

File No. 220927

Committee Item No. 4

Board Item No. \_\_\_\_\_

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee Date October 19, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

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- \_\_\_\_\_
- \_\_\_\_\_
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- \_\_\_\_\_
- \_\_\_\_\_

Completed by: Brent Jalipa Date October 13, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

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

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.

19  
20  
21  
22  
23  
24  
25



EXHIBIT C

**Recorded at the Request of and  
When Recorded Mail to:**

Andrew Kershen  
Legal Department  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, California 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS:  
Document entitled to free  
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Government Code Section 27383  
NO TAX DUE

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[Space Above for Recorder’s Use]

SLC File No.: [\_\_\_\_\_]
APNs: 5215--017, -021, -022
Property at 1620, 1650 and 1680 Davidson Avenue

**PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR  
1620-1650-1680 DAVIDSON AVENUE**

This PUBLIC TRUST EXCHANGE AND TITLE SETTLEMENT AGREEMENT FOR 1620-1650-1680 DAVIDSON AVENUE (“**Agreement**”) is dated for reference as of \_\_\_\_\_, 2022. The parties to the Agreement are the STATE OF CALIFORNIA (“**State**”), acting by and through the STATE LANDS COMMISSION (“**Commission**”); the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation (“**City**”) acting by and through the SAN FRANCISCO PORT COMMISSION (“**Port**”), as a trustee under Chapter 1333 of the Statutes of 1968 (as amended, “**Burton Act**”); and Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”). The Commission, City/Port and Cole Trust are each a “**Party**” and are referred to together as the “**Parties.**” This Agreement is entered into pursuant to Sections 6107, 6216 and 6307 of the California Public Resources Code and the Kapiloff Land Bank Act (Pub. Resources Code section 8600 et seq.).

RECITALS

A. Cole Trust claims ownership of approximately 1.31 acres of land commonly known as 1680 Davidson Avenue (Assessors Block 5215, Lot 021) (“**1680 Davidson**”), approximately 1.15 acres of adjoining land commonly known as 1650 Davidson Avenue Custer Avenue Exchange Agreement

(Assessors Block 5215, Lot 022) (“**1650 Davidson**”), and approximately 0.16 acres of adjoining land commonly known as 1620 Davidson (Assessors Block 5215, Lot 017) (“**1620 Davidson**” and, for convenience, together with 1650 Davidson and 1680 Davidson, the “**Cole Property**”), as more particularly described in **Exhibit A** (Legal Description and Illustrative Plat of Cole Property) attached hereto. The Cole Property, which is adjacent to Islais Creek, includes that portion of former Custer Avenue, a so-called paper street, that lies generally between the eastern property line of 1650 Davidson and Islais Creek to the west, as shown in **Exhibit A** (“**Former Custer Avenue**”).

B. The ownership of Former Custer Avenue is disputed. Former Custer Avenue consists of former tide and submerged lands (collectively “**tidelands**”) that have been filled and reclaimed. The Commission and the Port assert that City holds an ownership interest in Former Custer Avenue under the common law public trust for navigation, commerce and fisheries (“**Public Trust**”) and the Burton Act and implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco (the “**Transfer Agreement**”), a copy of which was recorded January 30, 1969, as Instrument No. R40413 in Book B 308, Page 686 in the official records of the City and County of San Francisco (“**Official Records**”) (the Burton Act Trust together with the Public Trust, the “**Trust**”). Former Custer Avenue is described in the Official Records in document number Y88210 recorded on May 14, 1976, in Book C169, Pages 573 through 664 and is shown as a portion of Parcel “M” on page 70 on the Map of Lands Transferred in Trust to the City and County of San Francisco, recorded in the Official Records on May 14, 1976, in Book W of Maps at Pages 66 through 72. The Cole Trust disputes the City’s ownership and Trust status of Former Custer Avenue, and claims ownership of Former Custer Avenue, free of the Trust, originating from a 1917 deed from the City. The Parties wish to settle their claims pursuant to the exchange contemplated by this Agreement.

C. The circumstances giving rise to the trust and title uncertainty include the following:

1. Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty, received in trust for the people of the State of California all right, title, and interest in the tidelands within its boundaries up to the ordinary high-water mark, subject to the public trust. The Cole Property comprises lands that were tidelands at statehood, subject to the Public Trust.

2. Chapter 543 of the Statutes of 1868 (“**1868 Act**”) authorized the Board of Tide Land Commissioners (“**BTLC**”) to auction into private ownership State-owned tidelands, including portions of the Cole Property, but reserving to the State certain mapped streets (“**paper streets**”) and other areas reserved for public purposes. The lands subject to the 1868 Act were surveyed and shown on the Map of Salt Marsh and Tidelands (South of Second Street) prepared by George Allardt, completed in January 1869. The Cole Property is shown on the Allardt Survey as portions of Block 51 and Block 53, and portions of Third Avenue (later renamed Custer Avenue) which separated Block 51 and Block 53. The BTLC sold Blocks 51 and 53 by auction in the late 1860s and early 1870s. Subsequent to these sales, the Cole Property was filled, resulting in the current physical configuration of the parcels.

3. Custer Avenue appears as a public street on the official City map known as the “Humphreys Map,” which was authorized and approved by the City pursuant to Order 966 in October 1870. This map shows Former Custer Avenue (referred to as “3<sup>rd</sup> Avenue”) in the location described above (its present location). By an act dated April 1, 1872 (Stats. 1871-72, Ch. 562) (“**1872 Act**”), the State legislature expressly recognized and approved the Humphreys Map and declared that all streets, lanes, alleys, and other public places delineated upon that map were dedicated and declared to be open public streets, lanes, alleys and other public places (Article IV, Sections 1 and 2).

4. By Chapter 690, Stats. of 1911 (the “**1911 Act**”), the State legislature authorized any city or city and county, following the proper closing of any public street and opening of a new street in lieu of those so closed, to convey by deed its interest in the street so closed to the adjacent landowner in such manner as the local governing body deemed equitable. The 1911 Act does not address the Public Trust.

5. In 1917, by Resolution No. 14166, the City closed and abandoned the portion of Custer Avenue on the Cole Property as a public street. The City purported to convey Former Custer Avenue to Joseph Coryell by an indenture recorded on April 17, 1917. Mr. Coryell conveyed to the City an approximately 14-foot-wide strip of Block 51 and other property adjacent to Islais Creek by an indenture recorded on April 17, 1917, which land would expand the width of an existing paper street identified on the Humphreys Map as Islais Street.

6. As shown in subsequent assessor maps, the Cole Property was the subject of various lot mergers and subdivisions, including a purported merger with former Custer Avenue, resulting in the current legal configuration of the parcels known as 1620 Davidson, 1650 Davidson, and 1680 Davidson. The deed that conveyed 1650 Davidson to Cole Trust (or its predecessor) on April 18, 1979 purported to include portions of Former Custer Avenue. The deed that conveyed 1680 Davidson to Cole Trust (or its predecessor) on February 9, 1968, also purported to include portions of Former Custer Avenue. The property at the 1620 Davidson address does not include any portion of Former Custer Avenue.

7. In 1969, the State granted certain of its sovereign and other property interests within San Francisco to the City pursuant to the Burton Act and the Transfer Agreement, to be held by the Port subject to the Public Trust and the terms and conditions of the Burton Act and Transfer Agreement.

D. The historic conveyances of the State’s tidelands into private ownership, the reclamation of those lands, the 1911 Act, and the various actions in 1911 and 1917 have created substantial uncertainty as to the present configuration of Trust lands within the Cole Property, and have given rise to a bona fide dispute among the Parties as to the ownership and Trust status of Former Custer Avenue, the resolution of which would require extensive land title litigation at great expense.

E. California Public Resources Code Section 6307 (“**PRC 6307**”) authorizes the Commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these



lands, that are subject to the Public Trust, for other lands or interests in lands, if the Commission finds that all of the following conditions required thereunder are met: (1) the exchange is for one or more of the purposes listed in PRC 6307 subdivision (c); (2) the lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust; (3) the exchange does not substantially interfere with public rights of navigation and fishing; (4) the monetary value of the lands or interests in lands received by the Public Trust in exchange is equal to or greater than that of the lands or interests in lands given by the Public Trust in exchange; (5) the lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for Public Trust purposes; and (6) the exchange is in the best interests of the State. The Kapiloff Land Bank Act modifies PRC 6307 by allowing the consideration passing to the State in title settlements to consist, in whole or in part, of monetary payments into the Kapiloff Land Bank Fund, to be used to purchase lands or interests in lands that will benefit the Public Trust.

F. By settlement agreement dated May 25, 2021, the Port and the 2006 Murray G. And Doris M. Cole Revocable Trust agreed to resolve their dispute regarding title to Former Custer Avenue by, among other things, setting forth their intention to facilitate a sale or other resolution to enable the Cole Trust to hold clear fee title to Former Custer Avenue (“**Initial Settlement Agreement**”) as more fully described in the Initial Settlement Agreement. The parties to the Initial Settlement Agreement now intend to finally resolve their dispute concerning their respective rights, title and interest in and to the Former Custer Avenue under a final settlement agreement (“**Final Settlement Agreement**”), which requires among other things:

1. a sale agreement (“**Sale Agreement**”) under which the City will sell approximately 2,364 square feet of Former Custer Avenue, as more particularly described in **Exhibit B** (Legal Description and Illustrative Plat of SB 815 Parcel) to the Cole Trust, free of the Trust, pursuant to its authority under California Statutes of 2007, Chapter 660 (“**SB 815**”) Sections (1)(p)(3) and (8) (the “**SB 815 Parcel**”), subject to the terms and conditions of the Sale Agreement (including requisite findings by the Commission), which transaction will include sequential conveyances to and from the State prior to conveyance to the Cole Trust in accordance with Section 8(d) of SB 815, and which closing shall proceed in concert with closing of the transactions contemplated by this Agreement; and

2. this Agreement, which authorizes an exchange of lands pursuant to PRC 6307 and under which the following will occur: (i) City will quitclaim to the Commission its Burton Act Trust interest in the Cole Property; (ii) the Cole Trust will pay Seven Hundred Ninety Thousand Dollars (\$790,000.00) to the Commission, acting as trustee for the Kapiloff Land Bank Fund, pursuant to Public Resources Code Section 8625(a) (“**Kapiloff Deposit**”); (iii) the Commission will convey by patent its interest in the SB 815 Parcel to the City and City will sell the SB 815 Parcel to the Cole Trust pursuant to the Sale Agreement; (iv) the Cole Trust will convey a public trust easement (“**Public Trust Easement**”) over an eighteen foot (18’) wide strip of land lying within the Cole Property immediately adjacent to the northerly property line of 1650 and 1680 Davidson Avenue (“**Public Trust Easement Lands**”); and (v) the Commission will convey by patent to the Cole Trust all of the State’s right, title and

interest in the Cole Property free of the Trust, but reserving the Public Trust Easement in the Public Trust Easement Lands for navigation, commerce, and fisheries.

G. The Cole Trust is in contract to sell the Cole Property to 1620-1680 Davidson LLC, a Delaware limited liability company (subject to the Public Trust Easement referenced above) (the “**Cole Trust Sale Agreement**”). The Cole Trust desires to coordinate same day closings such that the sale of the Cole Property will take place immediately following the Closing hereunder and the closing under the Sale Agreement. The City and Commission have no objection; provided however, that the obligations and transactions under this Agreement, the Sale Agreement, and the Final Settlement Agreement are separately binding on the Parties and are not conditioned on consummation of the Cole Trust Sale Agreement.

H. Following the transactions described above, the Port and the Commission will cooperate to seek legislation granting to the City the rights to the Public Trust Easement Lands, to be held subject to the Trust.

I. The land exchange and title settlement described in this Agreement is needed to resolve the Parties’ bona fide disputes as to the title and trust status of Former Custer Avenue, and to resolve uncertainties regarding the Trust as to the Cole Property. As proposed, the exchange will confirm or impress a Trust easement on shoreline-adjacent land having the greatest value to the Trust, which may allow for future public access to and along Islais Creek that might otherwise be unavailable, and the exchange will terminate any Trust interest in the landward portions of the Cole Property that have been filled and reclaimed, are cut off from access to the waterfront, and that are relatively useless to the Trust, thereby making development of those areas economically feasible. In approving this Agreement, the Commission has made the findings required under PRC 6307.

J. The Parties have conducted independent studies and evaluations of the title evidence, applicable principles of law, and the merits of their legal positions. The Commission has reviewed an appraisal and other information prepared to analyze the monetary value of the Cole Property and the Public Trust Easement Lands and has reached an independent conclusion regarding the value of these properties.

K. Along with closing of the Sale Agreement of the SB 815 Parcel as described in Recital F, the land title transfers provided for in this Agreement will be effectuated through recorded conveyances, subject to the conveyance ordering, conditions of closing, and other terms and conditions of this Agreement.

L. The San Francisco Port Commission approved this agreement by Resolution [xx-xxx] adopted on [\_\_\_\_\_] (the “**Port Commission Resolution**”). The San Francisco Board of Supervisors, by Resolution [xx-xxx] adopted on [\_\_\_\_\_] , and signed by the Mayor on [Date], approved this Agreement and authorized the Port and the City’s Director of Real Estate to enter into this Agreement on behalf of the City (the “**Board of Supervisor’s Approval**”).

M. The Commission approved this Agreement by Staff Report No. [\_\_\_] at its meeting of [\_\_\_\_\_].

## AGREEMENT

In consideration of the foregoing recitals and the following conveyances and terms, the Parties hereby agree as follows:

1. Conveyances to Effectuate Exchange. Subject to the conditions of closing and other terms and conditions of the Sale Agreement with respect to the SB 815 Parcel only and this Agreement, the Parties shall make the following conveyances of property to be recorded and effective in the following order:

a. City Quitclaim to State. City shall convey, remise, release, and forever quitclaim to the Commission all of City's Burton Act Trust interest in the Cole Property. The conveyance shall be by Quitclaim Deed in the form of Exhibit C (Form of City Quitclaim Deed).

b. Cole Trust Kapiloff Deposit. The Cole Trust shall pay, or cause to be paid, the Kapiloff Deposit to the Commission, acting as trustee for the Kapiloff Land Bank Fund, pursuant to Public Resources Code Section 8625(a). The Kapiloff Deposit shall be non-refundable. The Commission intends to expend the Kapiloff Deposit to acquire new property interests in tide and submerged lands, lands that were or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership is necessary or beneficial to facilitate public trust purposes within the City, but its obligation to do so shall be non-binding. The Commission agrees to consider timely and in good faith the acquisition of any such potential suitable property interests identified and proposed by Port for an amount up to the Kapiloff Deposit; provided that the acquisition price is not greater than the fair market value of any such property interest.

c. State Patent to City. The Commission shall convey, remise, release, and forever quitclaim to City all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty but excluding mineral rights) in the SB 815 Parcel, provided that all conditions of closing as described separately in the Sale Agreement have been met. The conveyance shall be by Patent in the form of Exhibit D (Form of SB 815 Patent).

d. City Quitclaim of the SB 815 Parcel to the Cole Trust. The City will quitclaim the SB 815 Parcel to the Cole Trust pursuant to the Sale Agreement.

e. Cole Trust Conveyance of Trust Easement to State. The Cole Trust shall convey to the State an easement for Public Trust purposes over the Public Trust Easement Lands as further described in Exhibit E (Legal Description and Illustrative Plat of Public Trust Easement Lands). The conveyance shall be by an easement grant deed in the form of Exhibit F (Form of Trust Easement Grant Deed).

f. State Patent to Cole Trust. Upon accepting the City Quitclaim Deed, Kapiloff Deposit, and Trust Easement Grant Deed, the Commission shall convey, remise, release, and forever quitclaim to the Cole Trust all of the State's right, title, and interest (including any right, title, and interest existing by virtue of its sovereignty) in the Cole Property,

and shall specifically release and terminate the Trust except as to the Public Trust Easement Lands. The State shall reserve the Public Trust Easement in the Public Trust Easement Lands. The conveyance shall be by Patent in the form of **Exhibit G** (Form of Trust Termination Patent).

2. Legislative Grant of Public Trust Easement to City. As a separate obligation of Port and the Commission, Port and the Commission agree to promptly seek legislation granting the Public Trust Easement to the Port, subject to the Trust.

3. Commission Findings. The Commission, effective upon recordation of this Agreement, makes the following findings pursuant to PRC 6307 and the Kapiloff Land Bank Act and to comply with Article X section 3 of the California Constitution:

a. The exchange is for the purposes of resolving the title dispute, enhancing public access to or along the water, and enhancing waterfront and nearshore development or redevelopment for public trust purposes.

b. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Trust and the Kapiloff Deposit will be used to acquire lands or interests in land where the public use and ownership of the land is necessary or extremely beneficial for furtherance of Public Trust purposes.

c. The exchange does not substantially interfere with public rights of navigation and fishing.

d. The monetary value of the Public Trust Easement together with the Kapiloff Deposit is equal to or greater than the appraised fair market value of the lands or interests in lands given by the Trust in exchange.

e. The Cole Property, other than the Public Trust Easement Lands, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and ~~are~~is relatively useless for Trust purposes.

f. The exchange is in the best interests of the State.

4. Conveyance Order; Escrow; Closing.

a. Conveyance Order.

(1) The conveyances listed in Section 1 above shall be effected in the order described in Section 1 as a single Closing as described in this Section 4.

(2) Each conveyance in the Closing described in Section 1 above shall be recorded in the Official Records sequentially and on the same day and in the sequence in which they appear in Section 1.

b. Escrow; Closing. The Closing shall be consummated through an escrow account (“**Escrow**”) opened through the offices of First American Title Insurance Company,

4750 Willow Road, Suite 275, Pleasanton, CA 94588, Attn: Jules Fulop (“**Title Company**”). Upon approval of this Agreement by the Commission, but no later than one hundred twenty (120) days after the date the Governor executes the Trust Termination Patent, the Parties shall establish escrow with the Title Company and prepare joint escrow instructions conforming to the requirements of this Agreement, the Sale Agreement, the Final Settlement Agreement and with any other supplemental instructions necessary to effectuate the intent of this Agreement as may be agreed to in writing by the Parties (the “**Joint Escrow Instructions**”) and shall execute and deliver the Joint Escrow Instructions to the Title Company no less than ten (10) days prior to the Target Date. The Joint Instructions shall specify that the Escrow will close concurrently with the separate escrows for the Cole Trust Sale Agreement, and the purchase price funded for the Cole Trust Sale Agreement may be used to fund the Kapiloff Deposit if all closing conditions have been met for the Cole Trust Sale Agreement. Notwithstanding the foregoing, the obligations and transactions in this Agreement, the Sale Agreement and the Final Settlement Agreement are not conditioned on consummation of the Cole Trust Sale Agreement and the transactions contemplated by this Agreement, the Sale Agreement and the Final Settlement Agreement are independent of the transactions contemplated under the Cole Trust Sale Agreement.

“**Closing**” or “**Closing Date**” shall mean the date that the conveyances described in Section 1 above are recorded in the Official Records. The Closing Date under this Agreement shall occur on the same date as the closing under the Sale Agreement. The Closing Date shall occur no later than July 13, 2023 (the “**Outside Date**”) unless further extended by mutual written agreement of the Parties, but the Parties will use their best efforts to close no later than December 31, 2022 (the “**Target Date**”).

