

1 [Development Agreement - India Basin Investment LLC - India Basin Project - Innes Avenue
2 at Griffith Street]

3 **Ordinance approving a Development Agreement between the City and County of San**
4 **Francisco and India Basin Investment LLC, a California limited liability company, for**
5 **the India Basin Project at the approximately 28-acre site located at Innes Avenue**
6 **between Griffith Street and Earl Street, with various public benefits, including 25%**
7 **affordable housing and 11 acres of parks and open space; making findings under the**
8 **California Environmental Quality Act and findings of conformity with the General Plan,**
9 **and with the eight priority policies of Planning Code, Section 101.1(b); approving a**
10 **Public Trust Exchange Agreement, making public trust findings, and authorizing the**
11 **transfer and acceptance of real property and the recording of a land use covenant**
12 **consistent with the Public Trust Exchange Agreement; approving specific development**
13 **impact fees and waiving any conflicting provision in Planning Code, Article 4, or**
14 **Administrative Code, Article 10; confirming compliance with or waiving certain**
15 **provisions of Administrative Code, Chapters 14B, 23, 56, and 82 and Subdivision Code,**
16 **Section 1348, and ratifying certain actions taken in connection therewith.**

17 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
18 **Additions to Codes** are in *single-underline italics Times New Roman font*.
19 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
20 **Board amendment additions** are in double-underlined Arial font.
21 **Board amendment deletions** are in ~~strikethrough Arial font~~.
22 **Asterisks (* * * *)** indicate the omission of unchanged Code
23 subsections or parts of tables.

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

25 Section 1. Project Findings.

The Board of Supervisors makes the following findings:

1 (a) California Government Code Sections 65864 et seq. authorizes any city, county,
2 or city and county to enter into an agreement for the development of real property within the
3 jurisdiction of the city, county, or city and county.

4 (b) Chapter 56 of the San Francisco Administrative Code ("Chapter 56") sets forth
5 certain procedures for the processing and approval of development agreements in the City
6 and County of San Francisco (the "City").

7 (c) India Basin Investment LLC, a California limited liability company ("Developer")
8 owns the approximately 14.7 acre site along Innes Street, between Earl and Griffith Streets,
9 and holds options to purchase an additional 2.4 acres of adjacent land (the "Developer
10 Property"). The City owns approximately 6.2 acres of open space along the shoreline,
11 adjacent to the Developer Property, together with various street areas (the "City Property",
12 together with the Developer Property, the "Project Site").

13 (d) Developer filed an application with the City's Planning Department for approval
14 of a development agreement relating to the Project Site (the "Development Agreement")
15 under Chapter 56. A copy of the Development Agreement is on file with the Clerk of the
16 Board in File No. 180681.

17 (e) The Developer proposes a mixed use development on the Project Site that will
18 include a new publicly accessible network of improved parkland and open space and a mixed-
19 use urban village, including up to 1,575 dwelling units, approximately 676,052 square feet
20 (15.5 acres) of publicly accessible open space, and approximately 59,500 square feet of
21 public and private open space, as well as approximately 209,106 square feet of commercial
22 space and up to 1,800 off-street parking spaces, all as more particularly described in the
23 Development Agreement (the "Project").

24 (f) As set forth in the Development Agreement, the City agrees to initiate the
25 process to vacate portions of Hudson Avenue, Griffith Street, Arelious Walker Drive and Earl

1 Street and, following any vacation and satisfaction of any applicable City conditions, to convey
2 the underlying land to Developer in connection with the land assembly required for the Project
3 (the “Street Vacation Actions”). In return, Developer will convey certain land to the City.

4 (g) Concurrently with this Ordinance, the Board is taking a number of actions in
5 furtherance of the Project, as generally described in the Development Agreement, including
6 Exhibit E to the Development Agreement (the “Approvals”).

