

1 [Revising Findings – Contract Approval for Design and Construction of New Fire Station -
2 935 Folsom Street]

3 **Ordinance amending Ordinance 218-10 to revise the findings supporting the waiver of**
4 **Chapter 6 of the Administrative Code for a Conditional Land Disposition and**
5 **Acquisition Agreement between the City and the San Francisco Museum of Modern Art**
6 **for the design and construction of the new fire station to be located at 935 Folsom**
7 **Street, San Francisco, California.**

8 NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strike-through italics Times New Roman*~~.
10 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike through normal~~.

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

12 Section 1. Findings. The Board of Supervisors of the City and County of San
13 Francisco hereby finds and declares as follows:

14 A. On August 12, 2010, the City adopted Ordinance No. 218-10 to authorize the
15 Director of Real Property to enter into the Conditional Land Disposition and Acquisition
16 Agreement between City and the San Francisco Museum of Modern Art and its affiliate
17 (collectively "Museum (the "Agreement")), a copy of which is on file with the Clerk of the Board
18 of Supervisors in File No.100883. The Agreement was fully executed and delivered by the
19 parties on or about October 15, 2010.

20 B. Subject to the satisfaction of express conditions, including completion of
21 environmental review under the California Environmental Quality Act ("CEQA") (California
22 Public Resources Code Sections 21000 *et seq.*), the CEQA Guidelines (California Code of
23 Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31 of the San Francisco
24 Administrative Code, the Agreement provides for the transfer of City's real property known as
25 676 Howard Street (Block 3722, Lot 028) and the City's fire station known as "Fire Station No.

1 1” located on such real property, together with an adjoining section of right-of-way known as
2 Hunt Street also located within Block 3722, in San Francisco, California in exchange for (i) the
3 9,000-square-foot northern portion (the “Replacement Property”) of Museum's parcel of real
4 property located at 935 Folsom Street (Block 3753, Lot 140) in San Francisco, (ii) a new fire
5 station to be constructed by Museum, at Museum’s sole cost and expense (the “Replacement
6 Fire Station”), on the Replacement Property, and (iii) a parking easement over an
7 approximately 1,800-square-foot adjacent portion of the remaining 5,400-square-feet of such
8 parcel (the "Parking Easement").

9 C. Ordinance No. 218-10 also contains the Board's express finding that no City
10 funds will be used to pay any amounts to be expended pursuant to any contract entered into
11 by or on behalf of Museum to build the Replacement Fire Station or improve the Replacement
12 Property for City's use (inclusive of contracts for any materials, equipment, supplies, or
13 services incorporated or utilized in the construction of the Replacement Fire Station and the
14 associated other improvements to be constructed on the Replacement Property and the
15 Parking Easement).

16 D. Ordinance 218-10 also contains the Board's finding that the construction by
17 Museum of the Replacement Fire Station and the associated other improvements to be
18 constructed on the Replacement Property and the Parking Easement, as contemplated by the
19 Agreement, does not constitute a public work project and provides that and all contracts
20 entered into by or on behalf of Museum in connection with architectural, surveying,
21 engineering, legal, project management, construction, contracting, and other consulting
22 services for the Replacement Fire Station shall be exempt from all of the requirements of
23 Chapter 6 of City's Administrative Code Exemption.

24 E. Since Ordinance 218-10 was enacted, the Fire Department has determined that
25 it intends to enhance the architectural design and functionality of the Replacement Fire

1 Station beyond that which the Museum is required to provide pursuant to the Agreement by
2 additional reinforcement and finish to the slab of the apparatus bay, certain functional
3 connections with air compressor units, various flooring, wall, door and window treatments or
4 adjustments, and coordinated installation of telecommunications, data and fire/life safety lines,
5 (collectively, the "Additional Improvements"). Subject to the appropriation of adequate of
6 funds pursuant to the City's annual appropriations for Fire Department facilities improvements,
7 the Fire Department intends to expend City funds for the construction of the Additional
8 Improvements. The cost of construction of the Additional Improvements is estimated at
9 approximately \$400,000 or less if constructed by Museum's contractors as a part of the
10 original construction of the Replacement Fire Station. Such cost is expected to materially rise
11 if implemented as a City construction project after the completion of the initial construction of
12 the Replacement Fire Station because a separate City construction process is expected to
13 entail construction staging, demolition, and remodeling costs, and other construction and
14 administrative costs that should be avoidable if the Additional Improvements are completed
15 during the original construction of the Replacement Fire Station.

16 F. The estimated expenditure of City funds for the Additional Improvements does not
17 alter the Board's determination that the exchange transaction contemplated by the Agreement
18 is beneficial to the City and in its best interests. The estimated cost of the Additional
19 Improvements is expected to constitute less than 7% of the total construction cost of the
20 Replacement Fire Station and less than 5% of the total value of the Replacement Property to
21 be received by the City pursuant to the exchange transaction contemplated by the Agreement.

22 Section 2. Amendment of Section One of Ordinance 218-10. The Board's finding
23 contained in Section 1K of Ordinance 218-10 is hereby amended and restated in its entirety
24 as follows:

25

1 "K. The Board understands, and the Agreement provides that, (i) no City funds will be used
2 to pay any amounts to be expended pursuant to any contract entered into by or on behalf of
3 Museum to build the Replacement Fire Station as described in the Agreement or improve the
4 Replacement Property for City's use (inclusive of contracts for any materials, equipment,
5 supplies, or services incorporated or utilized in the construction of the Replacement Fire
6 Station and the associated other improvements to be constructed on the Replacement
7 Property and the Parking Easement) and (ii) to the extent the fair market value of the Museum
8 Transfer Property and Museum's cost to construct the Replacement Fire Station exceed the
9 fair market value of the City Property, such additional amount shall be deemed a gift to City by
10 Museum and no additional consideration shall be due or payable from City to Museum as a
11 result of such difference in value. Notwithstanding the foregoing, the Board understands that
12 City funds otherwise allocated to the Fire Department as part of the City's annual
13 appropriations process in an amount not to exceed \$400,000 may be expended to enhance
14 the architectural design and functionality of the Replacement Fire Station beyond that which
15 the Museum is obligated to provide pursuant to the Agreement and that it may be most
16 expeditious and cost effective for the City to have such architectural enhancements
17 constructed by Museum's contractors as a part of the initial construction of the Replacement
18 Fire Station."

19 Section 3. Except as specifically modified by this Ordinance, the text of Ordinance
20 218-10 is unchanged.

21 \
22 \
23 \
24 \
25 \

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECOMMENDED:

Director of Property

Fire Chief

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

By: _____
Richard Handel
Deputy City Attorney