5. Conditions Precedent to Closing.

a. Sale Agreement. It is a condition precedent to each Party’s obligation to close escrow for the conveyance or acceptance of real property under this Agreement that the City and Cole Trust have taken all actions and deposited into escrow all documents and funds necessary to effect the transaction described in the Sale Agreement as evidenced by written notice by the Title Company.

b. Commission’s Closing Conditions. As a condition precedent to the Commission’s obligation to close escrow, the Executive Officer shall have approved:

i. the condition of title and the form of a CLTA title insurance policy to be issued by the Title Company, in the amount of coverage reasonably requested, for the Public Trust Easement Lands; and

ii. the physical condition of the Public Trust Easement Lands.

c. City’s and Port’s Closing Conditions. As a condition precedent to City’s and Port’s obligation to close escrow, the City shall have approved:

i. the condition of title; and

ii. the physical condition of the Public Trust Easement Lands.

d. Cole Trust's Closing Conditions. As a condition precedent to the Cole Trust's obligation to close escrow, Title Company shall have given pro forma title commitments to issue an ALTA title insurance policy for the Cole Property to the Cole Trust or its designee, which policy includes no exceptions for the Trust (other than as to the Public Trust Easement Lands), or includes an endorsement that any such exceptions shall be removed upon final non-appealable judgment in a quiet title or validation action (including without limitation the actions described in Section 8 herein), in an action to establish title under the Destroyed Land Records Relief Law (Code of Civil Procedure section 751.01 et seq.), or both.

6. Deposits into Escrow.

a. Commission Deposits. At least two (2) business days prior to Closing, the Commission shall deposit the following documents into Escrow:

i. A certified copy of the Minute Item for Staff Report No. [\_\_\_], of the Commission's public hearing on [\_\_\_\_\_], showing the Commission's approval of this Agreement and the amount of funds to be deposited in the Kapiloff Fund.

ii. The Executive Officer's written approval of (A) the condition of title to the Public Trust Easement Lands, (B) a pro forma title commitment for the Trust Easement in coverage amounts acceptable to the Executive Officer, (C) the form of title insurance to be issued, and (D) the physical condition of the Public Trust Easement Lands.

iii. This Agreement, duly signed and attested.

iv. A duly signed and attested patent for the SB 815 Parcel in the form of **Exhibit D**, quitclaiming to the City all of its right, title and interest in the SB 815 Parcel, free of the Trust (with the exception of mineral rights).

v. A duly signed and attested Trust Termination Patent in the form of **Exhibit G**, quitclaiming to the Cole Trust the Cole Property, free of the Trust (except as to the Public Trust Easement Lands) and reserving the Trust Easement in the Public Trust Easement Lands.

b. City and Port Deposits. At least two (2) business days prior to Closing, the City and Port shall deposit the following documents into Escrow:

i. Certified copies of the Board of Supervisors' Approval and Port Commission Resolution, each authorizing entry into this Agreement.

ii. A duly signed and acknowledged quitclaim deed from City in the form of **Exhibit C**, quitclaiming to the Commission all of City's Burton Act Trust interest in the Cole Property.

c. Cole Trust Deposits. At least two (2) business days prior to Closing, Cole Trust shall deposit the following into Escrow:

- i. A duly signed and acknowledged Trust Easement grant deed in the form of **Exhibit F**.
- ii. Sufficient funds to pay the Kapiloff Deposit (provided, however, that the purchase price submitted under the Cole Trust Sale Agreement escrow may be used to satisfy this requirement so long as all closing conditions have been met for both escrows and Title Company has been instructed to fund the Kapiloff Deposit through the purchase price under the Cole Trust Sale Agreement).
- iii. Pro forma CLTA title insurance commitments for the Public Trust Easement Lands, in a form and with coverage amounts approved by the Commission.
- d. All patents and quitclaim deeds deposited into Escrow which name either City or the Commission as grantee shall include a certificate of acceptance duly executed by the grantee (which certificate may be deposited into Escrow separately by the grantee). The Parties shall also submit all appropriate attestations or acknowledgments and any ancillary documents required by state law or the City's Assessor-Recorder, such as an executed Transfer Tax Affidavit and executed Preliminary Change of Ownership Report.

7. **Impacts of Sea Level Rise.**

- a. The exchange authorized by this Agreement is intended to establish with certainty lands free of the Trust and lands subject to the Trust, which boundary is intended to be fixed and not subject to change by erosion, accretion, reliction, or submergence, whether due to natural or artificial causes. However, if lands established as free of the Trust should later become submerged or subject to the ebb and flow of the tide below the elevation of mean high water, whether due to erosion or sea level rise ("**Inundation**"), those lands, for so long as the condition of Inundation exists, shall be subject to an easement in favor of the Trust ("**Inundation Easement**"); provided, however, that the Inundation Easement shall not attach until Inundation has existed continuously for five years. Prior to the attachment of the Inundation Easement, neither the Inundation Easement nor the Commission shall prevent any owner of the inundated lands from seeking the necessary regulatory approvals to reclaim or otherwise restore the lands to their pre-Inundation condition so long as the owner has begun activities to reclaim or restore the lands within one year after Inundation. An owner's submittal of an application for any permit required for reclamation or restoration and reasonable efforts to complete the permitting process is sufficient evidence that the owner has begun reclamation or restoration under this Section. Unpermitted reclamation or restoration activities shall be insufficient evidence that the owner has begun reclamation or restoration under this Section. The trustee of adjacent Trust land (whether the Commission or City) may delay the attachment of the Inundation Easement for a specified period by resolution based upon its finding that reclamation or restoration could not be completed within the five-year period of Inundation under this Section.
- b. Nothing in this Agreement obligates the City or Commission to protect or cause to be protected any privately held uplands, including, but not limited to, constructing or causing to be constructed any protective structures that benefit any privately held uplands. Further, nothing in this Agreement shall be construed as creating any duty on the part of the City

or the Commission to the owners or lessees of any properties within the Cole Property or Public Trust Easement Lands to provide protection against sea level rise, inundation from any cause, avulsions, or tsunamis.

c. Nothing in this Section is intended to limit (a) rights a Party may have under applicable law to take actions to preserve the boundaries established by this Agreement, including without limitation the rights of a Party to undertake measures to protect its property, including lands freed from the Trust at the locations established pursuant to this Agreement, or to file an action within the applicable limitations period to preserve the title interests of such lands established by this Agreement, or (b) rights the public has under applicable law to navigate, fish, or otherwise use navigable waters on Inundated lands, including but not limited to any rights arising under *Bohn v. Albertson* (1951) 107 Cal.App.2d 738 and *People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040.

8. Judicial Confirmation of Validity of Settlement.

a. Any Party may bring a quiet title action under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the California Code of Civil Procedure to confirm the respective ownership interests established under this Agreement by court judgment.

b. Any Party may choose to submit the settlement embodied in this Agreement to a court of competent jurisdiction to confirm the validity of the settlement by court judgment pursuant to California Code of Civil Procedure section 860 et seq. The statement of decision in the action may include a recitation of the disputed underlying facts identified in this Agreement and shall include a determination whether this Agreement meets the requirements of PRC 6307, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of this Agreement.

c. The Parties shall cooperate in obtaining such a confirmatory judgment. Upon entry of a judgment confirming the validity of the settlement embodied in this Agreement, each Party shall be deemed to have waived any right to appeal from such judgment. Except as the Parties may otherwise agree in writing, Cole Trust shall be responsible for all costs incurred by the Commission and the City associated with their participation in a judicial action initiated by Cole Trust pursuant to this Section including without limitation reasonable attorneys' fees and costs.

9. Indemnification and Defense of Claims.

a. Cole Trust shall indemnify, defend and hold harmless the Commission, City including Port, and each of their respective officers, agencies, commissions, boards, departments and employees from and against any and all claims, liabilities, losses, costs and expenses (collectively "**Claims**"), including, without limitation, third party Claims and Claims by any governmental agency, in any such case, relating to any Waste or Hazardous Substances that, at any time, whether before or after Closing, are located at, on, over, under, migrate to, or flowing through any portion of the Cole Property, except to the extent that such Waste or Hazardous Substances are located, or come to be located at, on, over or under Former Custer



Avenue solely due to the intentional actions or gross negligence of the City, Port or the State, can be shown by clear and convincing evidence to predate April 17, 1917, and were not exacerbated by the acts or omissions of others. For purposes of this Agreement: (1) “**Hazardous Substances**” shall mean any substance which is defined or regulated under any Environmental Law; (2) “**Waste**” shall have the definition given in California Water Code section 13050; and (3) “**Environmental Law**” shall mean all present and future federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals, authorizations and similar requirements pertaining to the protection of human health and safety or the environment.

b. The Parties agree to use reasonable efforts to defend this Agreement, any deed, patent, agreement, or other instrument executed pursuant thereto, and any decision made by a Party to approve the foregoing, including the approval of any required findings related thereto, in any legal action challenging the validity or legality thereof. In any such action, Cole Trust shall reimburse the Commission, Port, and City for all costs incurred in connection with such action, including but not limited to reasonable staff time and attorneys’ fees incurred by the Commission, Port, or City, and including but not limited to any award of attorney fees made by a court of competent jurisdiction against the Commission, Port, or City. Nothing in this Section limits the discretion of the Commission, Port, or City, to conduct its own defense or take the lead in its own defense.

10. Execution Before a Notary Public. All signatures of the Parties to this Agreement and all deeds and other instruments of conveyance executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to the executed Agreement and other documents to allow them to be recorded in the Public Records. The Governor’s signature shall be attested to by the Secretary of State.

11. Agreement for Compromise and Settlement. It is expressly understood by the Parties that the provisions set forth in this Agreement have been agreed upon for purposes of compromising and settling disputed interests in the Former Custer Avenue.

12. No Determination of Trust Consistency. Nothing in this Agreement shall be construed as a determination by the Commission, City or Port regarding the Trust consistency of any use of the Public Trust Easement Lands authorized by any other permits and approvals.

13. Agreement Not To Encumber. Except to the extent consistent with the purposes of this Agreement, or as otherwise provided herein, none of the Parties shall sell, transfer, assign, mortgage, pledge, or hypothecate, whether by operation of law or otherwise, any of their respective rights, title, or interests or alleged rights, title, or interests in or to the Cole Property prior to the consummation of the transfers provided for herein, without the prior written consent of the other affected Parties, not to be unreasonably withheld or delayed. Notwithstanding the foregoing, the Cole Trust may mortgage, pledge or hypothecate its interest in the Public Trust Easement Lands without prior written consent so long as the terms of any such encumbrance require a full release of such encumbrance as to the applicable property prior

to the consummation of the transfer, or require the applicable mortgagee to subordinate its rights to the Trust Easement granted hereunder.

14. Further Assurances. So long as authorized by applicable laws to do so, the Parties will perform such other acts, and execute, acknowledge, and deliver all further conveyances and other instruments that may be necessary to fully assure to the other Parties all of the respective properties, rights, titles, interests, remedies, powers and privileges to be conveyed or provided for by this Agreement.

15. Allocation of Costs and Expenses. Cole Trust shall pay the expenses and fees of the escrow agent, including those costs associated with document preparation and recordation of this Agreement, its deeds and patents, and any associated documents. Cole Trust shall also pay all closing costs, including without limitation all expenses and fees associated with any title insurance policy, including the title insurance policy for the Public Trust Easement required by this Agreement.

16. No Admission or Effect if Agreement Not Made Effective. If this Agreement does not become effective, or becomes effective but is declared by a final non-appealable judgment of a court of competent jurisdiction to be invalid, nothing in it shall constitute, or be construed as, an admission by any Party hereto or evidence concerning the boundaries, physical character, or character of title or interest in the Cole Property.

17. No Effect on Other Lands. The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of rights, title and interest in and to any lands outside the Cole Property.

18. No Damages. No Party shall have any remedy for monetary damages against another Party for breach of this Agreement, excepting recovery of attorneys' fees as provided below, and excepting any indemnification required by this Agreement.

19. Notice: Any notice required pursuant to this Agreement shall be in writing and given by delivering the notice in person or by sending it by registered or certified mail, or overnight mail, return receipt requested, with postage to the addresses shown below or to such other address as the applicable Party may provide in writing in the manner required by this Section. Notices may not be given by facsimile or electronic mail, but a courtesy copy of a notice shall be provided by electronic mail.

**Commission:**

State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202  
Attn: Seth Blackmon, Chief Counsel

Email: Seth.Blackmon@slc.ca.gov

**With copies to:**

Office of the Attorney General  
State of California  
1515 Clay Street, 20th Floor  
Oakland, CA 94612  
Attn: David Alderson  
Email: David.Alderson@doj.ca.gov

**City:**

Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attn: Elaine Forbes, Executive Director  
Email: elaine.forbes@sfport.com

**With copies to:**

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
Attn: Andrico Penick, Director of Property  
Email: andrico.penick@sfgov.org

Port of San Francisco  
Pier 1  
San Francisco, CA 94111  
Attn: Michelle Sexton, Port General Counsel  
Email: michelle.sexton@sfgov.org

San Francisco City Attorney's Office  
City Hall, Rm. 234  
1 Dr. Goodlett Place  
San Francisco, CA 94102  
Attn: Charles Sullivan, Deputy City Attorney  
Email: charles.sullivan@sfcityatty.org

**Cole Trust:**

4100 Windward Court  
Discovery Bay CA 94505

**with a copy to:**

George P. Eshoo, Esq.  
702 Marshall St. Ste 500  
Redwood City, CA 94063  
Email: georgeeshoo@aol.com

**and with copies to:**

DECA  
1620-1680 Davidson LLC  
201 Spear Street, Suite 1100  
San Francisco, CA 94105  
Email: Daniel.sachs@decaco.com

Gibson, Dunn & Crutcher LLP  
555 Mission Street, Suite 3  
San Francisco, CA 94105-0921  
Attn: Neil H. Sekhri, Esq.  
Email: nsekhri@gibsondunn.com

20. Acceptance of Conveyances and Consent to Recording. By their execution of this Agreement, the Parties each agree to accept the conveyance of rights, titles, and interests in land referred to in this Agreement, subject to the approvals and conditions described in this Agreement, and consent to the recording of this Agreement and other documents executed pursuant to this Agreement.

21. Approvals and Consents. Unless otherwise provided in this Agreement, whenever an approval, consent or satisfaction is required of a Party, the approval, consent or satisfaction shall be given on behalf of the Party by the representative(s) listed below.

a. If the Party is the Commission: by the Commission, as may be evidenced by appropriate document executed by the Executive Officer of the Commission.

b. If the Party is City or Port: by the Director of Property or the Executive Director of the Port, as authorized by the San Francisco Board of Supervisors.

c. If the Party is Cole Trust: by Cole Trust's authorized representative.

22. Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement, in a legal description or the reference to or within any exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits, the Parties affected by the error by mutual written agreement may correct such error by memorandum reflecting the intent of the Parties concerning the relevant exhibits, legal descriptions, or other provisions at the time of approval and execution of this Agreement. The Executive Officer of the Commission, the Executive Director of the Port, and the Cole Trust, as

applicable, may approve and execute such a “**Memorandum of Correction**” without the necessity of amendment of this Agreement. Such Memorandum of Correction shall be recorded.

23. Agreement Binding on Successors. All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, successors, and assigns of the Parties.

24. Entire Agreement. As of the Closing, this Agreement, and additionally, as to the City and Cole Trust, the Sale Agreement and the Final Settlement Agreement, supersedes any and all other prior agreements and understandings, either oral or in writing, between the Parties with respect to the subject matter of this Agreement, and no other prior agreement, statement, or promise relating to the subject matter of this Agreement, and additionally, as to the City and Cole Trust, the Sale Agreement, the Final Settlement Agreement, and any surviving provisions of the Initial Settlement Agreement, which is not contained herein, shall be valid or binding. Each Party acknowledges and agrees that as of the Closing Date, this Agreement, and additionally, as to City and Cole Trust, the Sale Agreement and the Final Settlement Agreement, shall constitute the entire agreement between the Parties individually or jointly concerning the subject matter of this Agreement.

25. Severability The Parties acknowledge and agree that if any agreement, covenant, provision, term or condition in this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law of either the State of California or the United States of America by a court of competent jurisdiction, such agreement, covenant, provision, term or condition shall be ineffective only to the extent of such invalidity, illegality or unenforceability and all other agreements, covenants, provisions, terms and conditions in this Agreement shall nevertheless remain in full force and effect; provided that the elimination or invalidity of such agreement, covenant, provision, term or condition does not materially alter the intent of the Agreement or the consideration received by any Party.

26. Modification. Except as explicitly stated in this Agreement, no modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by the Parties to this Agreement.

27. No Effect on Other Government Jurisdiction. This Agreement has no effect whatsoever on the regulatory, environmental or other jurisdiction of any federal, state, local, or other government entity not a party to this Agreement.

28. Headings. The title headings of the Sections of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

29. Effective Date. This Agreement shall become effective upon execution by the Governor. Notwithstanding the preceding sentence, for purposes of bringing a validation action as described in Section 8 this Agreement shall be deemed entered into upon execution by

the Executive Officer of the Commission, who shall be the last to sign prior to the signature of the Governor.

30. Execution. Notwithstanding anything to the contrary contained in this Agreement, the Cole Trust acknowledges and agrees that the Commission and City have no obligation to execute this Agreement until and unless (i) this Agreement, the Sale Agreement, and the Final Settlement Agreement have been duly approved and (ii) the Cole Trust executes this Agreement, the Sale Agreement and the Final Settlement Agreement.

31. Termination. If the transactions contemplated by this Agreement have not Closed by the Outside Date, this Agreement shall automatically terminate and be of no further force and effect unless extended in writing by each Party in their sole and absolute discretion. Upon termination under this Section, the Parties will have no obligations or liabilities under this Agreement and this Agreement shall be null and void.

32. Exhibits A through G. Exhibits A through G, inclusive, are attached to this Agreement and are incorporated by reference.

To witness this Agreement, a duly authorized officer of each Party has executed it below on the date opposite each signature.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**PORT 7/7/22**

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Jennifer Lucchesi  
Executive Officer

Approved as to form:

Robert Bonta  
Attorney General of the  
State of California

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Amanda Johnson  
Deputy Attorney General

[SIGNATURES CONTINUE ON FOLLOWING PAGE]





DATED: \_\_\_\_\_

CITY AND COUNTY OF SAN  
FRANCISCO, acting by and through the  
SAN FRANCISCO PORT COMMISSION  
as a trustee under Chapter 1333 of the  
Statutes of 1968

By: \_\_\_\_\_  
Elaine Forbes, Executive Director

DATED: \_\_\_\_\_

SAN FRANCISCO REAL ESTATE  
DEPARTMENT

By: \_\_\_\_\_  
Andrico Q. Penick,  
Director of Property

Approved as to form:  
David Chiu, City Attorney

By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of San Francisco            )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

PORT 7/7/22

**2006 MURRAY G. AND  
DORIS M. COLE REVOCABLE  
TRUST**

By: \_\_\_\_\_  
Murray G. Cole, Trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Doris M. Cole, Trustee

Date: \_\_\_\_\_

Approved as to form:  
George P. Eshoo, Esq.  
Attorney for **2006 MURRAY G.  
AND DORIS M. COLE REVOCABLE  
TRUST**

By: \_\_\_\_\_  
George P. Eshoo, Esq.

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of San Francisco         )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**PORT 7/7/22**

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the Seal of the State of California to be hereunto affixed pursuant to section 6107 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this \_\_\_\_\_, 2022.