7 (h) While the Development Agreement is between the City, acting primarily through
8 the Planning Department, and Developer, other City agencies retain a role in reviewing and
9 issuing certain later approvals for the Project. Later approvals include approval of subdivision
10 maps and plans for horizontal improvements and public facilities, design review and approval
11 of new buildings, actions relating to the Street Vacations Actions, and acceptance of
12 Developer’s dedications of horizontal improvements and parks and open spaces for City
13 maintenance and liability under the Subdivision Code. As a result, affected City agencies
14 have consented to the Development Agreement.

15 (i) The Project is anticipated to generate an annual average of approximately 3,505
16 construction jobs and, upon completion, approximately 477 on-site jobs and 833 total jobs,
17 with an approximately \$4.3 million annual increase in general fund revenues to the City. In
18 addition to the significant housing, jobs, urban revitalization, and economic benefits to the City
19 from the Project, the City has determined that development of the Project under the
20 Development Agreement will provide additional benefits to the public that could not be
21 obtained through application of existing City ordinances, regulations, and policies. Additional
22 public benefits to the City from the Project include: (1) an increase in affordable housing that
23 exceeds amounts otherwise required and will equal twenty five percent (25%) of the total
24 number of housing units for the Project; (2) workforce obligations, including significant
25 training, employment and economic development opportunities as part of the development

1 and operation of the Project; (3) construction and maintenance of the publicly accessible open
2 space, totaling approximately eleven (11) acres of parks and the improvement of existing City
3 Property along the shoreline; (4) child care space to serve not less than 40 children; and
4 (5) sea level rise improvements as part of the development, and future funding for additional
5 future sea level rise improvements; all as further described in the Development Agreement.
6 The Development Agreement will eliminate uncertainty in the City's land use planning for the
7 Project Site and secure orderly development.

8 (j) In particular, the City intends to create a series of contiguous, integrated
9 waterfront parks, including both the India Basin Open Space and the Big Green, as well as the
10 neighboring 900 Innes and India Basin Shoreline Park (collectively, the "India Basin Park
11 System"), for the benefit of the southeast community and the residents of San Francisco and
12 California at large. The City further intends to connect the India Basin Park System to the
13 Northside Park, when completed as part of the Candlestick/Hunters Point Shipyard
14 development project.

15 (k) Funding for maintenance of the India Basin Park System will include special
16 taxes under a community facilities district (CFD) to be formed by Developer and the City, as
17 more particularly described in the Financing Plan attached to the Development Agreement.
18 The CFD funds also will be available to pay for future sea level rise improvements.

19 (l) To assemble the land for the Project development, including the City's no-cost
20 acquisition of land from Developer for the Big Green, the City, the State Lands Commission
21 and Developer will enter into a public trust exchange agreement, substantially in the form
22 attached to the Development Agreement (the "Public Trust Exchange Agreement"). The City
23 will record a land use covenant against specified lands subject to the public trust that will be
24 placed under the Port's jurisdiction for purposes of the trust, but that will be maintained and
25 operated by the Recreation and Park Department.

1 Section 2. CEQA Findings.

2 On July 26, 2018, by Motion No. 20248, the Planning Commission certified as
3 adequate, accurate and complete the Final Environmental Impact Report ("FEIR") for the
4 Project pursuant to the California Environmental Quality Act (California Public Resources
5 Code Section 21000 et seq.) ("CEQA"). A copy of Planning Commission Motion No. 20248 is
6 on file with the Clerk of the Board of Supervisors in File No. 180681. Also on July 26, 2018,
7 by Motion No. 20248, the Planning Commission adopted findings, including a rejection of
8 alternatives and a statement of overriding considerations (the "CEQA Findings") and a
9 Mitigation Monitoring and Reporting Program ("MMRP"). The Planning Department issued a
10 memorandum dated October 10, 2018 to address certain revisions to air quality mitigation
11 measures for the Project. Specifically, the October 10, 2018 memorandum recommended
12 amending Mitigation Measures M-AQ-1a: Minimize Off-Road Construction Equipment
13 Emissions and M-AQ-1e: Implement Best Available Control Technology for Operational Diesel
14 Generators, to require diesel powered equipment to use renewable diesel to the extent
15 feasible These Motions and the October 10, 2018 memorandum are on file with the Clerk of
16 the Board of Supervisors in File No. 180681. In accordance with the actions contemplated
17 herein, this Board has reviewed the FEIR, the memorandum and related documents, and
18 adopts as its own and incorporates by reference as though fully set forth herein the CEQA
19 Findings, including the statement of overriding considerations, and the MMRP, as revised by
20 the October 10, 2018 memorandum.

21 Section 3. General Plan and Planning Code Section 101.1(b) Findings.

22 (a) The Board of Supervisors shall consider companion legislation that adopts
23 public necessity findings of Planning Code Section 302 and General Plan amendments. A
24 copy of the companion legislation is on file with the Clerk of the Board of Supervisors in File
25 No. 180681 and is incorporated herein by reference.

1 (b) For purposes of this Ordinance, the Board of Supervisors finds that the
2 Development Agreement will serve the public necessity, convenience and general welfare for
3 the reasons set forth in the companion legislation identified in subsection (a).

4 (c) For purposes of this Ordinance, the Board of Supervisors finds that the
5 Development Agreement is in conformity with the General Plan, as proposed to be amended,
6 and the eight priority policies of Planning Code Section 101.1 for the reasons set forth in the
7 companion legislation identified in subsection (a).

8 Section 4. Public Trust Findings.

9 The Board of Supervisors finds that this resolution and the Project is are consistent
10 with and furthers the purposes of the common law public trust and statutory trust under the
11 Burton Act (Stats. 1968, ch. 1333), as follows:

12 (a) Approximately 2.63 acres of the City Property, consisting of portions of Fairfax
13 Avenue, Evans Avenue and Arelious Walker Drive (formerly Fitch Street), lie waterward of the
14 historic ordinary high tide line and, as such, are subject to the public trust and held within the
15 administration and control of the Port Commission in accordance with the Burton Act and the
16 City Charter (but this land is managed by the Recreation and Park Department as part of the
17 India Basin Open Space). An additional approximately 9 acres of City Property, ~~of disputed~~
18 ~~trust status,~~ consists of streets under the jurisdiction of the Department of Public Works with
19 disputed trust status, and parcels within the existing India Basin Open Space under the
20 jurisdiction of the Recreation and Park Department and the Department of Public Works that
21 are free of the trust or have disputed trust status.

22 (b) The Developer Property includes filled lands that are not subject to the public
23 trust and lands that are of disputed status.

24 (c) As the public trust is presently configured, most of the lands on or adjacent to
25 the shoreline are either free of the trust or have uncertain trust status. At the same time, the

1 filled lands proposed for private development are further inland and cut off from the water, and
2 therefor are not useful to the public trust, yet they are encumbered with disputed trust claims.
3 The Developer Property has remained undeveloped and inaccessible for decades, despite its
4 waterfront location and adjacency to the existing waterfront parks.

5 (d) The proposed public trust exchange would eliminate all trust title uncertainties
6 within the Project Site and will facilitate the improvement and expansion of the India Basin
7 Open Space. The exchange would not remove any existing trust property from the Burton Act
8 trust, but the public trust would see a net gain of filled lands that will be useful to the trust. As
9 required under the Development Agreement and the SUD, all lands exchanged into the public
10 trust will be used for public open space, habitat restoration and water-oriented uses, all of
11 which are consistent with the Burton Act. The proposed trust exchange settlement will
12 consolidate the public trust lands along the water for open space and public access, providing
13 significant benefits to the public trust over existing conditions.

14 (e) As set forth in the Public Trust Exchange Agreement, the lands to be freed from
15 the public trust claims have been filled and reclaimed, are cut off from access to the waters of
16 San Francisco Bay, constitute a relatively small portion of the lands granted to the City and
17 County of San Francisco and are not needed or required for the promotion of the public trust
18 or the Burton Act trust. In addition, the Project would not cause a substantial interference with
19 public trust uses and purposes by virtue of the exchange. The lands or interests in lands to
20 be impressed with the public trust have an economic value equal to or greater than that of the
21 lands or interests in lands that will be freed from the public trust, and are useful for the
22 particular trust purposes specifically authorized in the Burton Act.

