) which confirmed the appropriateness of the fair market value conclusion of
22 the Appraisal; and

23 5. Notwithstanding the appraised value and in light of the title dispute, the sale
24 price of \$160,000 (excluding transaction costs), will further a public purpose; and
25

1 WHEREAS, Charter, Section 9.118(b) requires Board of Supervisors approval of sales
2 of City-owned real property; and

3 WHEREAS, In connection with the Sale Agreement and as required by SB 815, the
4 Port Commission made the following findings in Port Commission Resolution No. 22-35:

5 1. The Sale Parcel: (A) lies at least 100 feet landward of the High Water Line of
6 San Francisco Bay and is a paper street as defined in SB 815; (B) has been filled and
7 reclaimed as part of a highly beneficial plan of harbor development and has ceased to be
8 tidelands; (C) is no longer used or necessary for maritime commerce, navigation or fisheries
9 purposes; (D) constitutes a relatively small portion of tidelands granted to the City (a total of
10 approximately 725 acres (exclusive of submerged lands); (E) is not amenable to any Public
11 Trust uses other than revenue generation for the Trust; and (F) is and will be cut off from
12 access to waters of San Francisco Bay by the New Public Trust Easement; and

13 2. The consideration for the sale of the Sale Parcel is the fair market value of such
14 land in light of the title dispute; and

15 3. The Sale Parcel is no longer needed or required for the promotion of the Public
16 Trust and no substantial interference with the Public Trust uses and purposes will ensue due
17 to the sale; and

18 4. The sale is consistent with the findings and declarations made by the California
19 Legislature in Section 2 of SB 815; and

20 5. The sale is in the best interest of the City and the State; and

21 6. As required by SB 815, all revenues from the sale shall be deposited in a
22 separate account in the harbor fund and shall be expended solely for purposes of
23 implementing the Port's capital plan; and
24
25

1 WHEREAS, In connection with the Exchange Agreement and per Public Resources
2 Code, Section 6307, the Port Commission made the following findings in Port Commission
3 Resolution No. 22-35:

4 1. The exchange is for the purposes of resolving the title dispute; and

5 2. Former Custer Avenue, other than the New Public Trust Easement, is cut off
6 from water access and is no longer tidelands or submerged lands or navigable waterways by
7 virtue of having been filled or reclaimed, and is relatively useless for Trust purposes; and

8 3. The exchange of the current configuration of Former Custer Avenue for the New
9 Public Trust Easement which is immediately adjacent to Islais Creek will provide a significant
10 benefit to the Public Trust by providing better public access or open space to or along the
11 water; and

12 4. The deposit into the Kapiloff fund will be used to acquire lands or interests in
13 land, possibly in San Francisco, where the public use and ownership of the land is necessary
14 or extremely beneficial for furtherance of Public Trust purposes; and

15 5. The exchange does not substantially interfere with public rights of navigation
16 and fishing; and

17 6. The monetary value of the New Public Trust Easement together with the Kapiloff
18 deposit is equal to or greater than the appraised fair market value of the lands or interests in
19 lands given by the Trust in exchange; and

20 7. The exchange is in the best interests of the City and the State; and

21 WHEREAS, By Port Commission Resolution No. 22-35, the Port Commission found
22 that the Sale Parcel is (1) not subject to the State Surplus Lands Act (Cal. Gov. Code,
23 Sections 54220-54234) because it is property granted by the State in trust to a local agency
24 and its disposition is otherwise authorized (Cal. Gov. Code, Sections 54221(f)(1)(H)); and
25 (2) is not “surplus” or “underutilized” as those terms are defined in the City’s Surplus Public

1 Lands Ordinance (S.F. Admin., Ch. 23A) and the Surplus Public Lands Ordinance does not
2 limit the power of the City to carry out the transactions under the Sale Agreement; and

3 WHEREAS, Upon closing of the transactions described in the Sale Agreement and
4 Exchange Agreement, the City will hold no Public Trust interest in any of the Davidson
5 Properties; and

6 WHEREAS, Subsequent to the closing of the transactions called for in the Sale
7 Agreement and Exchange Agreement, State Lands and the Port will work together to seek
8 State legislation to amend the Burton Act to transfer the New Public Trust Easement to the
9 City, with Port as trustee; and