\_\_\_\_\_  
Gavin Newsom  
Governor, State of California

Attest:  
SECRETARY OF STATE

By: \_\_\_\_\_  
[Dr. Shirley N. Weber, PhD](#)  
Secretary of State

**LIST OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Name/Description</u></b>
A.	Legal Description and Illustrative Plat of Cole Property
B.	Legal Description and Illustrative Plat of SB 815 Parcel
C.	Form of City Quitclaim Deed to State for Cole Property and State Certificate of Acceptance
D.	Form of State Trust Termination Patent to City for SB 815 Parcel and City Certificate of Acceptance
E.	Legal Description and Illustrative Plat of Public Trust Easement Lands
F.	Form of Cole Trust Public Trust Easement Grant Deed to State and Certificate of Acceptance
G.	Form of State Trust Termination Patent to Cole Trust for Cole Property

**EXHIBIT A**

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF COLE PROPERTY  
[ATTACHED]**

**[PAGE INTENTIONALLY LEFT BLANK]**



**EXHIBIT B**

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL**

**[ATTACHED]**

EXHIBIT C  
FORM OF CITY QUITCLAIM DEED TO STATE

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN Nos.  
Block 5215, Lot 021  
Block 5215, Lot 017  
Block 5215, Lot 022  
SLC No. [\_\_\_\_\_]

QUITCLAIM DEED

WHEREAS, pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686, of the Official Records of the City and County of San Francisco (“**Transfer Agreement**”), the State of California (“**State**”) granted and conveyed to the City and County of San Francisco, a charter city and municipal corporation (“**City**”), all of the State’s right, title and interest in certain property within the City, subject to the public trust for navigation, commerce and fisheries and the terms and conditions of the Burton Act and the Transfer Agreement (collectively, “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”); and

WHEREAS, the granted lands included a “paper street” known as Custer Avenue, a portion of which was closed and abandoned by City Resolution number 14166 finally approved on March 27, 1917 (“**Former Custer Avenue**”); and

WHEREAS, the City’s and State’s title to a portion of Former Custer Avenue has been disputed by Murray G. Cole and Doris M. Cole as Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”);

WHEREAS, Cole Trust claims ownership of 1620, 1650, and 1680 Davidson Avenue in San Francisco, including a portion of Former Custer Avenue and the abutting parcels, as more particularly described and depicted in **Exhibit 1** (the “**Cole Property**”); and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, Port and the Cole Trust entered into a settlement agreement, dated [Date xx, 2022] for reference purposes, under which, among other things, the Port agreed to sell a portion of Former Custer Avenue to Cole Trust pursuant to California Statutes of 2007, Chapter 660; and

WHEREAS, as to the remainder of the Cole Property, the parties agreed to enter into a Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue with the California State Lands Commission (“**Commission**”) (“**Exchange Agreement**”) which, subject to the necessary findings and approvals by the Port, City and State, authorizes an exchange of lands pursuant to Public Resources Code section 6307; and

WHEREAS, the Exchange Agreement provides among other things that, to effectuate the exchange, the City will quitclaim to the Commission all of the City’s right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property described in **Exhibit 1**; and

WHEREAS, the Port, by Port Resolution [\_\_\_\_] adopted on [\_\_\_\_], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [\_\_\_\_] approved on [\_\_\_\_] and signed by the Mayor on [\_\_\_\_], approved the Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Exchange Agreement; and

WHEREAS, the Commission, at its public meeting on [\_\_\_\_], approved Staff Report No. [\_\_\_\_], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement on [\_\_\_\_].

NOW, THEREFORE,

The CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION, hereby REMISES, RELEASES, AND FOREVER QUITCLAIMS to the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, any and all of the right, title and interest of the CITY AND COUNTY OF SAN FRANCISCO in the Property described in **Exhibit 1** and acquired by virtue of the Burton Act and the Transfer Agreement.

*[Signatures on following page]*

Executed on \_\_\_\_\_, 202\_

DESCRIPTION CHECKED/APPROVED:

By: \_\_\_\_\_  
[NAME]  
City Engineer, City and County of San  
Francisco

CITY AND COUNTY OF SAN  
FRANCISCO, a charter city and municipal  
corporation

By: \_\_\_\_\_  
Andrico Q. Penick  
Director of Property

CITY AND COUNTY OF SAN  
FRANCISCO, acting by and through the  
SAN FRANCISCO PORT COMMISSION  
as a trustee under Chapter 1333 of the  
Statutes of 1968, as amended

By: \_\_\_\_\_  
Elaine Forbes, Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING  
Government Code 27281

[CITY QUITCLAIM]

This is to certify that the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts from the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation, acting by and through the SAN FRANCISCO PORT COMMISSION, the right, title and interest in real property conveyed by the Quitclaim Deed dated \_\_\_\_\_, 2022.

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Assessor-Recorder for the City and County of San Francisco.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the STATE LANDS COMMISSION, acting pursuant to law, as authorized by the Commission’s approval of Staff Report No. [\_\_] on [\_\_\_\_\_], 2022, by its duly authorized undersigned officer.

STATE OF CALIFORNIA, STATE  
LANDS COMMISSION

Date: \_\_\_\_\_

\_\_\_\_\_  
Jennifer Lucchesi  
EXECUTIVE OFFICER



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT 1 TO EXHIBIT C**  
**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF COLE PROPERTY**  
[to be attached at closing]

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EXHIBIT D  
FORM OF SB 815 PATENT

[STATE TO CITY]

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section  
27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN Nos.  
Block 5215, Lot 021  
Block 5215, Lot 017  
Block 5215, Lot 022  
SLC No. [\_\_\_\_\_]

STATE OF CALIFORNIA  
TRUST TERMINATION PATENT

WHEREAS, pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686, of the Official Records of the City and County of San Francisco (“**Transfer Agreement**”), the State of California (“**State**”) granted and conveyed to the City and County of San Francisco, a charter city and municipal corporation (“**City**”), all of the State’s right, title and interest in certain property within the City, subject to the public trust for navigation, commerce and fisheries and the terms and conditions of the Burton Act and the Transfer Agreement (collectively, “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”); and

WHEREAS, the granted lands included a “paper street” known as Custer Avenue, a portion of which was closed and abandoned by City Resolution number 14166 finally approved on March 27, 1917 (“**Former Custer Avenue**”); and

WHEREAS, the City’s and State’s title to a portion of Former Custer Avenue has been disputed by Murray G. Cole and Doris M. Cole as Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, “**Cole Trust**”);

WHEREAS, Cole Trust claims ownership of 1620, 1650, and 1680 Davidson Avenue in San Francisco, including a portion of Former Custer Avenue and the abutting parcels (the “**Cole Property**”); and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, Port and the Cole Trust entered into a settlement agreement, dated [Date xx, 2022] for reference purposes, under which, among other things, the Port agreed to sell a portion of Former Custer Avenue to Cole Trust pursuant to California Statutes of 2007, Chapter 660 (the “**SB 815 Parcel**”), more particularly described and depicted in **Exhibit 1**; and

WHEREAS, the Port, by Port Resolution [\_\_\_\_] adopted on [\_\_\_\_], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [\_\_\_\_] approved on [\_\_\_\_] and signed by the Mayor on [\_\_\_\_], approved the Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Exchange Agreement; and

WHEREAS, the Commission, at its public meeting on [\_\_\_\_], approved Staff Report No. [\_\_\_\_], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement on [\_\_\_\_].

WHEREAS, the City, acting by and through the Port Commission, has conveyed, remised, released, and forever quitclaimed to the State, all of the City’s right, title, and interest in the SB 815 Parcel;

WHEREAS, the State, acting by and through the Commission, has accepted the City’s quitclaim of the SB 815 Parcel;

NOW, THEREFORE,

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to the CITY AND COUNTY OF SAN FRANCISCO, acting by and through its PORT COMMISSION, all of the State’s right, title, and interest in the SB 815 Parcel as described in **Exhibit 1**, subject to the reservation of all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state, its successors, or assignees.

This Patent is intended to and does terminate the Trust in the SB 815 Parcel and the SB 815 Parcel is hereby freed from the Trust.

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 7730 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this \_\_\_\_ day of \_\_\_\_\_, two thousand twenty-\_\_\_\_.

---

Gavin Newsom  
GOVERNOR

Attest:

---

[Dr. Shirley N. Weber, PhD](#)  
SECRETARY OF STATE

Countersigned:

---

Jennifer Lucchesi  
EXECUTIVE OFFICER  
STATE LANDS COMMISSION

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING  
Government Code 27281

This is to certify that the interest in real property conveyed by the Patent and Trust Termination dated \_\_\_\_\_, 2022, from the State of California, acting by and through the State Lands Commission, to the City and County of San Francisco, a charter City, is hereby accepted by the City and County of San Francisco. This acceptance is made pursuant to authority conferred by Board of Supervisors Ordinance No. XXXX, adopted on XXXXX, 2022, and Port Resolution XXXX, adopted on XXXXXX, 2022. The property shall be forever freed from the public trust. The grantee consents to the recordation of this conveyance by its duly authorized officer.

CITY AND COUNTY OF SAN  
FRANCISCO

Date:

By: \_\_\_\_\_

Andrico Q. Penick  
Director of Property

Approved as to form:

\_\_\_\_\_  
City Attorney

Date:

By: \_\_\_\_\_

Michelle Sexton  
Port General Counsel

**EXHIBIT 1 TO EXHIBIT D**  
**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL**  
[to be attached at closing]





**EXHIBIT E**

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF  
PUBLIC TRUST EASEMENT LANDS**

**[ATTACHED]**

**[PAGE INTENTIONALLY LEFT BLANK]**

[PAGE INTENTIONALLY LEFT BLANK]

EXHIBIT F  
Form of Trust Easement Grant Deed

OFFICIAL STATE BUSINESS - EXEMPT FROM  
RECORDING FEES PURSUANT TO GOVERNMENT  
CODE SECTION 27383 AND DOCUMENTARY  
TRANSFER TAX PURSUANT TO SF BUSINESS AND  
TAX REGULATIONS CODE SECTION 1105

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Easement Grant Deed**

APN(S):  
5215-021 (a portion)  
5215-022 (a portion)  
City and County of San Francisco

Murray G. Cole and Doris M. Cole, Trustees of 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 ( "**Grantor**" ) hereby GRANTS to STATE OF CALIFORNIA, acting by and through the State Lands Commission ( "**Grantee**" ), a public trust easement for commerce, navigation, and fisheries, in the following described real property situated in the State of California, City and County of San Francisco, described as follows:

See **Exhibit 1** consisting of [\_\_\_\_] ([\_]) pages attached hereto and by this reference made a part hereof.

Grantor and Grantee intend that the easement, or portion of easement, shall not merge with the fee if the easement and fee are held simultaneously by the State during the transactions contemplated by the Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue dated \_\_\_\_\_, 2022.

[Signatures on following page]

GRANTOR:

Murray G. Cole and Doris M. Cole Trustees  
of the 2006 Murray G. and Doris M. Cole  
Revocable Trust Dated August 1, 2006

By: \_\_\_\_\_

Name: Murray G. Cole

Its: Trustee

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Doris M. Cole

Its: Trustee

Date: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**EXHIBIT 1 TO EXHIBIT F**

**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF TRUST EASEMENT**

[to be attached at closing]

A.P.N.: [\_\_\_\_\_]
S.L.C. No. [\_\_\_\_\_]

CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING
PUBLIC TRUST EASEMENT
Government Code 27281

This is to certify that STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts from Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006, the attached Easement Grant Deed dated \_\_\_\_\_, 202\_, conveying a public trust easement for commerce, navigation and fisheries in the real property described therein.

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, an agency of STATE OF CALIFORNIA, hereby consents to the recordation of this conveyance in the Office of the Assessor-Recorder for the City and County of San Francisco.

The said interests in real property are accepted by STATE OF CALIFORNIA, in its sovereign capacity in trust for the people of the state, as real property of the legal character of tidelands and submerged lands.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the STATE LANDS COMMISSION, acting pursuant to law, as authorized by the Commission's approval of Staff Report No. [\_\_] on [\_\_\_\_\_], 202\_, by its duly authorized undersigned officer.

STATE OF CALIFORNIA
STATE LANDS
COMMISSION

Dated: \_\_\_\_\_

By: \_\_\_\_\_
Jennifer Lucchesi
Executive Officer



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT G  
FORM OF TRUST TERMINATION PATENT  
[STATE TO COLE TRUST]

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned Grantee Declares:  
DOCUMENTARY TRANSFER TAX is  
[ ] computed on full value of property conveyed, OR  
[ ] computed on the full value less value of liens and encumbrances remaining at time of sale,  
[ ] unincorporated area; ( ) City of

By Grantee  
Name:  
Date:

APN Nos.  
Block 5215, Lot 017  
Block 5215, Lot 021  
Block 5215, Lot 022  
SLC No. [\_\_\_\_\_]

STATE OF CALIFORNIA  
TRUST TERMINATION PATENT

WHEREAS, Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (collectively, "**Cole Trust**"), claim to own the property located at 1620 Davidson, 1650 Davidson, and 1680 Davidson, situated in the City and County of San Francisco ("**Cole Property**"), including a portion of former Custer Avenue; and

WHEREAS the State of California (“**State**”) contends that, the Cole Property was historically tide and submerged lands owned by the State as an aspect of its sovereignty; that portions of the Cole Property were sold pursuant to Chapter 543, Statutes of 1868; and that a portion of the Cole Property known as “Third” or “Custer” Avenue was reserved from sale and retained by the State. The State further contends that pursuant to Chapter 1333, Statutes of 1968, as amended (“**Burton Act**”), and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco recorded on January 30, 1969 as Instrument No. R40413 in Book B 308, Page 686 of the Official Records of San Francisco (“**Transfer Agreement**”), the State granted and conveyed to the City and County of San Francisco, a charter city and county (“**City**”), all of the State’s right, title and interest in certain lands in San Francisco, including the portion of former Custer Avenue within the Cole Property, subject to the public trust for navigation, commerce and fisheries (“**Public Trust**”) and to the terms and conditions of the Burton Act and the Transfer Agreement (together with the Public Trust, the “**Trust**”), to be held and administered by the San Francisco Port Commission (“**Port**”), and that the granted lands included the Cole Property; and

WHEREAS, there is uncertainty as to the extent to which the Cole Property, as former tide and submerged lands, is subject to the Trust; and

WHEREAS, to resolve their dispute, the Port and Cole Trust agreed to enter into a Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue with the California State Lands Commission (“**Commission**”) (“**Exchange Agreement**”), which, subject to the necessary findings and approvals by the Port, City and State, authorizes an exchange of lands pursuant to Public Resources Code section 6307 in the property, as more particularly described in **Exhibit 1 (“Property”)**; and

WHEREAS, the Exchange Agreement provides among other things that, to effectuate the exchange, the City will quitclaim to the Commission all of the City’s right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property, the Cole Trust will convey to the Commission a Public Trust easement (“**Public Trust Easement**”) over a portion of the Property (“**Public Trust Easement Lands**”) as more particularly described in **Exhibit 2**, the Commission will patent to the City all the State’s right, title, and interest in a portion of the Property (“**SB 815 Parcel**”) as more particularly described in **Exhibit 3**, but reserving any mineral interest, and the Commission will patent to Cole Trust all of the State’s right, title and interest in the Property, including any mineral interest in the SB 815 Parcel and reserving the Public Trust Easement; and

WHEREAS, the Exchange Agreement further provides that the Trust will be terminated in the Property other than in the Public Trust Easement Lands; and

WHEREAS, the Port, by Port Resolution [\_\_\_\_] adopted on [\_\_\_\_], approved the Exchange Agreement; and

WHEREAS, the City, acting by and through its Board of Supervisors, by Resolution No. [\_\_\_\_] approved on [\_\_\_\_] and signed by the Mayor on [\_\_\_\_], approved the

Exchange Agreement and authorized the Port Executive Director and the San Francisco Director of Property to implement the Agreement; and

WHEREAS, the Commission, at its public meeting on [\_\_\_\_\_], approved Staff Report No. [\_\_\_], which approved the Exchange Agreement; and

WHEREAS, the parties thereafter executed the Exchange Agreement; and

WHEREAS, pursuant to the Exchange Agreement, City has conveyed, remised, released, and forever quitclaimed to the State, acting by and through the Commission, all of its right, title and interest acquired by virtue of the Burton Act and Transfer Agreement in the Property, and the State, acting by and through the Executive Officer of the Commission pursuant to Staff Report No. [\_\_\_], has accepted the Property; and

WHEREAS, the Commission has found and declared, inter alia, that the Property, other than the Public Trust Easement Lands has been cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and is relatively useless for purposes of the public trust for navigation, commerce and fisheries, and for purposes of the Burton Act; and

WHEREAS, pursuant to the Exchange Agreement, it is the intent of the State to quitclaim to Cole Trust all of its right, title and interest in and to the Property, and to terminate the Trust, but reserving the Public Trust Easement;

NOW, THEREFORE,

The STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to Murray G. Cole and Doris M. Cole, Trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006, all of the State's right, title, and interest in the Property, but reserving the Public Trust Easement in the Public Trust Easement Lands.

This Patent is intended to and does terminate the Trust in the Property, and the Property is hereby freed from the Trust except for the Public Trust Easement Lands.

[SIGNATURES ON FOLLOWING PAGE]

IN APPROVAL WHEREOF, I, Gavin Newsom, Governor of the State of California, have set my hand and caused the seal of the State of California to be hereunto affixed pursuant to Section 7730 of the Public Resources Code of the State of California. Given under my hand at the City of Sacramento this \_\_\_\_ day of \_\_\_\_\_, two thousand twenty-\_\_\_\_.

---

Gavin Newsom  
GOVERNOR

Attest:

---

[Dr. Shirley N. Weber, PhD](#)  
SECRETARY OF STATE

Countersigned:

---

Jennifer Lucchesi  
EXECUTIVE OFFICER  
STATE LANDS COMMISSION

**EXHIBIT 1 TO EXHIBIT G**  
**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT**  
**PROPERTY**

[To be attached at closing]

**EXHIBIT 2 TO EXHIBIT G**  
**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL**

[To be attached at closing]

**EXHIBIT 3 TO EXHIBIT G**  
**LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF PUBLIC TRUST EASEMENT**  
**LANDS**

[To be attached at closing]






## GENERAL PLAN REFERRAL

March 10, 2022

**Case No.:** 2022-001339GPR  
**Block/Lot No.:** 5215-022 and 5215-021  
**Project Sponsor:** Law Office of George P. Eshoo  
**Applicant:** George P. Eshoo – (650) 364-7030  
georgeeshoo@aol.com  
Law Office of George P. Eshoo  
702 Marshall St Ste 500  
Redwood City, CA 94063-1826  
**Staff Contact:** Danielle Ngo – (628) 652-7591  
danielle.ngo@sfgov.org

  
Digitally signed by  
Daniel A. Sider  
Date: 2022.03.10  
15:00:39 -08'00'

**Recommended By:** Daniel A. Sider, AICP  
for Rich Hillis, Director of Planning

**Recommendation:** Finding the project, on balance, is **in conformity** with the General Plan

### Project Description

The project sponsor, the Law Office of George P. Eshoo, is conducting a settlement agreement (the Project) on behalf of the property owner of 1650 and 1680 Davidson Avenue. The property, 1650-1680 Davidson Avenue, is approximately 2.42 acres and consists of a paved yard that is used for light industrial parking and storage use, including fleet parking for school buses, via an existing long-term lease for those uses. The property includes a portion of former Custer Avenue.

The property owner claims clear title to the entire subject lot, including a portion of the lot that had once been a segment of Custer Avenue, since vacated. In connection with title work conducted for a proposed sale, the Port of San Francisco (“Port”) and the State of California have asserted public trust and ownership claim over the former segment of Custer Avenue, which is now a portion of the subject property.

The settlement and property transaction are intended to settle these disputed claims regarding property ownership and will include the following elements:

- (1) The City and County of San Francisco (“City”), acting by and through the Port, will quitclaim any title interest in approximately 2,364 square feet of former Custer Avenue to the property owner pursuant to existing legislative authority under SB 815. The Port will enter into a Purchase and Sale Agreement with the property owner that will govern the conveyance of the former Custer Avenue parcel from the City to the property owner for its appraised value.
- (2) The City, acting by and through the Port, the State Lands Commission, and the property owner will enter into a Title Settlement and Trust Exchange Agreement that will provide title to the property, free of the public trust, except for a strip of land within the northern area of the property. This strip of land is along the water and will be subjected to a public trust easement in favor of the State or granted to the City, acting by and through the Port. The property owner will also make a payment into a State fund to account for any deficit in the square footage of land exchange.

