

File No. 121130

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date December 3, 2012

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Agreement for Transfer of Airspace Parcel, Successor Agency</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Agreement for Transfer of Airspace Parcel, Museum of Modern Art</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Successor Agency Resolution No. 13-2012</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Motion No. 18486</u> |
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Completed by: Alisa Miller Date November 30, 2012

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Transfer of Airspace Parcel Agreements - 151 Third Street - Successor Agency to the San
2 Francisco Redevelopment Agency and San Francisco Museum of Modern Art]

3 **Resolution approving and authorizing the Director of Real Estate to execute Agreement**
4 **for Transfer of Airspace Parcel within Block No. 3722, Lot No. 078, at 151 Third Street**
5 **from the Successor Agency to the San Francisco Redevelopment Agency to the City**
6 **and County of San Francisco; and Agreement for Transfer of Airspace Parcel from the**
7 **City and County of San Francisco to the San Francisco Museum of Modern Art.**

8
9 WHEREAS, The Museum is embarking on a major expansion of the SFMOMA to better
10 display to the public its growing collections of modern and contemporary art, which expansion
11 involves the construction of a new approximately 200-foot tall building (the "Museum
12 Expansion Project"), that will extend (i) on to three adjacent parcels, including City's real
13 property known as 676 Howard Street (Block 3722, Lot 028) and City's fire station known as
14 "Fire Station No. 1" located on such real property, together with an adjoining section of right-
15 of-way known as Hunt Street also located within Block 3722, in San Francisco, California
16 (collectively, the "City Property"); and (ii) into an airspace parcel above a sloping plane
17 between elevations 109.5 feet above sea level and 165.5 above sea level within a portion of
18 Lot 078, Assessor's Block 3722, located at 151 Third Street and described more particularly in
19 the legal description and property map on file with the Clerk of the Board of Supervisors in File
20 No. 121130 (the "Property" or "Airspace Parcel"); and

21 WHEREAS, On August 12, 2010, in connection with and to facilitate the Museum
22 Expansion Project, City adopted Ordinance No. 218-10 to authorize the Director of Real
23 Estate to enter into the Conditional Land Disposition and Acquisition Agreement between City
24 and the Museum and its affiliate (the "Land Swap Agreement"), a copy of which is on file
25 with the Clerk of the Board of Supervisors in File No. 100883. The Land Swap Agreement

1 was fully executed and delivered by the parties on or about October 15, 2010; and

2 WHEREAS, Subject to the satisfaction of express conditions, the Land Swap
3 Agreement provides for the transfer of the City Property in exchange for (i) the 9,000-square-
4 foot northern portion (the "Replacement Property") of Museum's parcel of real property
5 located at 935 Folsom Street (Block 3753, Lot 140) in San Francisco, (ii) a new fire station
6 (the "Replacement Fire Station") to be constructed by Museum, at Museum's sole cost and
7 expense, on the Replacement Property, and (iii) a parking easement over an approximately
8 1,800-square-foot adjacent portion of the remaining 5,400-square-feet of such parcel; and

9 WHEREAS, By its Resolution No. 34-09 adopted on January 27, 2009, the Board of
10 Supervisors acknowledged the magnitude that the exhibition of the Doris and Donald Fisher
11 Collection of Contemporary Art (the "Fisher Collection") to be displayed in the Museum's new
12 facility contemplated by the Museum Expansion Project would have on City's cultural
13 landscape and the positive impact it would have on tourist revenue and other key general fund
14 revenue sources, found that the Fisher Collection would be a valuable public addition to City's
15 civic well-being, and urged City to evaluate locations within City that might suitably house the
16 Fisher Collection; and

17 WHEREAS, By its adoption of Ordinance No. 218-10, the Board of Supervisors found
18 that entering into the Land Swap Agreement with Museum was appropriate and in City's best
19 interests under the circumstances set forth in that Ordinance and the Land Swap Agreement,
20 including, without limitation, all of the following: (i) the existing fire station was expected to
21 require renovations to achieve improved seismic performance and meet current standards for
22 fire station operations; (ii) the location of the proposed Replacement Fire Station is expected
23 to result in improved response times in the Mission Street corridor, the 6th Street corridor, and
24 Tenderloin community; (iii) the design and construction of the Replacement Fire Station is
25 expected to result in more efficient and comfortable fire station operations (including three

