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

WHEREAS, Pursuant to Chapter 1333 of the Statutes of 1968 (as amended, the
"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 tide and submerged lands to be held under the jurisdiction of the
San Francisco Port ("Port") and subject to the common law public trust for commerce,
navigation, and fisheries and the statutory trust imposed by the Burton Act, (collectively, the "Public Trust"); and

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

WHEREAS, In 2020, 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 an 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 and to negotiate in good faith to obtain approvals for and to terminate any Public Trust interest on Former Custer Avenue; the tolling of claims under the initial settlement agreement expires on July 14, 2023, unless terminated earlier pursuant to the terms and conditions of that agreement, subject to further extensions by mutual agreement of the parties; and

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

WHEREAS, In July 2022, as further described in the Memorandum to the Port Commission ("Port Memorandum") and Port Commission Resolution No. 22-35, the Port Commission approved a final settlement agreement with the Cole Trust (the "Settlement Agreement") that will, without any admission of liability or responsibility for any purpose, resolve the parties' respective claims; and
WHEREAS, The Settlement Agreement, 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 an approximately 2,364 square foot portion of Former Custer Avenue ("Sale Parcel") free of the City's Public Trust interest in accordance with an Agreement for Sale of Real Estate for Portions of Custer Avenue ("Sale Agreement"); and

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

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

   (B) the Cole Trust's deposit of $790,000 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 ("Exchange Agreement"); and

WHEREAS, The Sale Agreement and Exchange Agreement are subject to approval by the Board of Supervisors and State Lands as required by the authorizing local and state laws and their respective jurisdiction; and
WHEREAS, The Settlement Agreement will not become effective unless and until the Sale Agreement and Exchange Agreement are approved by both the Board of Supervisors and State Lands; and

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

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

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

2. 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 in resolving the title dispute; and

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

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

5. Notwithstanding the appraised value and in light of the title dispute, the sale price of $160,000 (excluding transaction costs), will further a public purpose; and
WHEREAS, Charter, Section 9.118(b) requires Board of Supervisors approval of sales of City-owned real property; and

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

1. The Sale Parcel: (A) 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; (B) has been filled and reclaimed as part of a highly beneficial plan of harbor development and has ceased to be tidelands; (C) is no longer used or necessary for maritime commerce, navigation or fisheries purposes; (D) constitutes a relatively small portion of tidelands granted to the City (a total of approximately 725 acres (exclusive of submerged lands); (E) is not amenable to any Public Trust uses other than revenue generation for the Trust; and (F) is and will be cut off from access to waters of San Francisco Bay by the New Public Trust Easement; and

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

3. The Sale 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

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

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

6. As required by SB 815, 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
WHEREAS, In connection with the Exchange Agreement and per Public Resources Code, Section 6307, the Port Commission made the following findings in Port Commission Resolution No. 22-35:

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

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; and

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 to or along the water; and

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; and

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

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; and

WHEREAS, By Port Commission Resolution No. 22-35, the Port Commission found that the Sale Parcel is (1) not subject to the State Surplus Lands Act (Cal. Gov. Code, Sections 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, Sections 54221(f)(1)(H)); and (2) is not “surplus” or “underutilized” as those terms are defined in the City’s Surplus Public
Lands Ordinance (S.F. Admin., Ch. 23A) and the Surplus Public Lands Ordinance does not limit the power of the City to carry out the transactions under the Sale Agreement; and

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

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

WHEREAS, Upon closing of the transactions described in the Sale Agreement and Exchange Agreement, under the Settlement Agreement, 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 claims or liabilities unrelated to the disputed title claims; and

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

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

WHEREAS, On February 16, 2022, the San Francisco Planning Department determined that the Settlement Agreement, Sale Agreement and Exchange Agreement are statutorily exempt from review under the California Environmental Quality Act (“CEQA”) under Public Resources Code, Section 21080.11; and by letter dated March 10, 2022 (the “General Plan Referral Letter”), the San Francisco Planning Department determined that the project, on
balance, is in conformity with the General Plan, and with the eight priority policies of Planning Code, Section 101.1; a copy of the CEQA determination and letter are on file with the Clerk of the Board of Supervisors under File No. 220927 and incorporated herein by this reference; now, therefore, be it