This settlement agreement includes: (1) approval by the Port Commission of the Purchase and Sale Agreement and Trust Agreement, pursuant to its authority under Charter Appendix B, (2) approval by the Board of Supervisors of the sale of City property under Charter Section 9.118(c) and to authorize the City’s acceptance of the public trust easement, if applicable, and (3) approval by the State Lands Commission of the Trust Agreement and adoption of findings related to the sale of a portion of former Custer Avenue under SB 815.

The project sponsor requests this General Plan Referral to be granted for the settlement agreement of 1650-1680 Davidson Avenue.

## Environmental Review

On 2/16/2022, the Planning Department determined that the subject settlement agreement is statutorily exempt from CEQA under Public Resources Code §21080.11 (Case No. 2022-001339PRJ).

## General Plan Compliance and Basis for Recommendation

As described below, the Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 1

**MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.**

**POLICY 1.3**

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

*The Project is a settlement agreement with no change of use. The property is zoned for PDR and is a paved yard that is used for light industrial parking and storage use, including a fleet of school busses.*

**OBJECTIVE 2**

**MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.**

**POLICY 2.1**

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

*The Project is a settlement agreement with no change of use. The property is zoned for PDR and is a paved yard that is used for light industrial parking and storage use, including a fleet of school busses.*

**Planning Code Section 101 Findings**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The Project would not have a negative effect on existing neighborhood-serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail. The Project, a settlement agreement, has no change of use.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The Project would not have a negative effect on housing or neighborhood character. The Project, a settlement agreement, has no change of use.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The Project would not have an adverse effect on the City's supply of affordable housing. The property is not zoned for housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The Project would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking. There are no public streets within the property.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The Project would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired. The property is currently zoned for PDR uses and will remain as such.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The Project would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake. The Project, a settlement agreement, has no change of use.*

7. That the landmarks and historic buildings be preserved;

*The Project would not have an adverse effect on the City's Landmarks and historic buildings. There are no buildings on this property.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The Project would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas. The Project, a settlement agreement, will include the creation of a public trust easement as described above.*

**Recommendation: Finding the project, on balance, is in conformity with the General Plan**

**Attachments:**

None

**EXHIBIT B**



**CITY AND COUNTY OF SAN FRANCISCO  
LONDON N. BREED, MAYOR**

---

**AGREEMENT FOR SALE OF REAL ESTATE**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO  
ACTING BY AND THROUGH THE  
SAN FRANCISCO PORT COMMISSION**

**AND**

**2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006  
("Buyer")**

**PORTIONS OF  
CUSTER AVENUE, SAN FRANCISCO, CALIFORNIA**

**ELAINE FORBES  
EXECUTIVE DIRECTOR**

**SAN FRANCISCO PORT COMMISSION**

**WILLIE ADAMS, PRESIDENT  
KIMBERLY BRANDON, VICE PRESIDENT  
JOHN L. BURTON, COMMISSIONER  
GAIL GILMAN, COMMISSIONER**

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**AGREEMENT FOR SALE OF REAL ESTATE**  
**(Portions of Former Custer Avenue, San Francisco)**

THIS AGREEMENT FOR SALE OF REAL ESTATE (this “**Agreement**”) dated for reference purposes only as of \_\_\_\_\_, 2022, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation (“**City**”) acting by and through the San Francisco Port Commission (“**Port**”), and Murray G. Cole and Doris M. Cole, trustees of the 2006 Murray G. and Doris M Cole Revocable Trust dated August 1 2006, (“**Cole Trust**” or “**Buyer**”) (individually a “**Party**” and together the “**Parties**”).

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

**A.** The Cole Trust contends that it is the owner of certain real property located between Islais Creek and Davidson Avenue in San Francisco, commonly referred to as 1620, 1650, and 1680 Davidson Avenue (the “**Cole Property**”). The Cole Property includes within its borders a portion of a “paper street” known as Custer Avenue (“**Former Custer Avenue**”).

**B.** The Port contends that the City owns Former Custer Avenue which was transferred in trust to the City (acting by and through the Port Commission) by the State (acting by and through the State Lands Commission) pursuant to California Statutes of 1968, Chapter 1333, as amended (“**Burton Act**”) and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco (the “**Transfer Agreement**”), to be held by the Port subject to the public trust for commerce, navigation, and fisheries (“**Public Trust**”) and the terms and conditions of the Burton Act and Transfer Agreement (“**Burton Act Trust**,” and together with the Public Trust, the “**Trust**”). *Exhibit A* attached and incorporated hereto shows a general vicinity map showing the Cole Property and Former Custer Avenue.

**C.** Each of the statements and positions of the Parties set forth above is in dispute (“**Title Claims**”). The Cole Trust disputes the validity of Port's claim of any interest in Former Custer Avenue and asserts that the Port and the State have no right, title, or interest in Former Custer Avenue and that the Cole Trust is entitled to quiet title of Former Custer Avenue and to seek damages under several legal theories. The Port contends that the City owns fee title to the Former Custer Avenue subject to the Trust and has claims against the Cole Trust, including without limitation claims for encroachment, trespass, and back rent. The Cole Trust and its predecessor owners allege that they have paid all property taxes on the Cole Property since at least the early 1960s.

**D.** By settlement agreement dated May 25, 2021, the Port and the Cole Trust agreed to resolve their Title Claims by, among other things, setting forth their intention to facilitate a sale or other resolution to enable the Cole Trust to hold clear fee title to Former Custer Avenue (“**Initial Settlement Agreement**”). On \_\_\_\_\_, the Port Commission approved the Parties’ agreement to finally resolve their Title Claims (the “**Final Settlement Agreement**”).

**E.** As contemplated by the Final Settlement Agreement, pursuant to its authority under California Statutes of 2007, Chapter 660 (“**SB 815**”) Sections (1)(p)(3) and (8) and in accordance with Section 3, Article X of the California Constitution, this Agreement provides for sale by the City of that certain real property described in the Final Settlement Agreement as the “**SB 815 Parcel**” consisting of a portion of Former Custer Avenue lying southerly of a line parallel with and distant 100 feet landward from the mean high water line of San Francisco Bay within 1650 Davidson Street, San Francisco, California consisting of approximately 2,364 square feet as more particularly described in the attached *Exhibit B* (the “**Property**”). In accordance with Section 8(d) of SB 815, the City and Port will quitclaim its Burton Act Trust interest to the state and receive from the State Lands Commission a patent to the right, title, and interest in the SB 815 parcel that the City will quitclaim to the Buyer. The Final Settlement Agreement also



requires the City and the Cole Trust to concurrently enter into a Public Trust Exchange and Title Settlement Agreement with the State Lands Commission (“**State Lands**”) for 1620-1650-1680 Davidson (“**Exchange Agreement**”) authorizing an exchange that will, among other things (i) quitclaim to the Cole Trust the City and State interests in the remainder of the Cole Property, free of the Trust except for an eighteen foot (18’) wide strip of land within the Cole Property immediately adjacent to its northerly boundary, near Islais Creek which will be impressed with a Public Trust easement and (ii) require the Cole Trust to pay money to the State that will be deposited into the Kapiloff Land Bank Fund (Public Resources Code 8600-8602).

**F.** The Parties desire to conclude the transactions called for in this Agreement and the Exchange Agreement in order to finally resolve the Title Claims as further described in the Final Settlement Agreement.

**G.** On February 16, 2022, the San Francisco Planning Department determined that this Agreement, the Final Settlement Agreement and the Exchange Agreement are statutorily exempt from review under the California Environmental Quality Act (“**CEQA**”) under Public Resources Code §21080.11; and on March 10, 2022, the San Francisco Planning Department determined that the project, on balance, is in conformity with the General Plan.

**H.** The San Francisco Port Commission approved this Agreement by Resolution [\_\_\_\_\_] adopted on [\_\_\_\_\_] (the “**Port Commission Resolution**”). The San Francisco Board of Supervisors, by Resolution [\_\_\_\_\_] adopted on [\_\_\_\_\_] and signed by the Mayor on [\_\_\_\_\_] approved this Agreement and authorized the Port and the City’s Director of Real Estate to enter into this Agreement on behalf of the City (the “**Board of Supervisors’ Approval**”).

**I.** In order for the Property to be transferred free of the Trust, State Lands must make certain findings under SB 815. The State Lands Commission made the findings required under Section 8(b) of SB 815 by Staff Report No. [\_\_\_\_\_] at its meeting of [\_\_\_\_\_] State Lands also approved the Exchange Agreement by Staff Report No. [\_\_\_\_\_] at its meeting of [\_\_\_\_\_].

**J.** The Cole Trust is in contract to sell the Cole Property to 1620-1680 Davidson LLC, a Delaware limited liability company (subject to the Public Trust Easement referenced above) (the “**Cole Trust Sale Agreement**”) and the Cole Trust desires to coordinate same day closings such that the sale of the Cole Property will take place immediately following the Closing of the Exchange Agreement and this Agreement. The City has no objection; provided however, that the obligations and transactions under this Agreement, the Exchange Agreement, and the Final Settlement Agreement are separately binding on the Parties and are not conditioned on consummation of the Cole Trust Sale Agreement.

## AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Buyer hereby agree as follows:

- 1. SALE AND PURCHASE.** Subject to the terms, covenants and conditions set forth herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, City’s interest in the Property. The Property shall be conveyed free of the Trust.
- 2. PURCHASE PRICE.** The purchase price for the Property is One Hundred Sixty Thousand Dollars (\$160,000.00) (the “**Purchase Price**”). All sums payable hereunder shall be paid in immediately available funds of lawful money of the United States of America.
- 3. TITLE.**

**3.1. Conditions of Title.** At the Closing, City shall quitclaim interest in and to the Property to Buyer by quitclaim deed in the form of *Exhibit C* attached hereto (the “**Quitclaim Deed**”). City makes no representation or warranty as to the condition of title.

**3.2. Buyer's Responsibility for Title Insurance.** Buyer understands and agrees that the right, title and interest conveyed shall not exceed that vested in City by virtue of the Burton Act, and City is under no obligation to furnish any policy of title insurance in connection with this transaction. Buyer recognizes that any fences or other physical monument of the Property's boundary lines may not correspond to the legal description of the Property. City shall not be responsible for any discrepancies in the parcel area or location of the property lines or any other matters which an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

**4. "AS IS" PURCHASE; RELEASE OF CITY.**

**4.1. Buyer's Independent Investigation.** Buyer represents and warrants to City that Buyer has been in physical possession of the Property for many years and has full knowledge of the condition of the Property. As such, Buyer is well aware of each and every aspect of the Property, and forgoes any further investigation, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(a) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.

(b) The zoning and other legal status of the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances and private or public covenants, conditions and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements and building and fire codes.

(c) The quality, nature, adequacy and physical condition of the Property, , and all other physical and functional aspects of the Property.

(d) The quality, nature, adequacy, and physical, geological and environmental condition of the Property (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Property or any other real property in the vicinity of the Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

(e) The suitability of the Property for Buyer's intended uses.

(f) The economics and development potential, if any, of the Property.

(g) All other matters of material significance affecting the Property.

**4.2. Property Disclosures.** Buyer acknowledges the following:

(a) Hazardous Materials. California Law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Property, including, but not limited to, vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as asbestos, naturally-occurring radionuclides, lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in the attached *Schedule x*, copies of which have been delivered to or made available to Buyer may be present on the Property. By execution of this Agreement, Buyer acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(b) FEMA-National Flood Insurance Program Disclosure Notice. As part of the National Flood Insurance Program (“NFIP”), Federal Emergency Management Agency (“FEMA”) issued the final flood insurance rate maps (“FIRMs”) for City and County of San Francisco on September 23rd, 2020, concluding a process that had been going on for more than a decade. This is the first time FEMA mapped flood risks for the City and County of San Francisco. FIRMs were later adopted by the Board of Supervisors through Ordinance 226-20 (“**Floodplain Management Program Ordinance**”) and became effective on March 23, 2021. Based on detailed studies of coastal flood hazards associated with San Francisco Bay and the Pacific Ocean, the final FIRMs designate portions of the City and County of San Francisco (“City”), including portions of the waterfront, Mission Bay, Islais Creek, Bayview Hunters Point, Hunters Point Shipyard, Candlestick Point, Treasure Island, San Francisco International Airport, and Ocean Beach, in coastal flood hazard areas. Referred to as “Special Flood Hazard Areas” (“SFHAs”), these areas are subject to inundation during a flood having a 1 percent chance of occurrence in any given year. They are shown as zones beginning with the letter “A” or “V” on the FIRMs. Port’s structures over water, including piers and wharfs, are designated as Zone D (area of undetermined flood hazard). Zone D areas are not subject to Building Code and NFIP regulation. Historic structures are also exempted from compliance under the NFIP.

The FIRM provides flood risk information for flood insurance and floodplain management purposes under the NFIP. The SFHAs, shown on the FIRM, may impact flood insurance requirements and rates, permitting, and building requirements for tenants and permit holders for property in designated SFHAs on the FIRM. Flood insurance is available through the NFIP and the private market. Flood insurance for Zone D areas is not available through NFIP. Pre-FIRM buildings of any type are not required to buy flood insurance. For more information on purchasing flood insurance, please contact your insurance agent. The City’s Floodplain Management Program ordinance is based on NFIP requirements. Under the ordinance, the Port and the City must regulate new construction and substantial improvements or repairs to structures in SFHAs to reduce the risk of flood damage. The requirements may include elevation or floodproofing of structures and attendant utilities.

Additional information on this matter is available on the City/Port websites and FEMA website as listed below-

San Francisco Floodplain Management Program website:  
<https://onesanfrancisco.org/isan-francisco-floodplain-management-program>

Port Floodplain Management Program Website:  
<https://sfport.com/flood-plain-management-program>

FEMA's NFIP website:  
[www.FloodSmart.gov](http://www.FloodSmart.gov).

(c) 100-Year Storm Flood Risk. Under San Francisco Police Code Article 51 (“**Article 51**”), property owners in San Francisco are required to disclose to transferees and prospective transferees if the subject property is Flood Risk Parcel, meaning that it is subject to Deep and Contiguous Flooding in a 100-Year Storm (each as defined in Article 51), as shown on the San Francisco Public Utilities Commission’s 100-Year Storm Flood Risk Map. The Property is a Flood Risk Parcel. See **Exhibit D** to this Agreement for the required disclosure information.

(d) Liquefaction. According to the United States Geological Survey, roughly one-quarter of the San Francisco Bay region may be exposed to liquefaction. More information about the potential areas of liquefaction may be found at <http://geomaps.wr.usgs.gov/sfgeo/liquefaction/susceptibility.htm>.

(e) The Property is in (i) a delineated earthquake fault zone (CA Public Resources Code Section 2621.9) and (ii) a seismic hazard zone (CA Public Resources Code Section 2694).

**4.3. “As Is” Purchase.** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING CITY’S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS PERSONAL KNOWLEDGE AND ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR BUYER'S INTENDED USES, THE CONDITION OF TITLE, OR ANY OF THE PROPERTY CONDITIONS. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, TITLE, OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

**4.4. Release of City.** As part of its agreement to purchase the Property in its “As Is With All Faults” condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its departments, boards, commissions, officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) Buyer’s and its Agents and customer’s past, present and future use of the Property, (ii) the physical, geological or environmental condition of the Property, including, without limitation, any Hazardous Material in, on, under, above or about the Property, (iii) the condition of title, and (iv) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “**Superfund**” law), as amended by Superfund Amendments and Reauthorization Act of 1986 (“**SARA**”) (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of 1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, “**RCRA**”) (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the “**Clean Water Act**”) (33 U.S.C. Section 1251 et seq.), the Toxic Substances Control Act (“**TSCA**”) (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the “**California Superfund**” law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 et seq.), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the “**Business Plan Law**”) (California Health and Safety Code Section 25500 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “**Proposition 65**”) (California Health and Safety Code Section 25249.5 et seq.).

In connection with the foregoing release, Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE, AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BY PLACING ITS INITIALS BELOW, BUYER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT BUYER WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: BUYER: \_\_\_\_\_

## 5. ESCROW AND CLOSING.

**5.1. Joint Escrow Instructions.** The Closing shall be consummated through an escrow account (“Escrow”) opened through the offices of First American Title Insurance Company, 4750 Willow Road, Suite 275, Pleasanton, CA 94588, Attn: Jules Fulop (“Title Company”). Upon approval of this Agreement by the Commission, but no later than one hundred twenty (120) days after the date the Governor executes the Trust Termination Patent as contemplated by the Exchange Agreement, the Parties shall establish escrow with the Title Company and prepare joint escrow instructions conforming to the requirements of this Agreement, the Exchange Agreement, the Final Settlement Agreement and with any other supplemental instructions necessary to effectuate the intent of this Agreement as may be agreed to in writing by the Parties (the “Joint Escrow Instructions”) and shall execute and deliver the Joint Escrow Instructions to the Title Company no less than ten (10) days prior to the Target Date. The Joint Instructions shall specify that the Escrow will close concurrently with the separate escrows for the Cole Trust Sale Agreement, and the purchase price funded for the Cole Trust Sale Agreement may be used to fund the Purchase Price under this Agreement if all closing conditions have been met for the Cole Trust Sale Agreement. Notwithstanding the foregoing, the obligations and transactions in this Agreement, the Exchange Agreement, and the Final Settlement Agreement are not conditioned on consummation of the Cole Trust Sale Agreement and the transactions contemplated by this Agreement, the Exchange Agreement, and the Final Settlement Agreement are independent of the transactions contemplated under the Cole Trust Sale Agreement.

**5.2. Closing.** “Closing” or “Closing Date” shall mean the date that the Quitclaim Deed is recorded in the Official Records. The Closing Date under this Agreement shall occur on the same date as the closing under the Exchange Agreement. The Closing Date shall occur no later than July 13, 2023 (the “Outside Date”), but the Parties will use their best efforts to close no later than December 31, 2022 (the “Target Date”).

### **5.3. Conditions Precedent to Closing; Deposits into Escrow.**

(a) **Joint Closing Conditions.** It is a condition precedent to each Party’s obligation to close escrow that: (i) State Lands has made the findings required by SB 815; and (ii) the Exchange Agreement has been fully executed and all of the deposits to escrow called for under the Exchange Agreement have been made.

(b) **City’s and Port’s Closing Conditions.** As a condition precedent to City’s and Port’s obligation to close escrow, all of the following shall have occurred:

(i) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct as of the Closing.

(ii) the Cole Trust has provided evidence to the City’s satisfaction that it has withdrawn, discontinued, and disavowed any claim against Fidelity National Title Insurance Company and Old Republic Title with respect to the Title Claims; provided however, that, City, in its sole discretion, may waive this closing condition provided further that Fidelity

National Title Insurance Company and Old Republic Title execute a full release of claims against the City in a form and substance acceptable to the City;

(iii) the Board of Supervisors' Approval shall have been obtained;

(iv) all deposits to escrow required of Buyer under this Agreement have been made (or are available in the Escrow for the Cole Trust Sale Agreement);

(v) Title Company shall have agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in *Section 5.5* below);

(vi) Such other documents as reasonably required by the City/Port shall be received by Title Company.

(c) Buyer's Closing Conditions. As a condition precedent to Buyer's obligation to close escrow, all of the following shall have occurred:

(i) City and Port shall have performed all of their obligations hereunder;

(ii) all deposits to escrow required of City and Port under this Agreement have been made;

(iii) The Property is not subject to any encumbrances placed on the Property by the City after the Effective Date without the consent of Buyer, excepting (a) liens for taxes or assessments, and (b) the Project Declaration as defined in *Section 8.23*.

