

1 [Agreement Regarding the Exchange of Fire Station No. 1 Located at 676 Howard Street and  
2 Portions of Hunt Street for 935 Folsom Street and a Replacement Fire Station]

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4 **Ordinance authorizing the Director of Property to execute a conditional land**  
5 **disposition and acquisition agreement with the San Francisco Museum of Modern Art**  
6 **and its affiliate (collectively, Museum) for the proposed future conveyance by the City**  
7 **and County of San Francisco (City) to Museum of real property located at 676 Howard**  
8 **Street, San Francisco (Fire Station No. 1) and all of that portion of Hunt Street within**  
9 **Block No. 3722, collectively, in exchange for conveyance by Museum to City of a parcel**  
10 **of real property located at 935 Folsom Street, a new fire station to be constructed by or**  
11 **on behalf of Museum on such parcel, and an easement for parking purposes adjacent**  
12 **to such parcel; exempting from the competitive bidding and contract requirements of**  
13 **Chapter 6 of City's Administrative Code all contracts to be entered into by Museum for**  
14 **the design and construction of the new fire station and the improvement of such parcel**  
15 **and parking easement; and making findings, including findings of consistency with the**  
16 **General Plan and Planning Code Section 101.1(b).**

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

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

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

23 A. City owns (i) a fire station known as "Fire Station No. 1" located on City's real  
24 property known as 676 Howard Street (Block 3722, Lot 028) and (ii) an adjoining section of  
25 right-of-way known as Hunt Street also located within Block 3722, in San Francisco, California

1 (the "Hunt Street ROW"), which, together with all of City's interest in any rights, privileges, and  
2 incidental or appurtenant easements, shall be referred to in this Ordinance as the "City  
3 Property." The existing fire station is in need of enhancements to meet current rigorous  
4 standards for essential public safety facilities, and the City's adopted FY 2010-2019 Capital  
5 Plan, reflective of the budget constraints of the City, provides less funding than desired for  
6 such facilities throughout the City to effect immediate physical improvements.

7 B. Museum proposes to design and develop a major expansion of its museum  
8 facility located at 151 Third Street (Block 3722, Lot 78) in San Francisco (the "Museum  
9 Project") onto the adjacent property known as 670 Howard Street (Block 3722, Lot 027, a  
10 property already owned by a Museum affiliate) and the City Property. Museum's desire to  
11 house and display the Doris and Donald Fisher Collection of contemporary art is a significant  
12 motivation for the expansion contemplated by the proposed Museum Project.

13 C. By its Resolution No. 34-09 adopted on January 27, 2009, the Board of  
14 Supervisors acknowledged the magnitude that the exhibition of the Fisher art collection would  
15 have on the City's cultural landscape and the positive impact it would have on tourist revenue  
16 and other key general fund revenue sources, found that the Fisher art collection would be a  
17 valuable public addition to the City's civic well being, and urged the City to evaluate locations  
18 within the City that might suitably house the Fisher art collection.

19 D. To facilitate the proposed Museum Project, Museum proposes to acquire the  
20 City Property in exchange for (i) the 9,000-square-foot northern portion (the "Replacement  
21 Property") of Museum's parcel of real property located at 935 Folsom Street (Block 3753, Lot  
22 140) in San Francisco, (ii) a new fire station to be constructed by Museum, at Museum's sole  
23 cost and expense (the "Replacement Fire Station"), on the Replacement Property, and (iii) a  
24 parking easement over an approximately 1,800-square-foot adjacent portion of the remaining  
25 5,400-square-feet of such parcel (the "Remainder Property").

1 E. Museum and City have negotiated and prepared a proposed Conditional Land  
2 Disposition and Acquisition Agreement (the "Agreement"), a copy of which is on file with the  
3 Clerk of the Board of Supervisors in File No. \_\_\_\_\_, which provides for the exchange of  
4 the Replacement Fire Station, Replacement Property, and the Parking Easement (collectively,  
5 the Museum Transfer Property) for the City Property, subject to the satisfaction of express  
6 conditions, including completion of environmental review under the California Environmental  
7 Quality Act ("CEQA") (California Public Resources Code Sections 21000 *et seq.*), the CEQA  
8 Guidelines (California Code of Regulations, title 14, Sections 15000 *et seq.*), and Chapter 31  
9 of the San Francisco Administrative Code (collectively, "Environmental Review") and the City  
10 making certain environmental findings at the conclusion of and based on the analysis  
11 provided by the Environmental Review. The terms and conditions of such proposed  
12 exchange as contemplated by the Agreement shall be referred to in this Ordinance as the  
13 "Exchange Transaction." The Agreement does not bind City to approving the Museum  
14 Project, the Replacement Fire Station, the vacation of Hunt Street, or any proposed  
15 development of the Remainder Property (the "Remainder Property Project"). Rather, the  
16 Agreement sets forth the terms of the real estate transaction should the conditions imposed,  
17 including such future City approvals following Environmental Review, come to pass.

18 F. On February 25, 2010, the San Francisco Fire Commission approved a Letter of  
19 Intent for Exchange for Fire Department Station No. 1 (the "LOI") between the City, acting  
20 through the Fire Department and the Department of Real Estate, and the Museum. The LOI  
21 contained general terms and conditions substantially equivalent to those included in the  
22 Agreement.

23 G. On or about March 5, 2010, Museum submitted an application to City's Planning  
24 Department for Environmental Review of the Museum Project (Planning Department Case No.  
25 2009.0291E) and the Replacement Fire Station and the Remainder Property Project (Planning

1 Department Case No. 2010.0275E). City has not yet completed Environmental Review of  
2 these projects. The Board of Supervisors intends, and the Agreement specifically states, that  
3 the Agreement is a conditional land acquisition agreement as described in CEQA Guidelines  
4 Section 15004(b)(2)(A) to conditionally designate preferred sites for the Replacement Fire  
5 Station, the Remainder Property Project, and Museum Project and to define the transactional  
6 terms of the proposed exchange. By its terms, the Agreement is conditioned on City's  
7 completion of Environmental Review in compliance with state and local law and City's  
8 discretionary approval of the Replacement Fire Station Project, the Remainder Property  
9 Project, the vacation of Hunt Street and the Museum Project following completion of  
10 Environmental Review. As set forth in more detail in Section 4.1 of the Agreement, City will  
11 review and consider the final Environmental Review documents relating to the Projects before  
12 deciding whether to approve any of the Projects, including, without limitation, any associated  
13 rezoning, Municipal Code or General Plan amendments, and design, demolition, and building  
14 permits, and retains absolute discretion to: (i) require modifications in one or more of the  
15 Projects to mitigate significant adverse environmental impacts, (ii) select feasible alternatives  
16 that avoid significant adverse impacts of one or more of the Projects, (iii) require the  
17 implementation of specific measures to mitigate the significant adverse environmental impacts  
18 of one or more of the Projects, as identified through Environmental Review, (iv) reject all or  
19 part of one or more of the Projects as proposed if the economic and social benefits of the  
20 Project(s) rejected do not outweigh otherwise unavoidable significant adverse impacts of one  
21 or more of the Projects, or (e) approve one or more of the Projects upon a finding that the  
22 economic and social benefits of the Project(s) approved outweigh otherwise unavoidable  
23 significant adverse environmental impacts.

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1 H. Pursuant to a formal appraisal dated December 19, 2009 conducted by an  
2 independent appraisal firm, the City Property has been determined to have a fair market value  
3 of Two Million Forty Thousand Dollars (\$2,040,000).

4 I. Pursuant to a formal appraisal dated June 10, 2010 conducted by an  
5 independent appraisal firm, the Replacement Property and the Parking Easement have been  
6 determined to have a combined fair market value of Two Million Three Hundred Fifty  
7 Thousand Dollars (\$2,350,000).

8 J. Pursuant to the Agreement, Museum is solely responsible for every aspect of  
9 the construction of the Replacement Fire Station and the associated other improvements to  
10 be constructed on the Replacement Property and the Parking Easement and all related  
11 activities. The construction cost of the Replacement Fire Station is expected to exceed \$6  
12 million.

13 K. The Board understands, and the Agreement provides that, (i) no City funds will  
14 be used to pay any amounts to be expended pursuant to any contract entered into by or on  
15 behalf of Museum to build the Replacement Fire Station or improve the Replacement Property  
16 for City's use (inclusive of contracts for any materials, equipment, supplies, or services  
17 incorporated or utilized in the construction of the Replacement Fire Station and the associated  
18 other improvements to be constructed on the Replacement Property and the Parking  
19 Easement) and (ii) to the extent the fair market value of the Museum Transfer Property and  
20 Museum's cost to construct the Replacement Fire Station exceed the fair market value of the  
21 City Property, such additional amount shall be deemed a gift to City by Museum and no  
22 additional consideration shall be due or payable from City to Museum as a result of such  
23 difference in value.

24 L. After completion of Environmental Review and prior to consummation and  
25 closing of the Exchange Transaction, the Agreement contemplates further action by the Board

1 of Supervisors, the Mayor, and other City decisionmakers, including the Planning  
2 Commission, Planning Department, Arts Commission, Department of Public Works, and  
3 Department of Building Inspection, at their respective sole and absolute discretion, to approve  
4 the rezoning of the Replacement Property and the Parking Easement to a P (Public) zoning  
5 designation, demolition of the existing 935 Folsom Street building and construction of the  
6 Replacement Fire Station, rezoning of 676 Howard Street to a C-3-S zoning designation, the  
7 vacation of Hunt Street, demolition of the existing Fire Station No. 1 and construction of the  
8 Museum Project, and any other agreement, instrument, or matter relating to the proposed  
9 transactions that is subject to any such approval as required by applicable law.

10 M. Entering into the Agreement with Museum is appropriate and in City's best  
11 interests under the circumstances set forth in this Ordinance and the Agreement. Such  
12 circumstances include, without limitation, all of the following: (i) the existing fire station was  
13 expected to require renovations to achieve improved seismic performance and meet current  
14 standards for fire station operations; (ii) the location of the proposed Replacement Fire Station  
15 is expected to result in improved response times in the Mission Street corridor, the 6<sup>th</sup> Street  
16 corridor, and Tenderloin community; (iii) the design and construction of the Replacement Fire  
17 Station is expected to result in more efficient and comfortable fire station operations (including  
18 three vehicle bays, compared to only two vehicle bays at the existing fire station); and  
19 compliance with building standards applicable to critical facilities; and (iv) the expansion of the  
20 Museum's facility and the Museum's display of the Fisher art collection will improve the City's  
21 cultural landscape, enhance tourist revenues and other key general fund revenues, and  
22 constitute a valuable public addition to the City's civic well being.

23 N. By letter to the Board of Supervisors dated \_\_\_\_\_, the Planning  
24 Department found that the proposed Agreement was consistent with the City's General Plan  
25 and with Planning Code Section 101.1(b). A copy of said letter is on file with the Clerk of the

1 Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference.

2 The Board of Supervisors finds that the proposed Agreement is consistent with the City's  
3 General Plan and with Planning Code Section 101.1(b) for the reasons set forth in said letter.

4 Section 2. Approval of Agreement. In accordance with the recommendation of the Fire  
5 Chief and the Director of Property, the Board of Supervisors hereby approves the Agreement  
6 and the proposed Exchange Transaction and authorizes and approves the execution by the  
7 Director of Property of the Agreement in substantially the form presented to the Board in City's  
8 name and on its behalf and any other such documents that are necessary or advisable to  
9 effectuate the purpose and intent of this Ordinance, and hereby authorizes the Director of  
10 Real Estate to complete the contemplated Exchange Transaction, the closing of which is  
11 subject to satisfaction of each of the conditions stated in the Agreement, including, without  
12 limitation, City's completion of Environmental Review in compliance with state and local law  
13 and City's discretionary approval of the Replacement Fire Station, the Remainder Property  
14 Project, and Museum Project .

15 Section 3. Exemption from Administrative Code Chapter 6. The Board of Supervisors  
16 hereby finds that the construction by Museum of the Replacement Fire Station and the  
17 associated other improvements to be constructed on the Replacement Property and the  
18 Parking Easement, as contemplated by the Agreement, does not constitute a public work  
19 project and all contracts entered into by or on behalf of Museum in connection with  
20 architectural, surveying, engineering, legal, project management, construction, contracting,  
21 and other consulting services for the Replacement Fire Station shall be exempt from all of the  
22 requirements of Chapter 6 of City's Administrative Code.

23 Section 4. Additions, Amendments, and Modifications. The Board of Supervisors  
24 authorizes the Director of Property to enter into any additions, amendments, or other  
25 modifications to the Agreement and any other documents or instruments in connection with

1 the Agreement that the Director of Property determines are in City's best interests, do not  
2 materially decrease City's benefits with respect to the Exchange Transaction, do not  
3 materially increase the consideration or expense to be paid by City pursuant to the Agreement  
4 or City's obligations or liabilities in connection with the Agreement or the Exchange  
5 Transaction, and are necessary and advisable to complete the Exchange Transaction and  
6 effectuate the purpose and intent of this Ordinance, such determination to be conclusively  
7 evidenced by the execution and delivery by the Director of Property of any such additions,  
8 amendments, or other modifications.

9 Section 5. Approval and Ratification of Prior Actions. All actions prior to the adoption  
10 of this Ordinance by City's officers with respect to the Agreement and the Exchange  
11 Transaction are hereby approved, confirmed, and ratified.

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RECOMMENDED:

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Director of Property

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Fire Chief

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

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By: \_\_\_\_\_

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Richard Handel  
Deputy City Attorney