1 vehicle bays, compared to only two vehicle bays at the existing fire station); and compliance
2 with building standards applicable to critical facilities; and (iv) the expansion of the Museum's
3 facility and the Museum's display of the Fisher Collection will improve City's cultural
4 landscape, enhance tourist revenues and other key general fund revenues, and constitute a
5 valuable public addition to City's civic well-being.

6 WHEREAS, Prior to its dissolution on February 1, 2012, the Redevelopment Agency of
7 the City and County of San Francisco, (the "Former Redevelopment Agency") owned the
8 Airspace Parcel; and

9 WHEREAS, On February 1, 2012, pursuant to the California Assembly Bill known as
10 AB 26 and the California Supreme Court's decision and order in the case entitled California
11 Redevelopment Association et al. v. Ana Matosantos, the Former Redevelopment Agency
12 dissolved and, shortly thereafter, all of the Former Redevelopment Agency's non-housing
13 assets, including the Airspace Parcel, were transferred to the Successor Agency to the
14 Redevelopment Agency of the City and County of San Francisco (the "Successor Agency");
15 and

16 WHEREAS, On June 27, 2012, California's Governor approved an additional piece of
17 companion legislation to AB 26 entitled AB 1484, which imposes certain requirements on the
18 successor agencies to redevelopment agencies established by AB 26, including a
19 requirement that suspends certain dispositions of former redevelopment agency property until
20 certain state-imposed requirements are met (Cal. Health & Safety Code § 34191.3). Excluded
21 from such suspension are certain transfers of property to other governmental entities in
22 furtherance of a "governmental purpose" if the oversight board for a successor agency directs
23 the successor agency to transfer the property (Cal. Health & Safety Code § 34181 (a)); and

24 WHEREAS, In order to complete the Museum Expansion Project, the Museum needs
25 to acquire the Successor Agency's Airspace Parcel because the proposed Museum

1 Expansion Project would otherwise encroach into the Airspace Parcel; and

2 WHEREAS, The Successor Agency and City have negotiated and prepared a
3 proposed Agreement for Transfer of Airspace Parcel (the "Successor Agency Transfer
4 Agreement"), a copy of which is on file with the Clerk of the Board of Supervisors in File No.
5 121130, which provides for transfer of the Airspace Parcel to City in compliance with AB 1484
6 and in furtherance of the governmental purposes described therein, including the facilitation of
7 the construction and use of the Replacement Fires Station, the improvement of City's cultural
8 landscape, the enhancement of City revenues, and the valuable public addition to City's civic
9 well-being; and

10 WHEREAS, On October 12, 2012, the Oversight Board of the Successor Agency
11 adopted Resolution No. 13-2012, a copy of which is on file with the Clerk of the Board of
12 Supervisors in File No. 121130, by which the Oversight Board of the Successor Agency
13 approved and authorized the transfer of the Airspace Parcel to City pursuant to the Successor
14 Agency Transfer Agreement; and

15 WHEREAS, Pursuant to a formal appraisal dated March 1, 2012 conducted by an
16 independent appraisal firm, the Airspace Parcel has been determined to have a fair market
17 value of \$0, based on the assumption that the Airspace Parcel was encumbered with a deed
18 restriction that limited its use to museum-related uses; and

19 WHEREAS, Pursuant to the Successor Agency Transfer Agreement, the Successor
20 Agency will transfer the Airspace Parcel to City encumbered with a deed restriction that limits
21 use of the Air Space Parcel to museum-related uses for a consideration of One Dollar with the
22 understanding that City will then transfer the Airspace Parcel to the Museum under the same
23 material terms and conditions as contained in the Successor Agency Transfer Agreement,
24 and subject to the Museum's covenant to restrict use of the Airspace Parcel to museum,
25 cultural, educational, and ancillary uses in accordance with the use restrictions and covenants