(d) *City and Port Deposits*. At least two (2) business days prior to Closing, the City and Port shall deposit the following documents into escrow:

(i) A certified copy of the Minute Item for Staff Report No. [\_\_\_], of the Commission's public hearing on [\_\_\_\_\_] with the findings required by SB 815;

(ii) the duly executed and acknowledged Quitclaim Deed conveying the Property to Buyer;

(iii) a duly executed and acknowledged counterpart of the Project Declaration;

(iv) Certified copies of the Port Commission Resolution and Board of Supervisors' Approval, each authorizing entry into this Agreement;

(v) an original executed counterpart of this Agreement,

(e) *Cole Trust Deposits*. At least two (2) business days prior to Closing, Cole Trust shall deposit the following into escrow:

(i) the funds necessary to close this transaction comprised of (A) the Purchase Price; plus (B) the Port's transactional costs as set forth in the Final Settlement Agreement;

(ii) a duly executed and acknowledged counterpart of the Project Declaration;

(iii) an original executed counterpart of this Agreement.

**5.4. Failure of City's Conditions Precedent.** Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied on or before the Outside Date, City may, at its option, terminate this Agreement. Upon any such termination, neither Party shall have any further rights or obligations hereunder except as provided in *Section 7* (Expenses) or *Section 8.2* (Buyer's Representations and Warranties) or as otherwise expressly provided herein.

**5.5. Title Company as Real Estate Reporting Person.** Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require that certain information be provided to the United States Internal Revenue Service, and a statement to be furnished to City, in connection with the Closing. Buyer and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is hereby designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company shall perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Buyer and City shall each timely furnish Title Company with any information reasonably requested by Title Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

**6. RISK OF LOSS.** Each Party shall immediately provide written notice to the other Party if it learns of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Property. In the event that all or any portion of the Property is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of the notice specified in this Section, terminate this Agreement by written notice to City. If Buyer fails to terminate this Agreement as provided in this Section, Buyer must consummate the purchase for the full Purchase Price as required by the terms hereof. Buyer acknowledges that City self-insures and shall not be obligated to purchase any third-party commercial liability insurance or property insurance in connection with this Agreement.

## **7. EXPENSES.**

**7.1. Costs.** Buyer shall pay all expenses and fees in connection with this Agreement and any transfer taxes applicable to the sale, personal property taxes, escrow fees and recording charges and any other costs and charges of the escrow for the sale.

**7.2. Brokers.** The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party harmless against, any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the purchase and sale is not consummated for any reason, any termination of this Agreement.

## **8. GENERAL PROVISIONS.**

### **8.1. Notices.**

Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and may be served by personal delivery or by sending the notice by registered or certified mail, return receipt requested, with postage to the addresses shown below. Any notice or other communication served in the manner described above shall be deemed to have been given and received upon the date of delivery to the addressee or refusal by the addressee to accept delivery. For purposes of notice, the addresses of the Parties shall be as follows:

*To Port:*

Port of San Francisco  
Deputy Director Real Estate and Development  
Pier 1  
San Francisco, CA 94111

*With a copy to:* Port General Counsel at the same address

*To Cole Trust:* 4100 Windward Court  
Discovery Bay CA 94505

*With a copy to:* George P. Eshoo, Esq.  
702 Marshall St. Ste 500  
Redwood City, CA 94063

*And with a copy to:* DECA  
1620-1680 Davidson LLC  
201 Spear Street, Suite 1100  
San Francisco, CA 94105

The Parties may modify the addresses and/or names of representatives providing notice thereof in accordance with the provisions hereof.

Notices may not be given by facsimile or electronic mail, but a courtesy copy of a notice shall be provided by electronic mail.

**8.2. *Buyer's Representations and Warranties.*** Buyer makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

(a) Buyer is duly organized and validly existing and in good standing under the laws of the State of California. Buyer has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Buyer has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(b) Buyer represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Buyer has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(c) Buyer represents and warrants to City that this Agreement and all documents executed by Buyer which are to be delivered to City at Closing: (a) are or at the time of Closing will be duly authorized, executed and delivered by Buyer; (b) are or at the time of Closing will be legal, valid and binding obligations of Buyer; and (c) do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(d) No document or instrument furnished or to be furnished by the Buyer to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties of Buyer contained in this Agreement or in other agreements or documents executed by Buyer in connection with this Agreement shall survive the Closing.

**8.3. *Relationship of Parties.*** Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the Parties. No Party or its representatives shall act or be deemed to act as legal counsel or a representative of any



other Party, unless expressly authorized by this Agreement or retained by such Party for such purpose. The Parties do not intend to waive, and nothing herein shall be deemed to constitute a waiver of, any joint defense privilege that may exist among the Parties or between any of them.

**8.4. Amendments.** This Agreement shall not be amended, supplemented or modified unless in writing signed by the Parties. Such modification shall only be effective upon execution of a written modification by the Parties and shall be subject to Port Commission and San Francisco Board of Supervisors approval if required.

**8.5. Entire Agreement.** As of the Closing, this Agreement, the Final Settlement Agreement and the Exchange Agreement supersede any and all other prior agreements and understandings, either oral or in writing, between the Parties with respect to the subject matter of this Agreement including the Initial Settlement Agreement except with respect to provisions that explicitly survive the Initial Settlement Agreement (including without limitation the indemnity and exculpation provisions in Section 6 of the Initial Settlement Agreement), and no other prior agreement, statement, or promise relating to the subject matter of this Agreement, the Final Settlement Agreement and the Exchange Agreement which is not contained herein shall be valid or binding. Each Party acknowledges and agrees that as of the Closing Date, this Agreement, the Final Settlement Agreement, any surviving provisions of the Initial Settlement Agreement, and the Exchange Agreement shall constitute the entire agreement between the Parties individually or jointly concerning the subject matter of this Agreement.

**8.6. Correction of Technical Errors.** If by reason of inadvertence, and contrary to the intention of the Parties, errors are made in this Agreement, in a legal description or the reference to or within any exhibit with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits, the Parties, by mutual written agreement, may correct such error by memorandum reflecting the intent of the Parties concerning the relevant exhibits, legal descriptions, or other provisions. The Executive Director of the Port and the Cole Trust may approve and execute such a “Memorandum of Correction” without the necessity of amendment of this Agreement.

**8.7. Counterparts.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument.

**8.8. Governing Law; Venue.** This Agreement is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the Superior Court for the City and County of San Francisco, and each Party agrees to the exclusive jurisdiction of such court in any such suit, action, or proceeding (excluding bankruptcy matters). The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim that any suit, action, or proceeding brought in San Francisco Superior Court relating to this Agreement has been brought in an inconvenient forum. The Parties also unconditionally and irrevocably waive any right to remove any such suit, action, or proceeding to federal court.

**8.9. Miscellaneous.** Except as provided in *Section 5.3(e)(i)* or as otherwise expressly provided herein, each Party shall bear its own costs, attorney's fees and other fees incurred in connection with the negotiation and approval of this Agreement and related documents. Each of the Parties represents and warrants that it has read and fully understood the terms of this Agreement, and that it freely and voluntarily enters into and executes this Agreement without undue influence by any person and without relying on any promises, conditions, terms, statements or representations not expressly contained in this Agreement. The Parties warrant that no promise or inducement has been made or offered except as set forth herein as consideration for this Agreement.

**8.10. Severability.** The Parties acknowledge and agree that if any agreement, covenant, provision, term or condition in this Agreement is invalid, illegal or incapable of being enforced under any applicable rule or law of either the State of California or the United States of America by a court of competent jurisdiction, such agreement, covenant, provision, term or condition shall be ineffective only to the extent of such invalidity, illegality or unenforceability and all other agreements, covenants, provisions, terms and conditions in this Agreement shall nevertheless remain in full force and effect; provided that the elimination or invalidity of such agreement, covenant, provision, term or condition does not materially alter the intent of the Agreement or the consideration received by any Party.

**8.11. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns, and with respect to the rights and obligations of the Cole Trust, shall run with the land constituting the Property. Where the term "Party" is used in this Agreement, it means and includes their respective successors and assigns.

**8.12. Cooperation.** The Parties shall reasonably cooperate to effectuate the purposes and intent of this Agreement and agree to do all things and execute all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

**8.13. No Third-Party Beneficiaries.** Except as explicitly provided in this Agreement, nothing herein is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties and their respective successors and assigns, if any, nor shall any agreements, covenants, provisions, terms or conditions in this Agreement give any third parties any right of subrogation or action against the Parties.

**8.14. Parties and Their Agents.** The term "Buyer" as used herein shall include the plural as well as the singular. If Buyer consists of more than one (1) individual or entity, then the obligations under this Agreement imposed on Buyer shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors, tenants, and representatives of such party.

**8.15. Interpretation of Agreement.** The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

**8.16. Time of Essence.** Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

**8.17. No Merger.** The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

**8.18. Non-Liability of City Officials, Employees and Agents.** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, department, employee or agent of City shall be personally liable to Buyer, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Buyer, its successors and assigns, or for any obligation of City under this Agreement.

**8.19. *Conflicts of Interest.*** Through its execution of this Agreement, Buyer acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Buyer shall immediately notify the City.

**8.20. *Notification of Prohibition on Contributions.*** Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Buyer further acknowledges that the (i) prohibition on contributions applies to each Buyer; each member of Buyer's board of directors, and Buyer's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Buyer certifies that Buyer has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**8.21. *Sunshine Ordinance.*** Buyer understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Buyer hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

**8.22. *Tropical Hardwood and Virgin Redwood Ban.*** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

**8.23. *Local Hire and Prevailing Wage Requirements.*** Buyer understands and agrees to abide by the terms and conditions of the City's Local Hire and Prevailing Wage Requirements as set forth *Exhibit E*.

**8.24. *Approvals.*** Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges and agrees that no officer or employee of City has authority to commit City to this Agreement unless and until a Resolution of City's Board of Supervisors shall have been duly enacted approving this Agreement and authorizing the transactions contemplated hereby. Therefore, any obligations or liabilities of City hereunder are contingent upon the due enactment of such a Resolution, and this Agreement shall be null and void if City's Board of Supervisors and Mayor do not approve this Agreement in their respective sole discretion.

Approval of the transactions contemplated hereby by any department, commission or agency of City shall not be deemed to imply that such Resolution will be enacted nor will any such approval create any binding obligations on City.

**8.25. *Effective Date; Termination.*** The Effective Date of this Agreement is the date of City's execution as shown below. This Agreement is expressly conditioned upon the Governor's execution of the Exchange Agreement; if the Governor does not sign the Exchange Agreement, this Agreement will not become operative. Notwithstanding anything to the contrary in this Agreement, the Cole Trust acknowledges and agrees that City has no obligation to execute this Agreement until and unless (i) the Port Commission, Board of Supervisors and State Lands make the findings and/or take the necessary actions to duly approve this Agreement as described in ***Recitals H and I*** above; (ii) the Board of Supervisors and the Port Commission approve the Exchange Agreement and Settlement Agreement; (iii) State Lands approves the Exchange Agreement as described in ***Recital I***; (iv) the Cole Trust executes this Agreement, the Exchange Agreement and the Final Settlement Agreement; and (v) any default of the Cole Trust under the Initial Settlement Agreement is cured.

Further, notwithstanding anything to the contrary in this Agreement, the Sale Agreement or the Exchange Agreement, this Agreement shall automatically terminate and be of no further force and effect if the Closing Date does not occur by the Outside Date.

[SIGNATURES ON FOLLOWING PAGE]

The parties have duly executed this Agreement as of the respective dates written below.

**2006 MURRAY G. AND DORIS M. COLE REVOCABLE TRUST**

**PORT: CITY AND COUNTY OF SAN FRANCISCO**, a charter city and municipal corporation, operating by and through the San Francisco Port Commission

By: \_\_\_\_\_  
Murray G. Cole, Trustee  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Elaine Forbes  
Executive Director

By: \_\_\_\_\_  
Doris M. Cole, Trustee  
Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
George P. Eshoo, Esq.  
Attorney for **2006 MURRAY G. AND DORIS M. COLE REVOCABLE TRUST**

**APPROVED AS TO FORM:**  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
George P. Eshoo, Esq.

By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

Date: \_\_\_\_\_

**EXHIBIT A**  
**VICINITY MAP**

**EXHIBIT B**

**PROPERTY LEGAL DESCRIPTION AND MAP**

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

***[NOTE: DESCRIPTION TO COME FROM SURVEY AND TITLE REPORT]***

**EXHIBIT C**

**FORM OF QUITCLAIM DEED**

RECORDING REQUESTED BY,  
AND WHEN RECORDED RETURN TO:

Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Address: \_\_\_\_\_

(Space above this line reserved for Recorder's use only)

Block \_\_\_\_\_, Lot \_\_\_\_\_

The Undersigned Grantee Declares:

DOCUMENTARY TRANSFER TAX is

- computed on full value of property conveyed, OR
- computed on the full value less value of liens and encumbrances remaining at time of sale,
- unincorporated area; ( ) City of

By Grantee \_\_\_\_

Name:

Date:

**QUITCLAIM DEED**

(1650 Davidson Avenue (a portion))

APN:5215-022 (a portion)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a charter city and municipal corporation ("City"), pursuant to Resolution No. \_\_\_\_\_, adopted by the Board of Supervisors on \_\_\_\_\_, 20\_\_\_\_ and approved by the Mayor on \_\_\_\_\_, 20\_\_\_\_, hereby RELEASES, REMISES AND QUITCLAIMS to

\_\_\_\_\_, any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit 1 attached hereto and made a part hereof.



Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY AND COUNTY OF SAN FRANCISCO,  
a charter city and municipal corporation

By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through the SAN FRANCISCO  
PORT COMMISSION as a trustee under Chapter  
1333 of the Statutes of 1968, as amended

By: \_\_\_\_\_  
ELAINE FORBES  
Executive Director

APPROVED AS TO FORM:

DAVID CHIU  
City Attorney

By: \_\_\_\_\_  
Rona H. Sandler  
Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: \_\_\_\_\_  
[NAME]  
City Engineer

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of San Francisco         )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT 1 TO EXHIBIT C  
LEGAL DESCRIPTION AND ILLUSTRATIVE PLAT OF SB 815 PARCEL**

**EXHIBIT D****100- YEAR STORM FLOOD RISK TRANSFER DISCLOSURE STATEMENT**

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS A PORTION OF FORMER CUSTER AVENUE. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. 181108, CODIFIED AS ARTICLE 51 OF THE SAN FRANCISCO POLICE CODE. IT IS NOT A WARRANTY OF ANY KIND BY THE CITY OR ITS AGENTS, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN.

**I**

The City discloses the following information with the knowledge that even though this is not a warranty, prospective transferees may rely on this information in deciding whether and on what terms to purchase, rent, or lease the subject property. City hereby authorizes any agent(s) representing any transferee in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer (including any sale or lease) of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE CITY AS REQUIRED BY THE CITY AND COUNTY OF SAN FRANCISCO AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE CITY AND TRANSFEREE.

The City and County of San Francisco recognizes that it is in the public interest to ensure that persons who own properties at risk of flooding have information about their flood risk so they can take steps to mitigate the risk, such as flood-proofing their property or purchasing flood insurance. It is also in the public interest to ensure that before persons purchase, rent, or lease real property they have notice regarding the stormwater flood risk to their property. Mandatory disclosure before sale, rent, or lease is an effective tool for ensuring that transferees (including buyers and tenants) of real property in San Francisco have access to this important information.

Accordingly, the San Francisco Public Utilities Commission has adopted the 100-Year - Storm Flood Risk Map. The above-described property is located in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map. Accordingly, the property may be subject to deep and contiguous flooding during a 100-year storm event due to stormwater flow and drainage, and you may experience inconveniences, costs, and governmental requirements related to that flooding. A 100-year storm event means a storm that has a 1% probability of occurring at a particular location in a given year.

If the property is in a “100-year storm flood risk zone” as shown on the 100-Year Storm Flood Risk Map, that does not mean the property is subject to flooding only during a 100-year storm event. The property may also flood at other times and from other causes.

The 100-Year Storm Flood Risk Map shows only areas subject to flood risk in a 100-year storm event due to precipitation and related stormwater runoff. It does not show all areas of San Francisco that are subject to flood risk due to inundation, storm surge, high tides, stormwater systems blockages, or other causes of flooding, and should not be relied upon to provide a complete assessment of a property's risk of flooding.

The 100-Year Storm Flood Risk Map may be found at <https://sfpuc.org/learning/emergency-preparedness/flood-maps> and is on file with the San Francisco Public Utilities Commission at 525 Golden Gate Avenue, San Francisco, CA 94102. For additional information pertaining to this disclosure and the 100-Year Storm Flood Risk Map, please contact the San Francisco Public Utilities Commission at RainReadySF@sfgwater.org or (415) 695-7326.

The person signing below on behalf of the City certifies that the information in this disclosure is true and correct to the best of such person's knowledge as of the date below.

City and County of San Francisco,  
a charter city and municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date \_\_\_\_\_

II

*TRANSFeree MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.*

*I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.*

*Transferee* \_\_\_\_\_ *Date* \_\_\_\_\_

*Transferee* \_\_\_\_\_ *Date* \_\_\_\_\_

Agent (Broker Representing Buyer) \_\_\_\_\_ By \_\_\_\_\_ Date \_\_\_\_\_  
(Please Print) (Associate Licensee or Broker-Signature)

*A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.*

**EXHIBIT E****LOCAL HIRING AND PREVAILING WAGE REQUIREMENTS AND PROJECT DECLARATION**

(a) Any undefined, initially-capitalized term used in this *Exhibit E* shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Buyer uses the Property for the construction, rehabilitation or expansion of three (3) or more residential units (a “**Housing Project**”), the requirements of San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”) will apply to the Housing Project. Buyer shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Local Hiring Requirements.

(b) For a Housing Project, Buyer shall include, and shall require its Contractors and Subcontractors to include, a requirement to comply with the Local Hiring Requirements in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.62. Each such Construction Contract shall name the City and County of San Francisco as a third-party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Buyer shall cooperate, and require its Contractors and Subcontractors to cooperate, with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Local Hiring Requirements when required. Buyer’s failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. In addition, City shall have the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party (i.e., Buyer, a Contractor, or a Subcontractor, as applicable).

(c) Any undefined, initially-capitalized term used in this *Exhibit E* shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Buyer uses the Property for the construction of a Housing Project that will exceed the Threshold Amount, Buyer shall, and shall require its Contractors and Subcontractors to, comply with the applicable requirements in San Francisco Administrative Code Section 23.61, including, but not limited to, (1) paying workers performing such work not less than the Prevailing Rate of Wages, (2) providing the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, (3) complying with certain record keeping, posting, and audit requirements, such as maintaining weekly certified payroll records and submitting them to the City’s Office of Labor Standard Enforcement (“**OLSE**”) on request, and (4) employing Apprentices (collectively, “**Prevailing Wage Requirements**”). Buyer agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

(d) Buyer shall contact, and shall require its Contractors and Subcontractors to contact, OLSE before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Prevailing Wage Requirements, including the electronic submission of certified payroll records if mutually acceptable to OLSE and the applicable party (i.e., Buyer, Contractor, or Subcontractor, as applicable).

(e) Buyer shall include, and shall require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any

Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Buyer's failure to comply with its obligations under this Section shall constitute a material breach of this Agreement. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Rate of Prevailing Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call OLSE at 415-554-6235.

