

1 [Airspace Lease - State of California - Property along Duboce Street, between Otis Street  
2 and Stevenson Street - SoMa West Skatepark - Initial Term of Twenty Years - Initial  
3 Monthly Base Rent \$10,000]

4 **Resolution approving the execution of an airspace lease for a portion of property**  
5 **commonly known as Lot 071, Block 3513 and located along Duboce Street between**  
6 **Otis Street and Stevenson Street, by and between the City and County of San**  
7 **Francisco (City), and the State of California, acting by and through its Department of**  
8 **Transportation, for an initial term of twenty years and an initial monthly rent of \$10,000;**  
9 **adopting environmental findings and other findings that the actions set forth in this**  
10 **Resolution are consistent with the City's General Plan and eight priority policies; and**  
11 **authorizing other actions in furtherance of this Resolution.**

12  
13 WHEREAS, A portion of the former Central Freeway damaged by the 1989 Loma  
14 Prieta earthquake was replaced with a ground-level boulevard along Octavia Street from  
15 Market to Fell Streets; and

16 WHEREAS, The State of California, acting by and through its Department of  
17 Transportation (State) transferred certain real property formerly occupied by the Central  
18 Freeway (the "Central Freeway Parcels") to the City pursuant to Section 72.1 of the California  
19 Streets and Highways Code and a Cooperative Agreement between the City and the State  
20 dated November 29, 2000 ("Cooperative Agreement"), which transfer was authorized by  
21 Board Resolution No. 469-00, adopted by the City's Board of Supervisors on May 22, 2000,  
22 and signed by the City's Mayor on June 2, 2000. A copy of the Cooperative Agreement and  
23 Board Resolution No. 469-00 is on file with the Clerk of Board of Supervisors in File No.  
24 130384 and incorporated herein by reference; and  
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1 WHEREAS, Section 72.1 of the California Streets and Highways Code and the  
2 Cooperative Agreement require City to use the proceeds from the disposition of the excess  
3 Central Freeway parcels for transportation and related purposes authorized under Article XIX  
4 of the California Constitution; and

5 WHEREAS, In November of 1999, the voters of the City and County of San Francisco  
6 approved Proposition I, which required City to use the proceeds from the sale or disposition of  
7 excess Central Freeway Parcels for the Octavia Boulevard Plan, as defined in Proposition I, a  
8 copy of which is on file with the Clerk of Board of Supervisors in File No. 130384 and  
9 incorporated herein by reference; and

10 WHEREAS, Following completion of the Octavia Boulevard Plan, Proposition I required  
11 the City to utilize any remaining proceeds from the sale or disposition of excess Central  
12 Freeway Parcels (the "Remaining Proceeds") for transportation improvements to corridors on  
13 or ancillary to Octavia Boulevard, and directed the San Francisco Transportation Authority  
14 ("SFCTA") to allocate the Remaining Proceeds for such transportation improvements with  
15 advice from its Central Freeway Citizens Advisory Committee and its Technical Working  
16 Group and based on specified minimum criteria; and

17 WHEREAS, The SFCTA adopted the Central Freeway Replacement Project Ancillary  
18 Projects Study on February 28, 2006, a copy of which is on file with the Clerk of Board of  
19 Supervisors in File No. 130384 and incorporated herein by reference (the "Ancillary Projects  
20 Study"); and

21 WHEREAS, The Ancillary Projects Study identified twelve transportation projects (the  
22 "SoMa West Improvement Projects"), estimated to have a total cost of \$5,400,000, to be  
23 funded from the Remaining Proceeds, which were estimated to be \$5,750,000 in 2006; and  
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1 WHEREAS, One of the SoMa West Improvement Projects called for developing  
2 recreational uses under the portion of the Central Freeway structure restored by the State  
3 after the 1989 Loma Prieta earthquake; and

4 WHEREAS, Residents of the neighborhood impacted by the restoration of the  
5 damaged Central Freeway and the implementation of the Octavia Boulevard Plan, and the  
6 City-wide skateboarding community, have long expressed a desire for additional skatepark  
7 and open space amenities for recreational use within the neighborhood; and

8 WHEREAS, The City has identified a suitable State property under and adjacent to the  
9 Central Freeway and along Duboce Street between Stevenson Street and Otis Street (Lot  
10 071, Block 3513) (the "Property"), which is currently used for parking and is capable of  
11 accommodating the proposed skatepark; and

12 WHEREAS, The State has agreed to lease the Property to the City, and the City has  
13 agreed to lease the Property from Caltrans, pursuant to the form of lease on file with the Clerk  
14 of Board of Supervisors in File No. 130384 and incorporated herein by reference (the  
15 "Lease"); and