10 WHEREAS, Upon closing of the transactions described in the Sale Agreement and
11 Exchange Agreement, under the Settlement Agreement, the City and the Cole Trust will be
12 mutually released from all claims, except that the City will not release: (1) any tax liabilities, (2)
13 any criminal liabilities, or (3) any other claims or liabilities unrelated to the disputed title claims;
14 and

15 WHEREAS, Copies of the Port Memorandum, Port Commission Resolution No. 22-35,
16 Settlement Agreement, Sale Agreement, and Exchange Agreement are on file with the Clerk
17 of the Board of Supervisors in File No. 220927 and are incorporated herein by this reference;
18 and

19 WHEREAS, The Sale Agreement and Exchange Agreement conform to all local laws
20 and regulations and are not prohibited by the City's Administrative Code and Charter; and

21 WHEREAS, On February 16, 2022, the San Francisco Planning Department
22 determined that the Settlement Agreement, Sale Agreement and Exchange Agreement are
23 statutorily exempt from review under the California Environmental Quality Act ("CEQA") under
24 Public Resources Code, Section 21080.11; and by letter dated March 10, 2022 (the "General
25 Plan Referral Letter"), the San Francisco Planning Department determined that the project, on

1 balance, is in conformity with the General Plan, and with the eight priority policies of Planning
2 Code, Section 101.1; a copy of the CEQA determination and letter are on file with the Clerk of
3 the Board of Supervisors under File No. 220927 and incorporated herein by this reference;
4 now, therefore, be it

5 RESOLVED, That the Board of Supervisors affirms the Planning Department's
6 determination that the Sale Agreement and Exchange Agreement are statutorily exempt from
7 review under the California Environmental Quality Act ("CEQA") under Public Resources
8 Code, Section 21080.11; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors finds that the Sale Agreement
10 and Exchange Agreement are in conformity with the General Plan, and with the eight priority
11 policies of Planning Code, for the reasons set forth in the General Plan Referral Letter; and,
12 be it

13 FURTHER RESOLVED, As required by Administrative Code, Section 23.3, the Board
14 of Supervisors finds: (1) the public interest and necessity demands, and will not be
15 inconvenienced by the sale of the Sale Parcel; (2) a competitive bidding process is
16 impractical, impossible or is otherwise not in the public interest and the negotiated direct
17 conveyance will further a public purpose in resolving the title dispute; and (3) for these
18 reasons, notwithstanding the appraised determination of fair market value, which did not
19 include a reduction due to the title dispute, the sale price of \$160,000 will further a public
20 purpose; and, be it

21 FURTHER RESOLVED, In connection with the sale of the Sale Parcel pursuant to the
22 authority granted under SB 815, the Board of Supervisors finds: (1) the Sale Parcel: (a) lies at
23 least 100 feet landward of the High Water Line of San Francisco Bay and is a paper street as
24 defined in SB 815; (b) has been filled and reclaimed as part of a highly beneficial plan of
25 harbor development and has ceased to be tidelands; (c) is no longer used or necessary for

1 maritime commerce, navigation or fisheries purposes; (d) constitutes a relatively small portion
2 of tidelands granted to the City; (e) is not amenable to any Public Trust uses other than
3 revenue generation for the Trust; and (f) is and will be cut off from access to waters of San
4 Francisco Bay by the New Public Trust Easement; (2) the consideration for the sale of the
5 Sale Parcel is the fair market value of such land in light of the title dispute; (3) the Sale Parcel
6 is no longer needed or required for the promotion of the Public Trust and no substantial
7 interference with the Public Trust uses and purposes will ensue due to the sale; (4) the sale is
8 consistent with the findings and declarations made by the California Legislature in Section 2 of
9 SB 815; and (5) for these reasons, the sale is in the best interest of the City and the State;
10 and, be it