(f) At Closing, Buyer shall record against the Property in the Official Records a declaration in the form attached as **Attachment 1** (the "**Project Declaration**"). On Buyer's receipt of a final certificate of occupancy for a Housing Project (a "**Completion Certificate**"), Buyer shall deliver a copy of the Completion Certificate to OEWD and OLSE, together with any documents or material not previously delivered to confirm Buyer's satisfaction of the Local Hiring Requirements and the Prevailing Wage Requirements. The Project Declaration shall automatically terminate on the fourth (4th) anniversary of the date of the Completion Certificate. If Buyer decides to build something other than a Housing Project on the Property, receives a final certificate of occupancy for such alternative project, and delivers a copy of such certificate to City's Director of Property, City's Director of Property shall execute and deliver to Buyer a release of the Project Declaration in the form attached as **Attachment 2** to the Project Declaration (the "**Release of Declaration**"). The Project Declaration shall continue and remain in full force and effect at all times with respect to the Property until the earlier to occur of the fourth (4th) anniversary of the date of the Completion Certificate and the date that OEWD delivers the Release of Declaration to Buyer.

**Attachment 1**            **Form of Project Declaration**  
**Attachment 2**            **Form of Release of Declaration**

ATTACHMENT 1 to EXHIBIT E

Form of Project Declaration

WHEN RECORDED MAIL TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

1650 Davidson Avenue (a portion)
APN: \_5215-022 (a portion)\_\_\_\_\_

DECLARATION OF PROJECT WORK COVENANTS

(\_\_\_\_\_)

This Declaration of Project Work Covenants ("Declaration") is made as of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ ("Declarant"), in favor of the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

RECITALS

A. Declarant owns an approximately 2,364 square foot piece of real property in the City and County of San Francisco described and depicted in the attached Exhibit A (the "Former City Property"), which was the subject of a title dispute between Declarant and City immediately prior to the recordation of this Declaration in the Official Records of San Francisco.

B. Subject to applicable law, including without limitation the San Francisco Planning Code and Zoning Map, Declarant may develop a mixed-use project on the Former City Property (the "Declarant Project"), which may include residential use. Under San Francisco Administrative Code Section 23.62, if the Former City Property is sold for the construction, rehabilitation or expansion of three (3) or more residential units (a "Housing Project"), the Local Hiring Requirements (as defined in Section 1 below) will apply to the construction of the Housing Project, and if the estimated project cost of the Housing Project will exceed the Threshold Amount (as defined in San Francisco Administrative Code Section 23.61), the Prevailing Wage Requirements (as defined in Section 2 below) will apply to the construction of the Housing Project.



C. As a condition of resolving the title dispute including purchase of the Former City Property by Declarant, Declarant agreed to enter into this Declaration in its capacity as owner of the Former City Property to provide the terms and conditions for such requirements.

#### AGREEMENT

Now, therefore, in consideration of the City's conveyance of the Former City Property, Declarant agrees as follows:

1. Local Hiring Requirements. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Declarant uses the Former City Property for the construction, rehabilitation or expansion of a Housing Project, Declarant acknowledges the requirements of San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”) will apply to the Housing Project. Declarant shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Local Hiring Requirements.

For a Housing Project, Declarant shall include, and shall require its Contractors and Subcontractors to include, a requirement to comply with the Local Hiring Requirements in any construction contract with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Declarant shall cooperate, and require its Contractors and Subcontractors to cooperate, with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Local Hiring Requirements when required. Declarant’s failure to comply with its obligations under this Section shall constitute a material breach of this Declaration. In addition, City shall have the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party (i.e., Declarant, a Contractor, or a Subcontractor, as applicable).

2. Prevailing Wages and Working Conditions. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. If Declarant uses the Former City Property for the construction of a Housing Project and the estimated project cost of the Housing Project exceeds the Threshold Amount, Declarant shall, and shall require its Contractors and Subcontractors to, comply with the applicable requirements in San Francisco Administrative Code Section 23.61, including, but not limited to, (1) paying workers performing such work not less than the Prevailing Rate of Wages, (2) providing the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, (3) complying with certain record keeping, posting, and audit requirements, such as maintaining weekly certified payroll records and submitting them to the City’s Office of Labor Standard Enforcement (“**OLSE**”) on request, and (4) employing Apprentices (collectively, “**Prevailing Wage Requirements**”). Declarant agrees to cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Declarant shall contact, and shall require its Contractors and Subcontractors to contact, OLSE before starting any work on a Housing Project to confirm the specific requirements and otherwise coordinate on the successful completion of the Prevailing Wage Requirements, including the electronic submission of certified payroll records if mutually acceptable to OLSE and the applicable party (i.e., Declarant, Contractor, or Subcontractor, as applicable). Declarant shall include, and shall require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions

in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Declarant's failure to comply with its obligations under this Section shall constitute a material breach of this Declaration. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Rate of Prevailing Wages, see [www.sfgov.org/olse/prevailingwages](http://www.sfgov.org/olse/prevailingwages) or call OLSE at 415-554-6235.

3. **Enforcement.** City, but not the general public, may, in its sole discretion, rely on this Declaration to enforce any of the covenants hereunder in addition to any other rights and remedies available to City at law or in equity, including, but not limited to, City's rights under the San Francisco Administrative Code. City shall have the right, but not the obligation, to enforce the Local Hiring Requirements and the Prevailing Wage Requirements and to assess penalties for noncompliance in the amounts specified in San Francisco Administrative Code Sections 23.61 and 23.62. Accordingly, City may sue for and obtain an injunction for specific performance to prevent the breach of or to enforce the observance of the Local Hiring Requirements and the Prevailing Wage Requirements, as well as to pursue any additional rights or remedies available at law or in equity. All rights and remedies available to City under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy. If there is any breach of the covenants hereunder, City shall be entitled to recover all attorneys' fees and costs in connection with City's enforcement activities and actions.

Nothing contained herein shall be deemed to be a gift or dedication to the general public or for any public purposes whatsoever, nor shall it give rights to any party other than the City. Without limiting the foregoing, nothing herein creates a private right of action by any person or entity other than the City. City's failure to enforce any of the restrictions set forth in this Declaration at the time of its violation shall in no event be deemed a waiver of a right to do so subsequently.

4. **Binding on Successors; No Merger.** This Declaration and the covenants and restrictions set forth herein constitute restrictions and covenants running with the land and shall bind and burden Declarant, in its capacity as owner of the Former City Property, and any successor owner or occupier of the Former City Property (each, a "**Successor Owner**").

5. **Priority of Lien.** No violation or breach of any provision of this Declaration shall impair, defeat or invalidate the lien of any senior encumbrance, but all provisions hereof shall thereafter be binding upon and effective against any Successor Owner whose title is derived through foreclosure of any encumbrance or acceptance of any deed in lieu of foreclosure.

6. **No Waiver.** No waiver by City of any violation under this Declaration shall be effective or binding unless and to the extent expressly made in writing by City, and no such waiver may be implied from any failure by City to take action with respect to such violation. No express written waiver of any violation shall constitute a waiver of any subsequent violation in the performance of the same or any other provision of this Declaration.

7. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law, the validity of all remaining provisions shall remain unaffected and in full force and effect.

8. Nature and Purpose of Covenants; Run with the Land. The Local Hiring Requirements and the Prevailing Wage Requirements are for the burden of the Property, Declarant, and each Successor Owner and for the benefit of City. All of such covenants and restrictions are intended to be and are hereby declared to be covenants running with the land pursuant to California Civil Code Section 1460 *et seq.* Declarant and each Successor Owner (excluding any governmental agency), by accepting fee title to some or all of the Former City Property, agrees to be bound by and subject to all of the restrictions, covenants, and limitations set forth in this Declaration.

9. Duration; Release of Declaration. On Declarant's receipt of a final certificate of occupancy for a Housing Project (a "**Completion Certificate**"), Declarant shall deliver a copy of the Completion Certificate to OEWD and OLSE, together with any documents or material not previously delivered to confirm Declarant's satisfaction of the Local Hiring Requirements and the Prevailing Wage Requirements. This Declaration shall automatically terminate on the fourth (4<sup>th</sup>) anniversary of the date of the Completion Certificate. If Declarant decides to build something other than a Housing Project on the Former City Property, receives a final certificate of occupancy for such alternative project, and delivers a copy of such certificate to City's Director of Property, City's Director of Property shall execute and deliver to Declarant a release of the Project Declaration in the form attached as Exhibit B (the "**Release of Declaration**"). This Declaration shall continue and remain in full force and effect at all times with respect to the Former City Property until the earlier date (the "**Termination Date**") to occur of (a) the fourth (4<sup>th</sup>) anniversary of the date of the Completion Certificate and (b) the date that OEWD delivers the Release of Declaration to Declarant. At Declarant's request, City shall execute any reasonable documentation required to remove the lien of this Declaration from the Former City Property after the Termination Date.

10. Release, Waiver and Indemnification. Neither the City nor any of its commissions, departments, boards, officers, agents or employees (collectively, the "**City Parties**") shall be liable for any breach of any of the Local Hiring Requirements or the Prevailing Wage Requirements, for the failure to monitor or enforce any of the Local Hiring Requirements or the Prevailing Wage Requirements, or for any matter relating to this Declaration or the construction or development of any project at the Former City Property (collectively, the "**Released Matters**"). Declarant, on its own behalf and on behalf of its successors in interest to the Former City Property, fully RELEASES, WAIVES AND DISCHARGES forever any and all claims against, and covenants not to sue, the City Parties for anything arising from or relating to the Released Matters. Declarant acknowledges that the releases contained herein includes all known and unknown, direct and indirect, disclosed and undisclosed, and anticipated and unanticipated claims. The foregoing waiver, release and indemnification shall survive any expiration or termination of this Declaration.

11. Severability. Should the application of any provision of this Declaration to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Declaration shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Declarant and shall be reformed to the extent necessary to make such provision valid and enforceable.

12. No Joint Venturers or Partnership; No Authorization. This Declaration does not create a partnership or joint venture between City, Declarant or any Successor Owner as to any activity conducted by Declarant or any Successor Owner in connection with a Housing Project or

otherwise at the Former City Property. Neither Declarant nor any Successor Owner shall be deemed a state actor with respect to any activity conducted by such party on, in, around or under the Former City Property.

13. General Provisions. (a) This Declaration may be amended or modified only by a writing signed by the City and Declarant or any Successor Owner. (b) No waiver by City of any of the provisions of this Declaration shall be effective unless in writing and signed by City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Declaration. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the City's Labor Standards Enforcement Officer or his or her designee with respect to the Prevailing Wage Requirements, and the Director of OEWD or his or her designee with respect to the Local Hire Requirements. (d) This Declaration contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Declaration are for convenience of reference only and shall be disregarded in the interpretation of this Declaration. (f) Time is of the essence in each and every provision hereof. (g) This Declaration shall be governed by and construed in accordance with California law. (h) If Declarant, any Successor Owner, or City commences an action or a dispute arises under this Declaration, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of the City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the City's use of its own attorneys. (i) If any Successor Owner consists of more than one person or entity, then the obligations of each such person or entity shall be joint and several.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

**DECLARANT:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

[Name]  
Director of Property

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
[Name]  
Deputy City Attorney

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California                    )  
  ) ss  
County of San Francisco         )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**[PAGE INTENTIONALLY LEFT BLANK]**

ATTACHMENT 2 to EXHIBIT E

Form of Release of Declaration

WHEN RECORDED MAIL TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

APN: \_\_\_\_\_

TERMINATION OF PROJECT WORK COVENANTS

(\_\_\_\_\_)

This Termination of Project Work Covenants ("Termination") is made as of \_\_\_\_\_, 20\_\_\_\_, by the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City").

A. Pursuant to a Quitclaim Deed recorded in the Official Records of San Francisco County on \_\_\_\_\_ as Document No. \_\_\_\_\_, City sold certain real property in the City and County of San Francisco described in the attached Exhibit A (the "Former City Property") to \_\_\_\_\_, a \_\_\_\_\_ ("Buyer").

B. At the time Buyer acquired the Former City Property from City, Buyer intended to use the Former City Property to \_\_\_\_\_.

C. As further described in that certain Declaration of Project Work Covenants recorded in the Official Records of San Francisco County on \_\_\_\_\_ as Document No. \_\_\_\_\_ (the "Declaration"), if the Former City Property was sold for the construction, rehabilitation or expansion of three (3) or more residential units (a "Housing Project"), the requirements of San Francisco Administrative Code Section 23.62 would apply to the Housing Project, and if the estimated project cost of the Housing Project exceeded the Threshold Amount (as defined in San Francisco Administrative Code Section 23.61), the requirements of San Francisco Administrative Code Section 23.61 would apply to the Housing Project.

D. As a condition of selling the Former City Property to Buyer, Buyer agreed to enter into the Declaration.



E. Buyer or its successor in interest to the Former City Property used the Former City Property for the construction of a non- Housing Project development, and City agrees the Declaration is terminated in its entirety.

F. This Termination shall bind and inure to the benefit of the parties and their respective heirs, successors, and permitted assigns.

IN WITNESS WHEREOF, City has executed this Termination of Project Work Covenants as of the day and year first above written.

**CITY:** CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
[Name]  
Director of Property

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney



**EXHIBIT A**

Legal Description of Former City Property



## MEMORANDUM

July 8, 2022

**TO: MEMBERS, PORT COMMISSION**

Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. John Burton  
Hon. Gail Gilman

**FROM:** Elaine Forbes  
Executive Director

**SUBJECT:** Subject to approvals by the Board of Supervisors and the California State Lands Commission (“State Lands”), as required: request approval of a Final Settlement Agreement and related transaction documents to resolve disputed title claims as to a portion of Former Custer Avenue with the 2006 Murray G. And Doris M. Cole Revocable Trust (“Cole Trust”) including: (1) approval of a form Purchase and Sale Agreement (“Sale Agreement”) by the City to the Cole Trust, free of the Trust of a portion of Former Custer Avenue within 1650 Davidson Street San Francisco, California; (2) approval of a form Public Trust Exchange and Title Settlement Agreement For 1620-1650-1680 Davidson Avenue (“Exchange Agreement”) among the Port, the Cole Trust and State Lands by which the City and State Lands will quitclaim their interests in the property claimed by the Cole Trust and the Cole Trust will grant a new Public Trust Easement to the State and make a deposit into the Kapiloff Land Bank Fund; (3) authority to seek State Legislation and accept title to the new Public Trust Easement lands; (4) approval of an extension of the January 14, 2023 standstill date in the current settlement agreement between Port and the Cole Trust and delegation of authority for additional extensions to the Executive Director.

**DIRECTOR'S RECOMMENDATION:** Approve the Attached Resolution No. 22-35

## **Executive Summary**

This memorandum provides information and analysis regarding the recommendation by Port staff and the City Attorney's Office to approve a settlement agreement ("Final Settlement Agreement") between the City and a private party, the 2006 Murray G. and Doris M. Cole Revocable Trust ("Cole Trust" or the "Coles"), to permanently resolve a dispute regarding the underlying title and ownership of a portion of a "paper street" (known as a portion of Custer Avenue, here called "Former Custer Avenue"), which cuts through a portion of the property owned by the Cole Trust located at 1620-1650-1680 Davidson Street in the southern waterfront near Islais Creek.<sup>1</sup>

The need for the Final Settlement Agreement arose due to a title dispute in which the Port and State Lands assert that Former Custer Avenue is public trust property that was transferred from the State to the Port via the Burton Act of 1968 and the Cole Trust also claims ownership of the same portion of Former Custer Avenue. In May 2021, after being confronted by the possibility of litigation by the Coles, the Port entered into a settlement and standstill agreement with the Coles under which the parties agreed to work together in good faith over 18 months to resolve their disputes rather than to initiate litigation against the other (the "Initial Settlement Agreement"). The standstill provisions of the Initial Settlement Agreement expire on January 14, 2023.

In accordance with the Initial Settlement Agreement and in order to finally resolve the dispute, the proposed Final Settlement Agreement calls for the following transactions to be consummated by the Port, City and State Lands (collectively, the "Trust Parties") and the Coles: (1) the sale by the Port to the Cole Trust of a small portion of Custer Avenue comprised of approximately 2,364 square feet (known as the "SB 815 Parcel"); (2) an exchange of the fee interest in the remaining approximately 23,350 square feet of land in Former Custer Avenue for a public trust easement of approximately 7,082 square feet (the "New Easement") to ultimately be held in trust by the Port on a strip of land immediately adjacent to Islais Creek; and (3) a payment by the Cole Trust to the State that will be deposited into the Kapiloff Land Bank to be used by State Lands to acquire additional trust lands to offset the reduction to trust lands associated with the agreement. Upon closings of the transactions described above, the Port and Coles will release claims against each other.

In order to ensure that the contemplated transactions can be completed without the risk of litigation, the January 14, 2023 standstill expiration date under the Initial Settlement Agreement needs to be extended.

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<sup>1</sup> A "paper street" is a term used to identify a real property right-of-way originally planned as a street, but never formally constructed as a street.

## **Site Overview and Uses**

The Burton Act and San Francisco Charter Section B3.581 empower the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction. The granted lands under the Burton Act include Former Custer Avenue.

The Cole Trust bought the property at 1620-1650-1680 Davidson Street consisting of approximately 2.46 acres of unimproved property starting in the 1960s (the “Davidson Properties”). Former Custer Avenue runs through the Davidson Properties. The relevant portion of Custer Avenue was vacated as a street by City ordinance in 1911. In connection with the Coles’ due diligence conducted for a proposed sale of the Davidson Properties in 2021, the Trust Parties have asserted a public trust and ownership claim over Former Custer Avenue.

The figures in **Exhibit 1** show the Davidson Properties location outlined in blue. The land is currently zoned “Production, Distribution, and Repair” (or “PDR”). The portion of Former Custer Avenue running through the Davidson Properties is approximately 25,714 square feet. The entire Davidson Properties including Former Custer Avenue are currently under a long-term lease with a third party tenant (“Tenant” or “DECA”) for school bus storage. The Coles plan to consummate a sale of all of the Davidson Properties to DECA on the same day as, and immediately following, the closing of the transactions with the Trust Parties described in this Memorandum. There are no planning applications on file affecting the Davidson Properties, and Port staff is not aware of part of any foreseeable development project on the property.

**Figure 3** in **Exhibit 1** shows the final configuration of the Trust lands on the Davidson Properties – only the New Easement will remain in the Trust after the closings contemplated by the Final Settlement Agreement.

## **Proposed Final Resolution and Implementing Documents**

The Burton Act prohibits the City from conveying a permanent interest in the granted lands; at most it could convey a 66-year lease or easement. Accordingly, for the City to convey permanent air and subsurface rights to the Cole Trust in order to resolve the title dispute, the public trust and Burton Act restrictions must be lifted from the disputed portion of Former Custer Avenue. Two existing State statutes authorize Port and the State to terminate the Public Trust interest conditioned upon certain findings and approvals by State Lands.

The proposed Final Settlement Agreement will settle the disputed claims regarding property ownership and will include the following elements:

- (1) City, acting by and through the Port, will quitclaim any interest it holds by virtue of the Burton Act in approximately 2,364 square feet of Former Custer Avenue to the Cole Trust pursuant to existing legislative

authority under SB 815. To effect the transfer, the Port will enter into the Sale Agreement with the Cole Trust that will govern the conveyance of the Custer Avenue parcel from City to the Cole Trust. The sale price of \$160,000 is based on the appraised value of the land as well as the risks and uncertainty associated with potential litigation regarding title.