16 WHEREAS, The City has agreed to improve the Property as a skateboard park,  
17 designed in concert with the neighborhood and the skateboard community, with the skatepark  
18 improvements funded from the Remaining Proceeds; and

19 WHEREAS, Once the skatepark improvements are installed at the Property, the City  
20 will maintain the Property through a interdepartmental Memorandum of Understanding ("Park  
21 MOU") by and among the Real Estate Division of the General Services Agency ("DRE"),  
22 Department of Public Works, Recreation and Parks Department ("RPD"), and the Office of  
23 Economic and Workforce Development, a copy of which is on file with the Clerk of Board of  
24 Supervisors in File No. 130384 and incorporated herein by reference; and

1 WHEREAS, To facilitate RPD's maintenance and operation of the skatepark for DRE  
2 pursuant to the Park MOU, this Board extended the San Francisco Park Code to the public  
3 use of the skatepark at the Property during the term of the Lease pursuant to Ordinance No.  
4 \_\_\_\_\_ (the "Park Ordinance"), a copy of which is on file with the Clerk of Board of  
5 Supervisors in File No. \_\_\_\_\_ and incorporated herein by reference; and

6 WHEREAS, Although the proposed skatepark will provide recreational use of the  
7 Property, it will be subject to the term of the Lease and the impacts of being directly below the  
8 Central Freeway, and neither this Board's approval of the Lease nor adoption of Park  
9 Ordinance are intended to convert the Property into such a significant "park" or "recreational  
10 area" as those terms are used in 23 United States Code Section 138 and 49 United States  
11 Code Section 303; and

12 WHEREAS, The Lease will have an initial twenty-year term and an initial rent of  
13 \$10,000.00 per month, with annual 2% increases in such monthly rent, and State will need to  
14 issue an encroachment permit to the City before the installation of skatepark improvements at  
15 the Property, as further described in Exhibit B of the Lease; and

16 WHEREAS, The Lease grants the City a ten-year option to extend the term of the  
17 Lease at a rate to be negotiated pursuant the Lease; and

18 WHEREAS, The City's Planning Department determined that the Lease is exempt from  
19 environmental review under the California Environmental Quality Review Act, as evidenced in  
20 a Certificate of Determination issued for Case No. 2011.0645E on October 21, 2011, a copy  
21 of which is on file with the Clerk of the Board of Supervisors in File No. 130384 and is  
22 incorporated herein by reference; and

23 WHEREAS, In a General Plan Referral dated March 6, 2013, for Case No.  
24 2011.0645R, the City's Planning Department found that the proposed project described in this  
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1 Resolution is consistent with the City's General Plan pursuant to Section 4.105 of the Charter  
2 and Section 2A.53 of the Administrative Code, with a copy of such General Plan Referral on  
3 file with the Clerk of the Board of Supervisors in File No. 130384 and incorporated herein by  
4 reference. The Board of Supervisors finds that the project contemplated in this Resolution is  
5 consistent with the City's General Plan and with the Charter Section 4.105 and Administrative  
6 Code Section 2A.53 for the reason set forth in said letter; now, therefore, be it

7 RESOLVED, That in accordance with the recommendation of the Director of Property,  
8 the Director of Property is hereby authorized to enter into the Lease and take all actions on  
9 behalf of the City and County of San Francisco necessary to effect the Lease and perform  
10 City's obligations under the Lease; and, be it

11 FURTHER RESOLVED, That the Lease shall include a clause with City indemnifying,  
12 holding harmless, and defending the State and its officers, employees, and agents from and  
13 against any and all claims, suits, actions, injury, damage, and liability incurred as a result of  
14 any acts or omissions by City in the performance of its obligations under the Lease or any  
15 allegedly dangerous condition of public property based upon the condition of the Property,  
16 excluding those incurred as a result of the highway structure above the Property or the use of  
17 or activities on the Property by State or its officers, employees, or agents; and be it

18 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
19 Property to enter into any amendments or modifications to the Lease (including, without  
20 limitation, the exhibits) that the Director of Property in consultation with the City Attorney,  
21 determines are in the best interest of the City, do not materially increase the obligations of the  
22 City or materially decrease the benefits of the City, are necessary or advisable to  
23 consummate the performance of the purposes and intent of this Resolution, and comply with  
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1 all applicable laws, including the City's Charter, including any modifications or amendments to  
2 the Lease; and be it

3 FURTHER RESOLVED, That the Lease shall be subject to certification as to funds by  
4 the Controller, pursuant to Section 105 of the City Charter.

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\$1,648,039.00 Available  
BUF Index Code: \_\_\_\_\_  
Project Code: \_\_\_\_\_

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CONTROLLER

RECOMMENDED:

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JOHN UPDIKE  
DIRECTOR OF PROPERTY