1 set forth in the grant deed from City to the Museum, which will conform to the grant deed from
2 the Successor Agency to City; and

3 WHEREAS, City and the Museum have negotiated and prepared a proposed
4 Agreement for Transfer of Airspace Parcel (the "Museum Transfer Agreement"), a copy of
5 which is on file with the Clerk of the Board of Supervisors in File No. 121130, which provides
6 for the transfer of the Airspace Parcel by City to the Museum on the same material terms and
7 conditions as contained in the Successor Agency Transfer Agreement, and subject to the
8 Museum's covenant to restrict use of the Airspace Parcel to museum, cultural, educational,
9 and ancillary uses in accordance with the use restrictions and covenants set forth in the grant
10 deed from City to the Museum, which will conform to the grant deed from the Successor
11 Agency to City; and

12 WHEREAS, Both the transfer of the Airspace Parcel by the Successor Agency to City
13 pursuant to the Successor Agency Transfer Agreement and the transfer of the Airspace
14 Parcel by City to Museum pursuant to the Museum Transfer Agreement (the "Transaction")
15 will coincide with the Museum's closing of the exchange transactions contemplated by the
16 Land Swap Agreement now contemplated to occur in January 2013; and

17 WHEREAS, On November 10, 2011, the Planning Commission certified, by Motion No.
18 18485, the Final Environmental Impact Report for the Museum Expansion Project ("Final
19 EIR"), finding that the Final EIR fully complied with the California Environmental Quality Act
20 ("CEQA") (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines
21 (California Code of Regulations, title 14, Sections 15000 et seq.), and Chapter 31 of the San
22 Francisco Administrative Code. By Motion No. 18486, the Planning Commission adopted
23 CEQA Findings including a statement of overriding consideration, and adopted a Mitigation
24 Monitoring and Reporting Program ("MMRP") for the Museum Expansion Project. On January
25

1 10, 2012, this Board of Supervisors affirmed on appeal, by Motion No. M12-007, the Planning
2 Commission's certification of the Final EIR; and

3 WHEREAS, On January 24, 2012, this Board rezoned the City Property to facilitate the
4 Museum Expansion Project, by Ordinance No. 011-12, and in so doing, incorporated by
5 reference and adopted as its own the CEQA Findings set forth in Planning Commission
6 Motion No. 18486, including the statement of overriding considerations that sets forth further
7 public benefits associated with the Museum Expansion Project, and adopted the MMRP; and

8 WHEREAS, This Board finds that the Transaction is within the scope of the Museum
9 Expansion Project analyzed in the Final EIR. Since the certification of the Final EIR, no
10 changes have occurred with respect to the Museum Expansion Project or the circumstances
11 surrounding the Museum Expansion Project, and no new information has been put forward
12 that would result in new significant environmental impacts not adequately analyzed in the
13 Final EIR, cause a substantial increase in impacts previously identified in the Final EIR, or
14 require additional review under CEQA prior to the execution of this Agreement; now,
15 therefore, be it

16 RESOLVED, That the Board of Supervisors adopts and incorporates by reference as
17 though fully set forth here the CEQA Findings, including the statement of overriding
18 considerations and the MMRP, set forth in Planning Commission Motion No. 18486; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the
20 conveyances contemplated pursuant to the Transaction are in the public interest, approves
21 the Successor Agency Transfer Agreement and the Museum Transfer Agreement and the
22 proposed Transaction, and authorizes and approves the execution by the Director of Real
23 Estate of the Successor Agency Transfer Agreement and the Museum Transfer Agreement in
24 substantially the forms presented to the Board in City's name and on its behalf and any other
25 such documents that are necessary or advisable to effectuate the purpose and intent of this

1 Resolution, and hereby authorizes the Director of Real Estate to complete the contemplated
2 Transaction, the closing of which is subject to satisfaction of each of the conditions stated in
3 the Successor Agency Transfer Agreement and the Museum Transfer Agreement; and, be it