- (2) City, acting by and through the Port, State Lands and the Coles will enter into the Exchange Agreement authorized by Public Resources Code section 6307 that will provide title to the remaining Davidson Properties free and clear of the Public Trust interest except for an 18' wide strip of land consisting of 7,082 square feet (the "New Easement") within the northern area of the property along Islais Creek which will be subjected to a public trust easement in favor of the State – to eventually be transferred to the City acting by and through the Port.
- (3) The Coles will also make a deposit of \$790,000 into the State Kapiloff Land Bank fund to account for the deficit in the square footage of land exchanged ("Kapiloff Deposit"). The Kapiloff Deposit must be used by State Lands to acquire new trust lands. Though the funds can be used anywhere in California, State Lands agrees that it (A) intends to use the funds in San Francisco and (B) will consider the acquisition of suitable property interests identified and proposed by Port for an amount up to the Kapiloff Deposit; provided that the acquisition price is not greater than the fair market value of any such property interest. Newly acquired trust lands in San Francisco will be under Port jurisdiction.

In order to ensure that the contemplated transactions can be completed without the risk of litigation, the January 14, 2023 standstill expiration date under the Initial Settlement Agreement needs to be extended in case more time is needed to consummate the contemplated transactions. Staff proposes that the Port Commission extend the date to July 14, 2023 and delegate authority for further extensions until January 14, 2024 to the Executive Director.

Approvals necessary to implement the Final Settlement Agreement include:

- (1) approval by the Port Commission of the Sale Agreement and Exchange Agreement, pursuant to its authority under Charter Appendix B,
- (2) approval by the Board of Supervisors of the Sale Agreement and Exchange Agreement under Charter Section 9.118(c) and authorization of the City's acceptance of the New Easement (to be held by Port as trustee), and
- (3) approval by State Lands of the Sale Agreement and Exchange Agreement and adoption of findings related to the sale of a portion of

Former Custer Avenue under SB 815.

### **Proposed Final Settlement Agreement**

Port staff, working in close collaboration with State Lands staff and with the Cole Trust, have negotiated a proposed Final Settlement Agreement, the terms of which staff believe to be favorable to Port. The final settlement proposal would result in a complete resolution of potential liability by taking advantage of existing state legislation and would avoid litigation delays, costs and risk.

#### ***Financial Benefits to Port***

The proposed final settlement would provide Port with direct financial benefits including sale proceeds of \$160,000 from the sale of the SB 815 Parcel to be used for capital purposes. The Port would also receive transaction reimbursement costs of \$25,000 plus the Port is able to collect the use fee estimated at \$112,000 through the closing. In addition, the Port would benefit from the settlement through the avoidance of potentially significant litigation costs.

#### ***Other Trust Benefits***

The Trust will benefit from the New Easement along Islais Creek that will ultimately be under Port's jurisdiction. The New Easement location could help provide a link to Rankin Street across the neighboring San Francisco Public Utilities Commission property. Additionally, if Port can identify appropriate opportunities, the entire Kapiloff Deposit could be re-invested in new trust lands in San Francisco under Port's jurisdiction. The key terms of the Initial Settlement Agreement, the Final Settlement Agreement and the Sale Agreement and Exchange Agreement are included as **Exhibit 2**.

### **Sale of SB 815 Parcel**

As depicted in **Figure 2** in **Exhibit 1**, the 2,364 square foot SB 815 Parcel proposed to be quitclaimed to the Cole Trust is more than 100 feet from the High Water Line of the San Francisco Bay and is considered a "paper street". Because of its isolated nature, including being landlocked from the San Francisco Bay, SB 815 has no material utility to the Port. The highest and best use of SB 815 to the Port and the Public Trust is to sell the property.

#### **Required Findings Under Governing Statutes**

Per SB 815, in order to enter into the Sale Agreement as described above, the Port Commission must make certain findings, including that:

- (a) the SB 815 Parcel: (i) lies at least 100 feet landward of the High Water Line of San Francisco Bay and is a paper street as defined in SB 815;*
- (ii) has been filed and reclaimed as part of a highly beneficial plan of harbor development and has ceased to be tidelands; (iii) is no longer*



*used or necessary for maritime commerce, navigation of fisheries purposes; (iv) constitutes a relatively small portion of tidelands granted to the City (the SB 815 Parcel is xx acres compared to a total of approximately 725 acres (exclusive of submerged lands); (v) is not amenable to any Public Trust uses, other than revenue generation for the Trust; and (vi) is and will be cut off from access to waters of San Francisco Bay by the Trust Easement; and*

*(b) the consideration for the sale of the SB 815 Parcel is the fair market value of such land in light of the title dispute; and*

*(c) the SB 815 Parcel is no longer needed or required for the promotion of the Public Trust and no substantial interference with the public trust uses and purposes will ensue due to the sale; and*

*(d) the sale is consistent with the findings and declarations made by the California Legislature in Section 2 of SB 815; and*

*(e) the sale is in the best interest of the City and the State; and*

*(f) all revenues from the sale shall be deposited in a separate account in the harbor fund and shall be expended solely for purposes of implementing the Port's capital plan.*

For reasons described in this Staff Report, the Sale Agreement meets the requirements of SB 815.

### **Exchange Agreement**

As depicted in **Figure 2** and **Figure 3** in **Exhibit 1**, the Port will to quitclaim its Burton Act interest and State Lands will quitclaim its interest in the remaining Davidson Properties in exchange for the New Easement of approximately 7,082 square feet, to ultimately be held in trust by the Port on a strip of land immediately adjacent to Islais Creek. The New Easement is 18' wide and runs adjacent to and buffers the San Francisco Bay and Former Custer Avenue. The New Easement will enable new public access and open space along the waterfront. Additionally, the Exchange Agreement will provide a significant benefit to the Public Trust by contributing funds into the Kapiloff Fund, which can be used to acquire additional real property for the benefit of the Public Trust.

### **Required Findings Under Governing Statutes**

Similarly, the Port Commission is required to make certain findings in connection with the Exchange Agreement, per PRC Section 6307:

*(a) the exchange is for the purposes of resolving the title dispute;  
and*

- (b) former Custer Avenue, other than the New Easement, is cut off from water access and is no longer tidelands or submerged lands or navigable waterways by virtue of having been filled or reclaimed, and is relatively useless for Trust purposes; and*
- (c) the exchange of the current configuration of Former Custer Avenue for the New Easement which is immediately adjacent to Islais Creek will provide a significant benefit to the Public Trust by providing better public access or open space potential to or along the water; and*
- (d) the deposit into the Kapiloff fund will be used to acquire lands or interests in land, possibly in San Francisco, where the public use and ownership of the land is necessary or extremely beneficial for furtherance of Public Trust purposes; and*
- (e) the exchange does not substantially interfere with public rights of navigation and fishing; and*
- (f) the monetary value of the Public Trust Easement together with the Kapiloff deposit is equal to or greater than the appraised fair market value of the lands or interests in lands given by the Trust in exchange; and*
- (g) the exchange is in the best interests of the City and the State.*

For reasons described in this Staff Report, the Trust Exchange meets the requirements of PRC Section 6307.

### **California Environmental Quality Act (“CEQA”) Findings**

In a letter dated February 16, 2022, the City’s Planning Department determined that the Final Settlement Agreement is exempt from CEQA pursuant to Public Resources Code §21080.11. (Case No. 2022-001339GPR) No further environmental review is required.

### **Recommendation**

Port staff recommends that the Port Commission: (1) approve the Final Settlement Agreement and attached forms of Sale Agreement and Exchange Agreement, based on the necessary findings; (2) authorize subsequent State legislation and the transfer of the New Easement into Port jurisdiction; and (3) extend the Initial Settlement Agreement deadline in the current Initial Settlement Agreement to July 14, 2023 and delegate authority to the Executive Director to make further extensions as needed to that deadline.

## Next Steps

With Port Commission approval of the attached Resolution No. 22-XX, the immediate next steps include:

- \* Seek Board of Supervisors:(1) approval of the Sale Agreement and Exchange Agreement, based on the necessary findings; and (2) authorization for subsequent State legislation and the transfer of the New Easement into Port jurisdiction

*Anticipated: September 2022*

- \* Seek State Lands approval of the Sale Agreement and Exchange Agreement, based on the necessary findings.

*Anticipated: October 25, 2022*

Assuming these dates, prompt action by the policy bodies and signature by the Governor, the transaction could close by **December 31, 2022**. State legislation necessary to transfer the New Easement to the Port would follow.

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through: Joshua Keene  
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Deputy Director  
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**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**RESOLUTION NO. 22-35**

WHEREAS, Pursuant to Chapter 1333 of the Statutes of 1968 (“Burton Act”) and the implementing Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco (“Transfer Agreement”), the State of California granted to the City and County of San Francisco (“City”) certain current and former tidelands and submerged lands, to be held under the jurisdiction of the San Francisco Port (“Port”) subject to the Burton Act and the public trust for commerce navigation and fisheries (the “Public Trust”); and

WHEREAS, The Burton Act and San Francisco Charter Section B3.581 empower the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Commission jurisdiction; and

WHEREAS, The granted lands under the Burton Act include a portion of Custer Avenue, lying generally between Islais Creek, Rankin Street, and Davidson Avenue; the relevant portion of Custer Avenue was a so-called “paper street” which was vacated as a street by City Ordinance in 1911 (“Former Custer Avenue”); and

WHEREAS, In 2021, a dispute arose regarding the underlying title and ownership of Former Custer Avenue between Port and the trustees of the 2006 Murray G. and Doris M. Cole Revocable Trust dated August 1, 2006 (“Cole Trust”), a private party that is the owner of the surrounding lands (comprised of 1620, 1650 and 1680 Davidson Avenue, the “Davidson Properties”) and that claims ownership of Former Custer Avenue; and

WHEREAS, In May 2021, Port and the Cole Trust entered into a Settlement Agreement (the “Initial Settlement Agreement”) under which the parties agreed, among other things, to refrain from filing any claim or cause of action relating to the disputed title claims until January 14, 2023, and to negotiate in good faith to obtain approvals for and to terminate any Public Trust interest on Former Custer Avenue; and

WHEREAS, The Public Trust interest can only be terminated by State Legislation; and

WHEREAS, Two existing State statutes authorize Port and the State to terminate the Public Trust interest conditioned upon certain findings and approvals by the California State Lands Commission (“State Lands”); and

WHEREAS, Without any admission of liability or responsibility for any purpose, the Port and the Cole Trust have negotiated a final resolution of their respective

claims as described in the proposed final settlement agreement (“Final Settlement Agreement”) which, among other terms and conditions, provides for the following transactions to be implemented in an orderly manner:

1. pursuant and subject to California Statutes of 2007, Chapter 660 (“SB 815”) Sections (1)(p)(3) and (8), the sale by the City to the Cole Trust of a portion of Former Custer Avenue free of the City’s Public Trust interest in accordance with an Agreement for Sale of Real Estate for Portions of Custer Avenue between the Port and the Cole Trust (“Sale Agreement”); and
2. as to the remainder of Former Custer Avenue, pursuant and subject to Public Resources Code section 6307, a Public Trust and Title Settlement Agreement among the Port, the Cole Trust and State Lands (“Exchange Agreement”) by which the City and State will terminate their Public Trust interests in exchange for: (A) the Cole Trust’s conveyance to the State of a Public Trust easement over an eighteen foot (18’) wide strip of land immediately adjacent to Islais Creek (a portion of which is not now subject to the Public Trust interest) (“New Public Trust Easement”); and (B) the Cole Trust’s deposit of moneys into the Kapiloff Land Bank Fund (Public Resources Code Section 8625(a)) which moneys can be used later by State Lands to acquire additional public trust lands; and

WHEREAS, Port, working with staff of the City’s Real Estate Department (“RED”), and the Cole Trust have negotiated the terms of the Sale Agreement, and Port and RED staff, the Cole Trust and State Lands staff have negotiated the terms of the Trust Exchange Agreement (collectively, the “Transaction Documents”) which call for a series of real property conveyances and require various findings and approvals as further described in the Memorandum to the Port Commission dated July 8, 2022; and

WHEREAS, In connection with the sale the of the approximately 2,364 square foot SB 815 Parcel under the Sale Agreement:

1. Per Administrative Code Section 23.3, the Port Commission finds that in order to resolve the title dispute without the cost and risk of litigation: (a) the public interest or necessity demands, or will not be inconvenienced by the sale; (b) a competitive bidding process is impractical, impossible or is otherwise not in the public interest and the negotiated direct conveyance will further a public purpose; (c) RED obtained an Appraisal (as defined by Administrative Code Section 23.3 dated March 24, 2022 performed by MAI appraiser Clifford Advisory LLC (“Clifford Appraisal”) on behalf of the Cole Trust which determined the fair market value of the SB 815 Parcel to be \$260,040, exclusive of any dispute regarding ownership of the

property; (d) RED obtained an Appraisal Review (as defined by Administrative Code Section 23.3) dated June 8, 2022 of the Clifford Appraisal dated March 24, 2022 performed by MAI appraiser R. Bluhm & Associates which determined the fair market value of the SB 815 Parcel to be \$260,040; (e) notwithstanding the appraised value and in light of the title dispute, the sale price of \$160,000 will further a public purpose; and

2. Per SB 815, The Port Commission finds that:

(a) the SB 815 Parcel: (i) lies at least 100 feet landward of the High Water Line of San Francisco Bay and is a paper street as defined in SB 815; (ii) has been filed and reclaimed as part of a highly beneficial plan of harbor development and has ceased to be tidelands; (iii) is no longer used or necessary for maritime commerce, navigation or fisheries purposes; (iv) constitutes a relatively small portion of tidelands granted to the City (a total of approximately 725 acres (exclusive of submerged lands); (v) is not amenable to any Public Trust uses, other than revenue generation for the Trust; and (vi) is and will be cut off from access to waters of San Francisco Bay by the New Public Trust Easement; and

(b) the consideration for the sale of the SB 815 Parcel is the fair market value of such land in light of the title dispute;

(c) the SB 815 Parcel is no longer needed or required for the promotion of the Public Trust and no substantial interference with the Public Trust uses and purposes will ensue due to the sale; and

(d) the sale is consistent with the findings and declarations made by the California Legislature in Section 2 of SB 815; and

(e) the sale is in the best interest of the City and the State; and

(f) all revenues from the sale shall be deposited in a separate account in the harbor fund and shall be expended solely for purposes of implementing the Port's capital plan; and

3. the SB 815 Parcel is not subject to the State Surplus Lands Act (Cal. Gov. Code §§54220-54234), because it is property granted by the State in trust to a local agency and its disposition is otherwise authorized (Cal. Gov. Code §54221(f)(1)(H)); and

4. the Port Commission has not determined that the SB 815 Parcel is either "surplus" or "underutilized" as those terms are defined in the Surplus Public Lands Ordinance (S.F. Admin. Ch. 23A), which

expressly recognizes the jurisdictional authority of the Port Commission over Port property, and the Surplus Public Lands Ordinance does not limit the power of the Port Commission to sell the SB 815 Parcel as described in the Sale Agreement; and

WHEREAS, In connection with the Exchange Agreement, per Public Resources Code Section 6307, the Port Commission finds that (1) the exchange is for the purposes of resolving the title dispute, (2) Former Custer Avenue, other than the New Public Trust Easement, is cut off from water access and is no longer tidelands or submerged lands or navigable waterways by virtue of having been filled or reclaimed, and is relatively useless for Trust purposes; (3) the exchange of the current configuration of Former Custer Avenue for the New Public Trust Easement which is immediately adjacent to Islais Creek will provide a significant benefit to the Public Trust by providing better public access or open space potential to or along the water; (4) the deposit into the Kapiloff fund will be used to acquire lands or interests in land, possibly in San Francisco, where the public use and ownership of the land is necessary or extremely beneficial for furtherance of Public Trust purposes; (5) the exchange does not substantially interfere with public rights of navigation and fishing; (6) the monetary value of the New Public Trust Easement together with the Kapiloff deposit is equal to or greater than the appraised fair market value of the lands or interests in lands given by the Trust in exchange; and (7) the exchange is in the best interests of the City and the State.

WHEREAS, RED has reviewed and approved the terms and conditions of the Transaction Documents; and recommends approval by the Port Commission and Board of Supervisors; and

WHEREAS, In connection with the swap of land under the Exchange Agreement and the future transfer of the New Public Trust Easement from the State to the City, the Port Commission finds that the addition of the New Public Trust Easement to the land under Port's jurisdiction will benefit the Public Trust and serve a public purpose as described above including potential use as open space or public access use; and

WHEREAS, Upon closing of the transactions described in the Transaction Documents, the City will hold no Public Trust interest in Former Custer Avenue or any of the property claimed by the Cole Trust; and

WHEREAS, Subsequent to the closing of the Transaction Documents, State Lands and the Port will work together to seek State legislation to transfer the New Public Trust Easement to be held by the City, with Port as trustee, subject to the terms and conditions of the Burton Act; and

WHEREAS, Upon closing of the transactions described in the Transaction Documents, pursuant to the Final Settlement Agreement, the Initial Settlement

Agreement will expire and the City and the Cole Trust will be mutually released from all claims, except that the City will not release: (1) any tax liabilities, (2) any criminal liabilities, or (3) any other claim or liabilities unrelated to the disputed title claims; and

WHEREAS, The Transaction Documents are subject to the approval of the Board of Supervisors; and State Lands must make the findings required by SB 815 and make the findings required by Public Resources Code Section 6307 and approve the Exchange Agreement; and

WHEREAS, The Transaction Documents conform to all local laws and regulations and are not prohibited by the City's Charter; and

WHEREAS, The tolling provisions of the Initial Settlement Agreement expire on January 14, 2023 and need to be extended in order to allow time to obtain all approvals and close the transactions contemplated by the Final Settlement Agreement; and

WHEREAS, On February 16, 2022, the San Francisco Planning Department determined that this Agreement, the Final Settlement Agreement and the Exchange Agreement are statutorily exempt from review under the California Environmental Quality Act ("CEQA") under Public Resources Code Section 21080.11; and on March 10, 2022, the San Francisco Planning Department determined that the project, on balance, is in conformity with the General Plan; and therefore be it

RESOLVED, That the Port Commission approves an amendment to the Initial Settlement Agreement to extend the tolling expiration date until July 14, 2023; and authorizes the Port's Executive Director to further extend the expiration date in reasonable increments, but no later than January 14, 2024, in order to obtain all approvals and close the transactions contemplated by the Final Settlement Agreement; and be it further

RESOLVED, That, in order to finally resolve the title dispute and for the reasons set forth herein, the Port Commission has made the necessary findings to support approval of the Transaction Documents by the Board of Supervisors and State Lands under Administrative Code Section 23.3, SB 815 and Public Resources Code Section 6307, pursuant to their respective jurisdiction; and be it further

RESOLVED, That, in order to finally resolve the title dispute and for the reasons set forth herein, as recommended by the City Attorney, the Port Commission hereby approves the Final Settlement Agreement and the form of Sale Agreement and form of Trust Exchange Agreement including all attachments and exhibits thereto, and the transactions which such agreements contemplate on the terms and conditions set forth in the Port Commission Memorandum dated July 8, 2022, subject to the approval of



the Board of Supervisors and State Lands, and in such final form as is approved by the City Attorney; and be it further

RESOLVED, The Port Commission authorizes the Port's Executive Director to obtain approval of the Transaction Documents as required by the Board of Supervisors and State Lands; and be it further

RESOLVED, Upon approval by the Board of Supervisors and State Lands, the Port's Executive Director and the Director of Property or their designees are hereby authorized, in the name and on behalf of the City and the Port, to (i) determine satisfaction of all conditions precedent, (ii) execute the Final Settlement Agreement, Sale Agreement and Exchange Agreement with any additions, amendments or other modifications to the Final Settlement Agreement, form of Sale Agreement and form of Exchange Agreement that the Executive Director, in consultation with the City Attorney, determines are in the best interest of the Port, do not materially increase the obligations or liabilities of the City or Port, and are necessary or advisable to complete the transactions which the Final Settlement Agreement contemplates and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director or her designee of the Final Settlement Agreement, Sale Agreement and Exchange Agreement; (iii) execute and deliver any and all conveyance deeds, patents, and instruments contemplated by the Transaction Documents; and (iv) to take any and all other steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as they deem necessary or appropriate in consultation with the City Attorney, in order to consummate the transactions contemplated by the Final Settlement Agreement, Sale Agreement and Exchange Agreement in accordance with their terms, or to otherwise effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Executive Director of any such documents; and be it further

RESOLVED, The Port Commission authorizes the Executive Director or her designees to work with State Lands to seek State legislation to transfer the New Public Trust Easement to be held by the City, with Port as trustee, subject to the terms and conditions of the Burton Act; and to execute and deliver any and all conveyance deeds, patents, and instruments and to take any and all other steps (including, but not limited to, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents and other instruments or documents) as deemed necessary or appropriate in consultation with the City Attorney, in order to consummate the transfer of the New Public Trust Easement, or to otherwise effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery

by the Executive Director of any such documents; and be it further

RESOLVED, That the Port Commission approves, confirms and ratifies all prior actions taken by the officials, employees and agents of the Port Commission or the City with respect to the Initial Settlement Agreement, Final Settlement Agreement and Transaction Documents.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of July 12, 2022.***

DocuSigned by:  
*Carl Neita*  
BFA59E31E3B84A8...