23 Section 5. Development Agreement.

24 (a) The Board of Supervisors approves all of the terms and conditions of the
25 Development Agreement, in substantially the form on file with the Clerk of the Board of

1 Supervisors in File No. 180681, subject to the consent of the Port Commission, the Municipal
2 Transportation Agency, the San Francisco Public Utilities Commission and the Recreation and
3 Park Commission.

4 (b) The Board of Supervisors approves and authorizes the execution, delivery and
5 performance by the City of the Development Agreement as follows: (i) the Director of
6 Planning and (other City officials listed thereon) are authorized to execute and deliver the
7 Development Agreement, with signed consents of the Port Commission, the Municipal
8 Transportation Agency, the San Francisco Public Utilities Commission, the Recreation and
9 Park Commission, and the San Francisco Fire Department, and (ii) the Director of Planning
10 and other applicable City officials are authorized to take all actions reasonably necessary or
11 prudent to perform the City's obligations under the Development Agreement in accordance
12 with the terms of the Development Agreement. Without limiting the foregoing, (A) the Port
13 Director, the Recreation and Park Department General Manager, and the Director of Property
14 are authorized to execute and perform all City obligations under the Public Trust Exchange
15 Agreement substantially in the form attached to the Development Agreement, including the
16 conveyance of all of the City's rights, title and interest in the exchange lands to the State for
17 purposes of effectuating the exchange in the manner provided in the Public Trust Exchange
18 Agreement, and (B) the Director of Public Finance and the Controller are authorized to take all
19 preliminary actions required to form the CFD as described in the Financing Plan, provided the
20 actual CFD formation documents and issuance of debt will be subject to the review and
21 approval of the Board of Supervisors.

22 (c) The Director of Planning, at his or her discretion and in consultation with the City
23 Attorney, is authorized to enter into any additions, amendments or other modifications to the
24 Development Agreement that the Director of Planning determines are in the best interests of
25 the City and that do not materially increase the obligations or liabilities of the City or materially

1 decrease the benefits to the City as provided in the Development Agreement. The Port
2 Director and the Recreation and Park Department General Manager, at their discretion and in
3 consultation with the City Attorney, are authorized to enter into any additions, amendments or
4 other modifications to the Public Trust Exchange Agreement that they determine are in the
5 best interests of the City and that do not materially increase the obligations or liabilities of the
6 City or materially decrease the benefits to the City as provided in the Public Trust Exchange
7 Agreement.

8 Section 6. Board Authorization and Appropriation.

9 By approving the Development Agreement, the Board of Supervisors authorizes the
10 Controller and City Departments to accept the funds paid by Developer as set forth therein,
11 and to appropriate and use the funds for the purposes described therein. The Board
12 expressly approves the use of the development impact fees as set forth in the Development
13 Agreement, and waives or overrides any provision in Article 4 of the City Planning Code and
14 Article 10 of the City Administrative Code that would conflict with the uses of these funds as
15 described in the Development Agreement.

16 Section 7. City Administrative Code Conformity and Waivers.

17 In connection with the Development Agreement, the Board of Supervisors finds that the
18 City has substantially complied with the requirements of Administrative Code Chapters 14B
19 and 56, and waives any requirement to the extent not strictly followed. The Development
20 Agreement shall prevail in the event of any conflict between the Development Agreement and
21 City Administrative Code Chapters 14B and 56, and without limiting the generality of the
22 foregoing, the following provisions of City Administrative Code Chapters 14B and 56 are
23 waived or deemed satisfied as follows:

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25

1 (a) The Project comprises approximately 28 acres and is the type of large multi-
2 phase and/or mixed-use development contemplated by the City Administrative Code and
3 therefore satisfies the provisions of Chapter 56, Section 56.3(g).