11 FURTHER RESOLVED, In connection with the Exchange Agreement pursuant to the
12 authority granted under Public Resources Code, Section 6307, the Board of Supervisors
13 finds: (1) the exchange is for the purposes of resolving the title dispute; (2) Former Custer
14 Avenue, other than the New Public Trust Easement, is cut off from water access and is no
15 longer tidelands or submerged lands or navigable waterways by virtue of having been filled or
16 reclaimed, and is relatively useless for Trust purposes; (3) the exchange of the current
17 configuration of Former Custer Avenue for the New Public Trust Easement which is
18 immediately adjacent to Islais Creek will provide a significant benefit to the Public Trust by
19 providing better public access or open space potential to or along the water; (4) the Clifford
20 Appraisal, as confirmed by the Blum Appraisal, determined that the New Public Trust
21 Easement, which the City will ultimately acquire as part of the Exchange Agreement, has no
22 independent economic value given that it can only be used for Public Trust purposes; (5) the
23 deposit into the Kapiloff fund will be used to acquire lands or interests in land, possibly in San
24 Francisco, where the public use and ownership of the land is necessary or extremely
25 beneficial for furtherance of Public Trust purposes; (6) the exchange does not substantially

1 interfere with public rights of navigation and fishing; (7) the monetary value of the New Public
2 Trust Easement together with the Kapiloff deposit is equal to or greater than the appraised fair
3 market value of the lands or interests in lands given by the Trust in exchange; and (8) for
4 these reasons, the exchange is in the best interests of the City and the State; and, be it

5 FURTHER RESOLVED, That Former Custer Avenue qualifies as “exempt surplus land”
6 under the State Surplus Lands Act and that the transactions contemplated in the Sale
7 Agreement and Exchange Agreement comply with the City’s Surplus Public Lands Ordinance
8 and State Surplus Lands Act; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors hereby approves the
10 transactions contemplated by the Sale Agreement and Exchange Agreement including all
11 attachments and exhibits thereto, and the transactions which such agreements contemplate,
12 on the terms and conditions set forth in the Port Memorandum and Port Commission
13 Resolution No. 22-35 and in such final form as approved by the City Attorney; and, be it

14 FURTHER RESOLVED, Upon approval by State Lands, the Port’s Executive Director
15 (“Executive Director”) and the Director of Property or their designees are hereby authorized, in
16 the name and on behalf of the City and the Port, to 1) determine satisfaction of all conditions
17 precedent, 2) execute the Sale Agreement and Exchange Agreement with any additions,
18 amendments or other modifications that the Executive Director or the Director of Property or
19 their designees, in consultation with the City Attorney, determines are in the best interest of
20 the City, do not materially increase the obligations or liabilities of the City, and are necessary
21 or advisable to complete the transactions which the Sale Agreement and Exchange
22 Agreement contemplate and effectuate the purpose and intent of this Resolution, such
23 determination to be conclusively evidenced by the execution and delivery by the Executive
24 Director or the Director of Property or their designees of the Sale Agreement and Exchange
25 Agreement; 3) execute, deliver, and accept any and all conveyance deeds, patents, and

1 instruments contemplated by the Sale Agreement and Exchange Agreement (including
2 without limitation, acceptance from the State of the New Public Trust Easement to be held by
3 the City, with Port as trustee, subject to State enabling legislation); and 4) take any and all
4 other steps (including without limitation, the execution and delivery of any and all certificates,
5 agreements, notices, consents, escrow instructions, closing documents, and other
6 instruments or documents) as the Executive Director or the Director of Property or their
7 designees deem necessary or appropriate in consultation with the City Attorney, in order to
8 consummate the transactions contemplated by the Sale Agreement and Exchange Agreement
9 in accordance with their terms, or to otherwise effectuate the purpose and intent of this
10 Resolution, such determination to be conclusively evidenced by the execution and delivery by
11 the Executive Director or the Director of Property or their designees of any such documents;
12 and, be it

13 FURTHER RESOLVED, That this Board of Supervisors hereby ratifies, approves, and
14 authorizes all actions heretofore taken by any City official in connection with the Sale
15 Agreement and Exchange Agreement; and, be it

16 FURTHER RESOLVED, That within thirty (30) days of the Sale Agreement and
17 Exchange Agreement being fully executed by all parties, the Port shall provide the final
18 agreements to the Clerk of the Board for inclusion into the official file.

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RECOMMENDED:

 /s/
Port of San Francisco
Executive Director

 /s/
Real Estate Division
Director of Property