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Secretary

# EXHIBIT 1

## Figures 1 - 3

Figure 1. Davidson Avenue and Custer Avenue Context Map

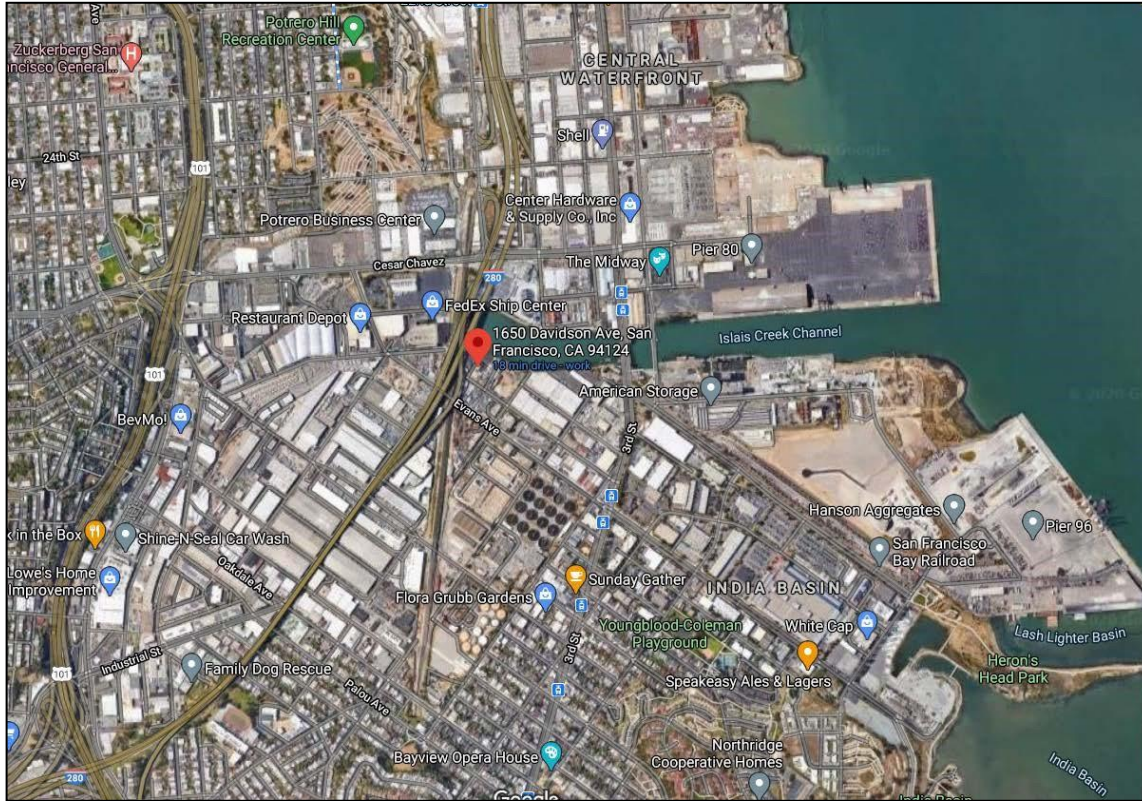


Figure 2. SB 815 Parcel



Figure 3. New Trust Easement



**EXHIBIT 2**  
**Key Terms of Agreements**

**Initial Settlement Agreement:**

**A. Standstill:** Parties will not file a lawsuit against the other until January 14, 2023 during which time the parties will work together in good faith to permanently resolve the title dispute. The stated goal is to terminate the Trust interest through a sale, trust swap, legislative fix or other mutually acceptable resolution (subject to approval by the Port Commission, Board of Supervisors and State Lands).

**B. Usage and Payment.** Port will not attempt to gain possession and the Coles and their tenants can continue to use Former Custer Avenue in exchange for a non-refundable monthly payment of \$6,420.75.

**C. Indemnity.** The Coles indemnify and hold Port harmless in connection with its property use and carry third party insurance coverage.

**D No Admission.** The parties do not admit any facts, liability or responsibility and the agreement cannot be used against either party if there is future litigation.

**E. Port Transaction Costs.** Coles to reimburse Port for its transaction costs in reaching a final resolution.

**Proposed Final Settlement Agreement:**

**I. Final Settlement Agreement (City/Port and Coles)**

**A. Execution of Transaction Documents.** The Final Settlement Agreement requires execution of a Sale Agreement and Exchange Agreement. The Sale and Exchange Agreements are subject to approval by the Board of Supervisors and State Lands.

**B. Mutual Releases.** The parties will release their title claims against each other. City will not release: any tax liabilities, any criminal liabilities, environmental hazard claims that occurred before 1917 and were not exacerbated by a third-party, or any other claim or liabilities unrelated to the title claims. The Initial Settlement Agreement will terminate except for those provisions that survive the termination of the Initial Settlement Agreement.

**C. No Admission.** The parties will not admit any facts, liability or responsibility and the agreement cannot be used against either party if there is future litigation.

**D. Port Transaction Costs.** Port to be reimbursed for \$25,000 of its

transaction costs.

## II. Sale Agreement (City/Port and Coles)

**A. Sale.** Sale by the City of a small portion of Former Custer Avenue that can be transferred under existing state legislative authority (SB 815).

**B. Sale Price.** Appraised Value of \$110/per square foot as appraised by John Clifford Assoc and affirmed by R. Blum and Associates. Proposed discounted sale price of \$67.68 per square foot for a total of \$160,000 to reflect the delays, uncertainty and risks associated with litigation.

**C. Claims by Title Companies.** As a closing condition, the Cole Trust must provide satisfactory evidence that it has settled, withdrawn, discontinued or disavowed any claim against Fidelity National Title Insurance Company and Old Republic Title, the original title companies, with respect to the disputed title; City may waive this requirement and instead obtain a release from these title companies or an indemnity against liabilities from the Cole Trust.

**D. Transaction.** Using City/Real Estate Department Form of Sale Agreement; complies with City requirements for sale of property, including necessary public purpose and other findings.

**D. Trust-Related Findings.** Port Commission, Board of Supervisors and State Lands to make various supporting findings required by law.

## III. Exchange Agreement (City/Port, Coles and State Lands)

**A. Swap.** Land swap under existing state legislative authority (Public Resources Code §6307) to essentially shift the strip of land that is Former Custer Avenue north to be adjacent to Islais Creek. That will become a new 18-foot public trust easement (“New Easement”) (a portion of the New Easement is currently in the Public Trust as a fee interest). Port will quitclaim the remainder of its Burton Act interests and State Lands will quitclaim its interest to the Coles free of the Trust.

**B. Kapiloff Payment.** Because the New Easement land going into the Trust is less than the land coming out of the Trust, a contribution to the Kapiloff Fund is needed to make up for the difference. The Cole Trust will make a deposit into the Kapiloff Land Bank Fund in an amount equal to \$790,000 to make up for the lost square footage. Kapiloff funds to be used later by State Lands to acquire additional Trust lands.

State Lands agrees that it intends to use the funds to in San Francisco and will consider the acquisition of suitable property interests identified and proposed by Port for an amount up to the Kapiloff Deposit; provided that the acquisition price is not greater than the fair market value of any such property interest. Newly acquired trust lands in San Francisco will be under Port jurisdiction.

**C. New Easement.** The New Easement will initially be held by the State, but Port will work together with State Lands to seek state legislation to transfer the New Easement to the City to be held by the Port as trustee, subject to the terms and conditions of the Burton Act. This item can be done later and does not require involvement by the Coles.

**D. Trust-Related Findings.** Port Commission, Board of Supervisors and State Lands to make various supporting findings required by law.



## CEQA Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b> 1650-1680 Davidson Avenue		<b>Block/Lot(s)</b> 5215022
<b>Case No.</b> 2022-001339PRJ		<b>Permit No.</b>
<input type="checkbox"/> <b>Addition/Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<p><b>Project description for Planning Department approval.</b></p> <p>The subject property consists of approximately 1.15 acres of unimproved property that includes a portion of former Custer Avenue, commonly known as 1650 Davidson Avenue, and an adjoining 1.31 acre parcel commonly known as 1680 Davidson. The Property consists of a paved yard that is used for light industrial parking and storage use, including fleet parking for school buses. It is subject to an existing long-term lease for those uses. There are no planning applications on file affecting the Property, and it is not part of any foreseeable development project. The Property has been owned by the current owner (the "Owner") since the 1960's. The Owner claims clear title to former Custer Avenue, but in connection with title work conducted for a proposed sale, the Port and the State have asserted a public trust and ownership claim over former Custer Avenue. The settlement and property transaction (the "Settlement") are intended to settle these disputed claims regarding property ownership and will include the following elements: 1. City, acting by and through the Port, will quitclaim any title interest it holds in approximately 2,364 square feet of former Custer Avenue to the Owner pursuant to existing legislative authority under SB 815. The Port will enter into a Purchase and Sale Agreement with Owner that will govern the</p> <p>FULL PROJECT DESCRIPTION ATTACHED</p>		

### STEP 1: EXEMPTION TYPE

<b>The project has been determined to be exempt under the California Environmental Quality Act (CEQA).</b>	
<input type="checkbox"/>	<b>Class 1 - Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	<b>Class 3 - New Construction.</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<p><b>Class 32 - In-Fill Development.</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below:</p> <p>(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.</p> <p>(b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses.</p> <p>(c) The project site has no value as habitat for endangered rare or threatened species.</p> <p>(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.</p> <p>(e) The site can be adequately served by all required utilities and public services.</p>
<input checked="" type="checkbox"/>	<b>Other</b> _____ Public Resources Code §21080.11
<input type="checkbox"/>	<b>Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).</b> It can be seen with certainty that there is no possibility of a significant effect on the environment.



**STEP 2: ENVIRONMENTAL SCREENING ASSESSMENT**

**TO BE COMPLETED BY PROJECT PLANNER**

<input type="checkbox"/>	<p><b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g. use of diesel construction equipment, backup diesel generators, heavy industry, diesel trucks, etc.)? <i>(refer to the Environmental</i></p>
<input type="checkbox"/>	<p><b>Hazardous Materials:</b>    <input type="checkbox"/> <b>Maher</b> or    <input type="checkbox"/> <b>Cortese</b>          Is the project site located within the Maher area or on a site containing potential subsurface soil or groundwater contamination and would it involve ground disturbance of at least 50 cubic yards or a change of use from an industrial use to a residential or institutional use? Is the project site located on a Cortese site or would the project involve work on a site with an existing or former gas station, parking lot, auto repair, dry cleaners, or heavy manufacturing use, or a site with current or former underground storage tanks?  <i>if Maher box is checked, note below whether the applicant has enrolled in or received a waiver from the San Francisco Department of Public Health (DPH) Maher program, or if Environmental Planning staff has determined that hazardous material effects would be less than significant.</i>  <b>Note that a categorical exemption shall not be issued for a project located on the Cortese List</b></p>
<input type="checkbox"/>	<p><b>Transportation:</b> Does the project involve a child care facility or school with 30 or more students, or a location 1,500 sq. ft. or greater? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities? Would the project involve the intensification of or a substantial increase in vehicle trips at the project site or elsewhere in the region due to autonomous vehicle or for-hire vehicle fleet maintenance, operations or</p>
<input type="checkbox"/>	<p><b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? If yes, archeology review is required.</p>
<input type="checkbox"/>	<p><b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? <i>(refer to the Environmental Information tab on <a href="https://sfplanninggis.org/PIM/">https://sfplanninggis.org/PIM/</a>)</i> <b>If box is checked, Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Average Slope of Parcel = or &gt; 25%, or site is in Edgehill Slope Protection Area or Northwest Mt. Sutro Slope Protection Area:</b> Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, or (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area? <i>(refer to the Environmental Information tab on <a href="https://sfplanninggis.org/PIM/">https://sfplanninggis.org/PIM/</a>)</i> <b>If box is checked, a geotechnical report is likely required and Environmental Planning must issue the exemption.</b></p>
<input type="checkbox"/>	<p><b>Seismic Hazard:</b>    <input type="checkbox"/> <b>Landslide</b> or    <input type="checkbox"/> <b>Liquefaction Hazard Zone:</b>          Does the project involve any of the following: (1) New building construction, except one-story storage or utility occupancy, (2) horizontal additions, if the footprint area increases more than 50%, (3) horizontal and vertical additions increase more than 500 square feet of new projected roof area, or (4) grading performed at a site in the landslide hazard zone? <i>(refer to the Environmental Information tab on <a href="https://sfplanninggis.org/PIM/">https://sfplanninggis.org/PIM/</a>)</i> <b>If box is checked, a geotechnical report is required and Environmental Planning must issue the exemption.</b></p>
<p><b>Comments and Planner Signature (optional):</b>                      Don Lewis</p>	

**STEP 3: PROPERTY STATUS - HISTORIC RESOURCE  
TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> <i>(refer to Property Information Map)</i>	
<input type="checkbox"/>	<b>Category A:</b> Known Historical Resource. <b>GO TO STEP 5.</b>
<input checked="" type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age). <b>GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age). <b>GO TO STEP 6.</b>

**STEP 4: PROPOSED WORK CHECKLIST  
TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project <b>does not conform</b> to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>four or more</b> work descriptions. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves <b>less than four</b> work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: ADVANCED HISTORICAL REVIEW  
TO BE COMPLETED BY PRESERVATION PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Reclassification of property status.</b> <i>(Attach HRER Part I)</i>  <input type="checkbox"/> Reclassify to Category A a. Per HRER b. Other <i>(specify):</i>  <input type="checkbox"/> Reclassify to Category C <i>(No further historic review)</i>
<input type="checkbox"/>	2. Project involves a <b>known historical resource (CEQA Category A)</b> as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	3. <b>Interior alterations to publicly accessible spaces that do not remove, alter, or obscure character defining features.</b>
<input type="checkbox"/>	4. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	5. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.

<input type="checkbox"/>	6. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	7. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input type="checkbox"/>	8. <b>Work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (Analysis required):
<input type="checkbox"/>	9. <b>Work compatible</b> with a historic district (Analysis required):
<input type="checkbox"/>	10. <b>Work that would not materially impair</b> a historic resource (Attach HRER Part II).
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST sign below.</b>	
<input checked="" type="checkbox"/>	<b>Project can proceed with exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with exemption review. <b>GO TO STEP 6.</b>
<b>Comments (optional):</b>	
<b>Preservation Planner Signature:</b> Don Lewis	

**STEP 6: EXEMPTION DETERMINATION**  
**TO BE COMPLETED BY PROJECT PLANNER**

<input checked="" type="checkbox"/>	<b>No further environmental review is required. The project is exempt under CEQA.</b>	
	<b>Project Approval Action:</b> Port Commission	<b>Signature:</b> Don Lewis
		02/16/2022
<p>Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at <a href="https://sfplanninggis.org/PIM/">https://sfplanninggis.org/PIM/</a>. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link. Once signed or stamped and dated, this document constitutes an exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code.</p> <p>In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination to the Board of Supervisors can only be filed within 30 days of the project receiving the approval action.</p>		

## Full Project Description

The subject property consists of approximately 1.15 acres of unimproved property that includes a portion of former Custer Avenue, commonly known as 1650 Davidson Avenue, and an adjoining 1.31 acre parcel commonly known as 1680 Davidson. The Property consists of a paved yard that is used for light industrial parking and storage use, including fleet parking for school buses. It is subject to an existing long-term lease for those uses. There are no planning applications on file affecting the Property, and it is not part of any foreseeable development project.

The Property has been owned by the current owner (the "Owner") since the 1960's. The Owner claims clear title to former Custer Avenue, but in connection with title work conducted for a proposed sale, the Port and the State have asserted a public trust and ownership claim over former Custer Avenue. The settlement and property transaction (the "Settlement") are intended to settle these disputed claims regarding property ownership and will include the following elements:

1. City, acting by and through the Port, will quitclaim any title interest it holds in approximately 2,364 square feet of former Custer Avenue to the Owner pursuant to existing legislative authority under SB 815. The Port will enter into a Purchase and Sale Agreement with Owner that will govern the conveyance of the Custer Avenue parcel from City to Owner for its appraised value.
2. City, acting by and through the Port, the State Lands Commission and the Owner will enter into a Title Settlement and Trust Exchange Agreement (the "Trust Agreement") that will provide title to the Property free of the public trust except for an 18' wide strip of land within the northern area of the Property along the water that will be subjected to a public trust easement in favor of the State or granted to the City, acting by and through the Port. Owner will also make a payment into a State fund to account for any deficit in the square footage of land exchanged.

Approvals necessary to implement the Settlement include (1) approval by the Port Commission of the Purchase and Sale Agreement and Trust Agreement, pursuant to its authority under Charter Appendix B, (2) approval by the Board of Supervisors of the sale of City property under Charter Section 9.118(c) and to authorize the City's acceptance of the public trust easement, if applicable, and (3) approval by the State Lands Commission of the Trust Agreement and adoption of findings related to the sale of a portion of Custer Avenue under SB 815.

## STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT

### TO BE COMPLETED BY PROJECT PLANNER

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional

### MODIFIED PROJECT DESCRIPTION

Modified Project Description:

### DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION

Compared to the approved project, would the modified project:

- |                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Result in expansion of the building envelope, as defined in the Planning Code;   |
| <input type="checkbox"/> | Result in the change of use that would require public notice under Planning Code Sections 311 or 312;  |
| <input type="checkbox"/> | Result in demolition as defined under Planning Code Section 317 or 19005(f)?   |
| <input type="checkbox"/> | Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption? |

**If at least one of the above boxes is checked, further environmental review is required**

### DETERMINATION OF NO SUBSTANTIAL MODIFICATION

- |                          |   |
|--------------------------|---|
| <input type="checkbox"/> | The proposed modification would not result in any of the above changes. |
|--------------------------|---|

If this box is checked, the proposed modifications are exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice. In accordance with Chapter 31, Sec 31.08j of the San Francisco Administrative Code, an appeal of this determination can

**Planner Name:**

**Date:**



August 25, 2022

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102

Dear Ms. Calvillo:

Attached please find an electronic copy a proposed resolution for Board of Supervisors consideration, to approve and authorize execution of a public trust exchange and title settlement agreement for 1620-1650-1680 Davidson Avenue and agreement to sell a portion of Port real property in the vicinity of Islais Creek.

The following is a list of accompanying documents

- Broad of Supervisors Resolution
- Port Commission Resolution
- Transaction Documents
- CEQA Determination Letter
- General Plan Letter
- Draft Settlement Agreement

The following person may be contacted regarding this matter:

Boris Delepine, Legislative Affairs Manager  
415-571-6626  
Boris.Delepine@sfport.com