Resolution authorizing settlement of anticipated litigation to be filed by Bonneville International Corporation against the City and County of San Francisco for a non-exclusive easement on Bayview Hill for access to the radio tower owned by Bonneville.

WHEREAS, The Bonneville International Corporation owns property (the "Bonneville Property") that is bordered by Bayview Hill, an undeveloped natural area comprised of approximately 44 acres and under the jurisdiction of the City's Recreation and Park Department; and

WHEREAS, Bayview Hill was acquired by the City in piecemeal fashion over the past century. The City has owned one portion of Bayview Hill since 1915 (the "1915 Parcel") and acquired another portion of Bayview Hill in 1997 (the "Donnelly Parcel"). Even before the City owned the Donnelly Parcel, it had an easement over an unimproved road on the Donnelly Parcel that connected Key Avenue to the 1915 Parcel (the "Temporary Road"). Under the 1963 document granting the City its easement over the Temporary Road (the "Original City Easement"), the Original City Easement was to automatically terminate if the City extended Key Avenue over adjacent City property (the "Proposed Key Avenue Extension"); and

WHEREAS, At the time the City acquired the Donnelly Parcel, the Bonneville Property was improved with radio transmission equipment and was not served by a public street. The then-owner of the Bonneville Property used the Temporary Road for access; and

WHEREAS, The Bonneville Property is still not served by a public street and Bonneville also accesses the Bonneville Property over the Temporary Road; and

WHEREAS, Bonneville believes it has an easement to use the Temporary Road (the "Original Bonneville Easement") under a 1983 document between the previous owners of the
Bonneville Property and the Donnelly Parcel. Under that document, the Original Bonneville Easement was to automatically terminate if the Original City Easement terminated or if alternative access was created between the Bonneville Property and a public street; and

WHEREAS, Although the Proposed Key Avenue Extension was never constructed, the Original City Easement automatically terminated by operation of law when City acquired the entire Donnelly Parcel. The City believes the Original Bonneville Easement automatically terminated at the same time, since it was to terminate when the Original City Easement terminated, but Bonneville believes the Original Bonneville Easement still exists under certain equitable legal principles; and

WHEREAS, Under established California case law, the principles cited by Bonneville cannot be asserted by private parties against governmental entities. However, the City acknowledges that there is a possibility that a judge could decide to waive established law to allow Bonneville to assert those claims if the matter were to be litigated because, in part, Bonneville would otherwise have no ready access to the Bonneville Property to maintain its radio transmission equipment; and

WHEREAS, When Bayview Land Company transferred the 1915 Property to the City, it was conditioned on the City using the majority of the 1915 Property as a public park and certain portions of the 1915 Property (possibly including the 1915 Roadway) as public streets (the “Proposed Streets”). Bayview Land Company inserted these conditions in anticipation that adjacent property would be eventually developed as housing. Those housing plans did not come to fruition, and the City never converted the Proposed Streets into public streets. The City does not want to comply with the Proposed Streets condition because the housing development never occurred and the City wishes to maintain Bayview Hill as an unimproved natural area; and
WHEREAS, City has customarily allowed Bonneville to use the Temporary Road Easement (and, City believes, the 1915 Road) to access the Bonneville Property. Such customary usage only became a point of discussion when Bonneville asked the City to confirm its easement rights in the Original Bonneville Easement as part of its planned sale of the Bonneville Property; and

WHEREAS, If City does not enter into this settlement agreement, Bonneville's only option would be to sue the City. Even if Bonneville did not sue the City, Bonneville’s potential claims under the Original Bonneville Easement and to the Proposed Streets currently cloud the City’s ownership interest in Bayview Hill, which could only be cleared by the City filing a lawsuit against Bonneville; and

WHEREAS, In order to litigate this case, the City would incur significant survey and other costs with no certainty of success; and

WHEREAS, Under the proposed settlement agreement, Bonneville will release all claims under the Original Bonneville Easement and to the Proposed Streets, as well as any claims that City is obligated to provide any public streets or highways on the City Property or to the Bonneville Property; and

WHEREAS, In exchange for that release, the City would enter into an Easement Agreement, on file with the Clerk of the Board of Supervisors in File No. 100985, which is hereby declared to be a part of this motion as if set forth fully herein; that terminates the Original Bonneville Easement and provides Bonneville with access over the Temporary Road and the 1915 Road (together, the “Easement Road”). The proposed easement will limit Bonneville's use of the Easement Road to the extent necessary to maintain, repair and replace the antenna and transmitter facilities currently located on the Bonneville Property and will expressly reserve the City's right to use and relocate the Easement Road. In addition, the proposed easement agreement clarifies other matters that benefit the City, such as requiring
Bonneville to bear the maintenance costs for the Easement Road (unless damaged by City's activities). Recreation and Park Department staff have determined that Bonneville's use of the Easement Road under the terms of the proposed easement would not harm the unique environmental characteristics of Bayview Hill at its current level of usage; now, therefore, be it

RESOLVED, That Board of Supervisors hereby authorizes the City Attorney to settle anticipated litigation by Bonneville International Corporation, et al., against the City and County of San Francisco, et al., pursuant to the terms of the proposed easement agreement.
Resolution authorizing settlement of anticipated litigation to be filed by Bonneville International Corporation against the City and County of San Francisco for a non-exclusive easement on Bayview Hill for access to the radio tower owned by Bonneville.

September 30, 2010 Rules Committee - RECOMMENDED

October 19, 2010 Board of Supervisors - ADOPTED
Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Mar, Maxwell and Mirkarimi

I hereby certify that the foregoing Resolution was ADOPTED on 10/19/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom
Date Approved