4 (b) The provisions of Development Agreement and the Workforce Agreement
5 attached to the Development Agreement as Exhibit P shall apply in lieu of the provisions of
6 City Administrative Code Chapter 14B, Section 14B.20, and Chapter 56, Section 56.7(c).

7 (c) The provisions of the Development Agreement regarding any amendment or
8 termination, including those relating to "Material Change," shall apply in lieu of the provisions
9 of Chapter 56, Section 56.15 and Section 56.18.

10 (e) The provisions of Chapter 56, Section 56.20 have been satisfied by the
11 Memorandum of Understanding between Developer and the Office of Economic and
12 Workforce Development for the reimbursement of City costs, a copy of which is on file with the
13 Clerk of the Board of Supervisors in File No. 180681.

14 (f) The Board of Supervisors waives the applicability of Section 56.4 (Application,
15 Forms, Initial Notice, Hearing) and Section 56.10 (Negotiation Report and Documents).

16 Section 8. Planning Code Waivers; Ratification.

17 (a) The Board of Supervisors finds that the impact fees and other exactions due
18 under the Development Agreement will provide greater benefits to the City than the impact
19 fees and exactions under Planning Code Article 4 and waives the application of, and to the
20 extent applicable exempts the Project from, impact fees and exactions under Planning Code
21 Article 4 on the condition that Developer pays the impact fees and exactions due under the
22 Development Agreement.

23 (b) The Board of Supervisors finds that the Transportation Plan attached to the
24 Development Agreement includes a Transportation Demand Management Plan ("TDM Plan")
25 and other provisions that meet the goals of the City's Transportation Demand Management

1 Program in Planning Code Section 169 and waives the application of Section 169 to the
2 Project on the condition that Developer implements and complies with the TDM Plan.

3 (c) The Board of Supervisors finds that the Design Standards and Guidelines
4 attached to the Development Agreement sets forth sufficient standards for streetscape design
5 and waives the requirements of Planning Code Section 138.1 (Streetscape and Pedestrian
6 Improvements) and Public Works Code Section 806(d) (Required Street Trees for
7 Development Projects).

8 (d) All actions taken by City officials in preparing and submitting the Development
9 Agreement to the Board of Supervisors for review and consideration are hereby ratified and
10 confirmed, and the Board of Supervisors hereby authorizes all subsequent action to be taken
11 by City officials consistent with this Ordinance.

12 Section 9. Other Administrative Code Waivers.

13 The requirements of the Workforce Agreement attached to the Development
14 Agreement shall apply and shall supersede, to the extent of any conflict, the provisions of
15 Administrative Code: (i) Chapter 82.4 (Coverage); (ii) Chapter 23, Article II (Interdepartmental
16 Transfer of Real Property); and (iii) Chapter 23, Article VII (Prevailing Wage, Apprenticeship,
17 and Local Hire Requirements), but only to the extent any of the foregoing provisions are
18 applicable to the conveyance of vacated streets from the City to Developer and the other land
19 conveyances contemplated by the Development Agreement.

20 Section 10. Subdivision Code Waivers.

21 The Public Improvement Agreement, as defined in the Development Agreement, shall
22 include provisions consistent with the Development Agreement and the applicable
23 requirements of the Municipal Code and the Subdivision Regulations regarding extensions of
24 time and remedies that apply when improvements are not completed within the agreed time.
25

1 Accordingly, the Board of Supervisors waives the application to the Project of Subdivision
2 Code Section 1348 (Failure to Complete Improvements within Agreed Time).

3 Section 11. Effective and Operative Date.

4 This Ordinance shall become effective 30 days from the date of passage. This
5 Ordinance shall become operative only on (and no rights or duties are affected until) the later
6 of (a) 30 days from the date of its passage, or (b) the date that Ordinance _____,
7 Ordinance _____, and Ordinance _____ have become effective. Copies of

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9 ///
10 ///

11 these Ordinances are on file with the Clerk of the Board of Supervisors in File Nos.
12 _____ and _____.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

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17 By: _____
18 Charles Sullivan
19 Deputy City Attorney
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