4 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of Real
5 Estate to enter into any additions, amendments, or other modifications to the Successor
6 Agency Transfer Agreement and the Museum Transfer Agreement and any other documents
7 or instruments in connection with the Successor Agency Transfer Agreement and the
8 Museum Transfer Agreement that the Director of Real Estate determines are in City's best
9 interests, do not materially decrease City's benefits with respect to the Transaction, do not
10 materially increase the consideration or expense to be paid by City pursuant to the Successor
11 Agency Transfer Agreement and the Museum Transfer Agreement or City's obligations or
12 liabilities in connection with the Successor Agency Transfer Agreement, the Museum Transfer
13 Agreement, or the Transaction, and are necessary and advisable to complete the Transaction
14 and effectuate the purpose and intent of this Resolution, such determination to be
15 conclusively evidenced by the execution and delivery by the Director of Real Estate of any
16 such additions, amendments, or other modifications; and, be it

17 FURTHER RESOLVED, That all actions prior to the adoption of this Resolution by
18 City's officers with respect to the Successor Agency Transfer Agreement, the Museum
19 Transfer Agreement, or the Transaction are hereby approved, confirmed, and ratified.

20
21 RECOMMENDED:

22
23 
24 _____
25 Director of Real Estate

LEGISLATIVE DIGEST

[Transfer of Airspace Parcel Agreements - 151 Third Street - Successor Agency to the San Francisco Redevelopment Agency and San Francisco Museum of Modern Art]

Resolution approving and authorizing the Director of Real Estate to execute Agreement for Transfer of Airspace Parcel within Block No. 3722, Lot No. 078, at 151 Third Street from the Successor Agency to the San Francisco Redevelopment Agency to the City and County of San Francisco; and Agreement for Transfer of Airspace Parcel from the City and County of San Francisco to the San Francisco Museum of Modern Art.

Existing Law

Chapter 23 of the City's Administrative Code requires Board approval of specified conveyances of real property to or by the City. Pursuant to the proposed resolution, the Board would approve the execution by the City of an Agreement for Transfer of Airspace Parcel to City from the Successor Agency to San Francisco Redevelopment Agency and an Agreement for Transfer of Airspace Parcel by City to the Museum (collectively, the "Agreements").

Background Information

Pursuant to the Agreements, City will acquire from the Successor Agency to San Francisco Redevelopment Agency ("Successor Agency") an airspace parcel within Lot 078, Block 3722 at 151 Third Street adjacent to the existing San Francisco Museum of Modern Art and then transfer such airspace parcel to the Museum to allow the Museum to complete its proposed expansion project as contemplated by the existing Conditional Land Disposition and Acquisition Agreement between City and Museum, which was approved by the Board of Supervisors by its adoption of Ordinance No. 218-10 on August 12, 2010. This transaction is necessitated because the subject airspace parcel is currently owned by the Successor Agency, which is prevented by the recent enactment of California AB 1484 from transferring real property to third parties until certain benchmarks and conditions prescribed by such law are satisfied. An exception to such requirements are transfers to other governmental agencies that are in furtherance of certain governmental purposes.

AGREEMENT FOR TRANSFER OF AIRSPACE PARCEL

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO,

as Transferor,

and

CITY AND COUNTY OF SAN FRANCISCO,

as Transferee,

For the transfer of

an Airspace Parcel above
a sloping plane between elevations 109.5 and 165.5
at 151 Third Street
(Portion of Assessor's Block 3722, Lot 078)
San Francisco, California

December __, 2012

THIS AGREEMENT FOR TRANSFER OF AIRSPACE PARCEL (this "**Agreement**") dated for reference purposes only as of December __, 2012, is by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California ("**Successor Agency**" or "**Transferor**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Transferee**").

RECITALS

A. The Successor Agency became the successor agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (the "**Former Redevelopment Agency**"), when the Former Redevelopment Agency dissolved on February 1, 2012, pursuant to the California Assembly Bill known as AB 26 and the California Supreme Court's decision and order in the case entitled *California Redevelopment Association et al. v. Ana Matosantos*. Shortly thereafter, all of the Former Redevelopment Agency's non-housing assets, including all real property, were transferred to the Successor Agency.