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

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

be it

FURTHER RESOLVED, As required by Administrative Code, Section 23.3, the Board of Supervisors finds: (1) the public interest and necessity demands, and will not be inconvenienced by the sale of the Sale Parcel; (2) 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 in resolving the title dispute; and (3) for these reasons, notwithstanding the appraised determination of fair market value, which did not include a reduction due to the title dispute, the sale price of $160,000 will further a public purpose; and, be it

FURTHER RESOLVED, In connection with the sale of the Sale Parcel pursuant to the authority granted under SB 815, the Board of Supervisors finds: (1) the Sale Parcel: (a) 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; (b) has been filled and reclaimed as part of a highly beneficial plan of harbor development and has ceased to be tidelands; (c) is no longer used or necessary for
maritime commerce, navigation or fisheries purposes; (d) constitutes a relatively small portion of tidelands granted to the City; (e) is not amenable to any Public Trust uses other than revenue generation for the Trust; and (f) is and will be cut off from access to waters of San Francisco Bay by the New Public Trust Easement; (2) the consideration for the sale of the Sale Parcel is the fair market value of such land in light of the title dispute; (3) the Sale 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; (4) the sale is consistent with the findings and declarations made by the California Legislature in Section 2 of SB 815; and (5) for these reasons, the sale is in the best interest of the City and the State;
and, be it

FURTHER RESOLVED, In connection with the Exchange Agreement pursuant to the authority granted under Public Resources Code, Section 6307, the Board of Supervisors finds: (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 Clifford Appraisal, as confirmed by the Blum Appraisal, determined that the New Public Trust Easement, which the City will ultimately acquire as part of the Exchange Agreement, has no independent economic value given that it can only be used for Public Trust purposes; (5) 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; (6) the exchange does not substantially
interfere with public rights of navigation and fishing; (7) 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 (8) for
these reasons, the exchange is in the best interests of the City and the State; and, be it

FURTHER RESOLVED, That Former Custer Avenue qualifies as "exempt surplus land"
under the State Surplus Lands Act and that the transactions contemplated in the Sale
Agreement and Exchange Agreement comply with the City's Surplus Public Lands Ordinance
and State Surplus Lands Act; and, be it

FURTHER RESOLVED, That the Board of Supervisors hereby approves the
transactions contemplated by the Sale Agreement and 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 Memorandum and Port Commission
Resolution No. 22-35 and in such final form as approved by the City Attorney; and, be it

FURTHER RESOLVED, Upon approval by State Lands, the Port's Executive Director
("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 1) determine satisfaction of all conditions
precedent, 2) execute the Sale Agreement and Exchange Agreement with any additions,
amendments or other modifications that the Executive Director or the Director of Property or
their designees, in consultation with the City Attorney, determines are in the best interest of
the City, do not materially increase the obligations or liabilities of the City, and are necessary
or advisable to complete the transactions which the Sale Agreement and Exchange
Agreement contemplate 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 the Director of Property or their designees of the Sale Agreement and Exchange
Agreement; 3) execute, deliver, and accept any and all conveyance deeds, patents, and
instruments contemplated by the Sale Agreement and Exchange Agreement (including without limitation, acceptance from the State of the New Public Trust Easement to be held by the City, with Port as trustee, subject to State enabling legislation); and 4) take any and all other steps (including without limitation, the execution and delivery of any and all certificates, agreements, notices, consents, escrow instructions, closing documents, and other instruments or documents) as the Executive Director or the Director of Property or their designees deem necessary or appropriate in consultation with the City Attorney, in order to consummate the transactions contemplated by the 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 or the Director of Property or their designees of any such documents; and, be it

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

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

/s/
Port of San Francisco
Executive Director

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

October 19, 2022 Budget and Finance Committee - RECOMMENDED

October 25, 2022 Board of Supervisors - ADOPTED

Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 220927

I hereby certify that the foregoing Resolution was ADOPTED on 10/25/2022 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor