

1 [Settlement Agreement and Lease Amendment - Forty Niners, Ltd.]

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3 **Ordinance authorizing a settlement agreement and related lease amendment with the**
4 **San Francisco Forty Niners, Ltd. (the 49ers) to settle a claim made by the 49ers on**
5 **June 18, 2010, against the City and County of San Francisco relating to the condition of**
6 **Candlestick Stadium; exempting any new City policy requirements that the City's**
7 **Administrative Code would otherwise require for a material amendment to the lease.**

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

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

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14 (1) On June 18, 2010, the San Francisco Forty Niners, Ltd. ("the 49ers") filed a
15 government claim against the City and County of San Francisco, alleging that the City is in
16 breach of the Candlestick Park Stadium Lease dated as of December 3, 1969 between the
17 City and the 49ers, as amended (the "Lease") based upon the City's alleged failure to
18 maintain and repair the stadium commonly referred to as Candlestick Stadium ("the Stadium")
19 as required under the Lease (the "49ers Claim").

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20 (2) In May 2009, the City's Controller's Office released a report finding that the 49ers
21 owed the City for underpaying rent relating to parking fees that the 49ers charged on property
22 under the Lease, a copy of which is on file with the Clerk of the Board of Supervisors in File
23 No. 110313 (the "City's Claim").

23

24 (3) In settlement of the 49ers' Claim and of the City's Claim (collectively "the Claims"),
25 the parties negotiated a settlement agreement (the "Settlement Agreement") and a related
26 amendment to the Lease (the "Lease Amendment") that include: (1) a \$3 million payment to

1 the 49ers to make improvements to the Stadium; (2) the provision of \$3.4 million in rent
2 credits for further improvements to the Stadium; (3) a rent reduction in the amount of
3 \$3.4 million; (4) an extension of the lease term to May 31, 2016, with an option to terminate
4 the lease early, on May 31, 2015, exercisable by the 49ers; (5) a revision to the remaining
5 extension options under the lease to permit annual extensions to May 31, 2023 exercisable by
6 the 49ers, and providing additional rent credits and rent reductions during each annual
7 extension; (6) changes to the maintenance and repair provisions of the Lease, including new
8 provisions relating to the City's continuing maintenance and future unanticipated capital
9 repairs at the Stadium; (7) a mutual withdrawal of claims, covenant not to sue, and release of
10 existing claims; and (8) the termination of an existing tolling agreement between the City and
11 the 49ers; all as further described in the Settlement Agreement and Lease Amendment.

12 (4) The 49ers and the City understand and agree that as a material part of settlement
13 of the Claims, the Lease Amendment shall not be subject to any new City policy requirements
14 that the City's Administrative Code would otherwise require for a material amendment to the
15 Lease since the date of the last amendment to the Lease.

16 Section 2. The Board of Supervisors authorizes the San Francisco City Attorney's
17 Office to settle the Claims according to the terms set forth herein, and the Board of
18 Supervisors further approves and authorizes the Recreation and Park Commission, the
19 Recreation and Park General Manager, the Controller and the City Attorneys' Office, on behalf
20 of the City, to take any and all steps necessary or appropriate to effectuate the execution,
21 delivery and performance of the Settlement Agreement and the Lease Amendment in
22 substantially the form filed with the Clerk of the Board in File No. 110313, and any
23 additions, amendments or other modifications to the Settlement Agreement and Lease
24 Amendment that the Recreation and Park General Manager determines, in consultation with
25 the City Attorney, are in the best interests of the City and do not materially increase the

1 obligations or liabilities of the City or decrease the benefits to the City, and are necessary or
2 advisable to effectuate the purpose and intent of this Ordinance. Any and all actions taken by
3 City officials consistent with this Ordinance are hereby ratified and approved.

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5 APPROVED AS TO FORM AND
6 RECOMMENDED:

7 DENNIS J. HERRERA
8 City Attorney

RECOMMENDED BY RECREATION AND
PARK COMMISSION
RESOLUTION NO.:
DATE:

9 By: _____
10 CHARLES SULLIVAN
11 Deputy City Attorney

MARGARET MCARTHUR
Government Liaison

12 FUNDS AVAILABLE:

13
14 _____
15 BEN ROSENFELD
16 Controller