B. As a result, the Successor Agency owns all of that certain real property identified as an airspace parcel above a sloping plane between elevations 109.5 feet and 165.5 feet within a portion of Lot 078, Assessor's Block 3722, located at 151 Third Street and described more particularly in the attached **Exhibit A** (Legal Description) and **Exhibit B** (Property Map) (the "**Property**" or "**Airspace Parcel**"). The Airspace Parcel is located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1, which was duly adopted in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011 (the "**Redevelopment Plan**").

C. The Former Redevelopment Agency originally acquired the Airspace Parcel and the land and airspace beneath it (collectively "**Parcel 3722-B**") with urban renewal funds provided through a federal Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal (the "**HUD Contract**"). Under the HUD Contract, the Former Redevelopment Agency was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949. In 1974, urban renewal funding was phased out and replaced with the Community Development Block Grant ("**CDBG**") program.

D. In 1983, the Former Redevelopment Agency and City executed, with HUD concurrence, the Yerba Buena Center Redevelopment Project Closeout Agreement ("**YBC Closeout Agreement**") whereby the Former Redevelopment Agency agreed to retain Parcel 3722-B (and other parcels identified as "**Project Property**" in Exhibit A to the YBC Closeout Agreement) for disposition, subject to applicable federal law and subject further to restrictions on the use of any proceeds received from the sale or lease of the Project Property (See Section 1(b) & (c) of the YBC Closeout Agreement). The YBC Closeout Agreement also describes the permissible uses of the proceeds (See Exhibit B, "Description of Proposed Project Completion and Economic Development Activities"). In approving the YBC Closeout Agreement, HUD

emphasized that “all future proceeds from the sale or lease of Project land must be treated as program income under the CDBG program.” (See letter date stamped August 15, 1983 from Henry Dishroom, HUD Area Manager, to Dianne Feinstein, Mayor).

E. Accordingly, the Former Redevelopment Agency has held Parcel 3722-B for the governmental purposes described in the YBC Closeout Agreement and the CDBG program (See 24 C.F.R. §§ 570.201 (completion of urban renewal projects under Title I of the Housing Act of 1949) and 24 C.F.R. § 570.800 (pre-1996 federal urban renewal regulations continue to apply to completion of urban renewal projects)) (“**CDBG Program Requirements**”).

F. In 1991, the Former Redevelopment Agency and the San Francisco Museum of Modern Art, a California nonprofit corporation (the “**Museum**”) entered into that certain Disposition and Development Agreement dated as of January 15, 1991 and recorded in the Official Records of the City and County of San Francisco (“**Official Records**”) on January 16, 1991 as Document No. E848701 at Reel F293, Image 408 (“**Original DDA**”), as amended by that certain First Amendment to Disposition and Development Agreement dated as of March 10, 1992 and recorded in the Official Records on March 25, 1992 as Document No. F090282 at Reel F591, Image 318 (“**First Amendment**”), and as further amended by that certain Second Amendment to Disposition and Development Agreement dated as of December 17, 1996 and recorded in the Official Records on May 23, 1997 as Document No. G165545 at Reel G889, Image 467 (which, together with the Original DDA and the First Amendment, shall be referred to as the “**DDA**”).

G. Pursuant to the DDA and the YBC Closeout Agreement, the Agency transferred to the Museum portions of Parcel 3722-B, namely that certain real property referred to therein as the “**EB-2 Museum Site**,” located below the Airspace Parcel for development of a first-class museum known as the San Francisco Museum of Modern Art (the “**SFMOMA**”), which was determined to be an economic development use consistent with the CDBG Program Requirements. At that time, the Agency retained ownership of the Airspace Parcel, which remains subject to the governmental purposes described in the YBC Closeout Agreement and the CDBG Program Requirements. The Museum subsequently constructed the SFMOMA on the EB-2 Museum Site.

H. On June 27, 2012, California's Governor approved an additional piece of companion legislation to AB 26 entitled AB 1484. AB 1484 imposes certain requirements on the successor agencies to redevelopment agencies established by AB 26, including a requirement that suspends certain dispositions of former redevelopment agency property until certain state-imposed requirements are met. Cal. Health & Safety Code § 34191.3. Excluded from such suspension are certain transfers of property to other governmental entities in furtherance of a “governmental purpose” if the oversight board for a successor agency directs the successor agency to transfer the property. Cal. Health & Safety Code § 34181 (a).

I. The Successor Agency now seeks to transfer the Airspace Parcel to City in furtherance of the governmental purpose of completing urban renewal projects pursuant to the YBC Closeout Agreement, the CDBG Program Requirements, and as described below, in compliance with AB 1484. The disposition of the Airspace Parcel is subject to the terms of the YBC Closeout Agreement and the CDBG Program Requirements and thus serves the

governmental purposes applicable to completion of urban renewal projects (i.e., disposition for economic development purposes).

J. The Museum is embarking on a major expansion of the SFMOMA to better display to the public its growing collections of modern and contemporary art, which expansion involves the construction of a new high-rise building that will extend into the Airspace Parcel and onto three adjacent parcels (the "**Museum Expansion Project**"). The Museum needs to acquire the Successor Agency's Airspace Parcel to allow the completion of the proposed Museum Expansion Project.

K. The Museum Expansion Project serves a critical economic development purpose because it will improve City's cultural landscape, enhance City revenues, and constitute a valuable public addition to City's civic well-being.

L. In addition, the Museum Expansion Project fulfills another governmental purpose. The disposition of the Airspace Parcel facilitates the construction and use of a new City fire station, a governmental purpose described in AB 1484, which is part of the Museum Expansion Project. One of the adjacent parcels needed for the Museum Expansion Project is 676 Howard Street, a City-owned parcel that is improved with an obsolete City fire station. City has agreed to transfer the Howard Street property to the Museum, and allow the Museum to demolish the obsolete fire station, to facilitate construction of the Museum Expansion Project. In exchange, the Museum has agreed to build and convey to City a new \$10.0 million fire station at 935 Folsom Street, a parcel of land owned by a Museum affiliate (the "**Replacement Fire Station**"). This "land swap" was formalized in the Conditional Land Disposition and Acquisition Agreement dated October 15, 2010 between City, the Museum, and the Museum affiliate (the "**Land Swap Agreement**"). The Replacement Fire Station is expected to improve response times and streamline operations and will obviate the need for City to seismically upgrade the obsolete fire station at 676 Howard Street, at considerable governmental expense. Under the Land Swap Agreement, conveyance to City of the Replacement Fire Station is contingent upon Museum obtaining a building permit for the Museum Expansion Project, which Museum would not do unless and until it has the right to acquire the Air Space Parcel.

M. The Successor Agency is transferring the Airspace Parcel to City at its appraised value as museum space (See March 1, 2012 appraisal by Clifford Advisory, LLC, that valued the Airspace Parcel at \$0, assuming the Property was encumbered with a deed restriction that limited its use to museum space) (the "**Transaction**"). Although California Health & Safety Code Section 34181(a) states that assets disposition may be accomplished by distribution of income to the taxing entities proportionate to their property tax share, proceeds from the disposition of the Airspace Parcel are not available for distribution to the taxing entities identified in AB 26 and AB 1484 because the federal restrictions on the use of the proceeds described in the YBC Closeout Agreement and the CDBG Program Requirements supersede state law.

N. The Successor Agency is transferring the Airspace Parcel to City with the understanding that City will then transfer the Airspace Parcel to the Museum under the same terms and conditions as contained in this Agreement, and subject to the Museum's covenant to restrict use of the Airspace Parcel to museum, cultural, educational, and ancillary uses in accordance with the use restrictions and covenants set forth in the grant deed from City to the Museum, which will conform to the grant deed from the Successor Agency to City, as set forth

in the attached Exhibit C (“Airspace Parcel Grant Deed”). The Transaction will coincide with the Museum’s closing of the exchange transactions contemplated by the Land Swap Agreement.

O. City has completed its environmental review for the Museum Expansion Project and the transactions contemplated under the Land Swap Agreement pursuant to the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code (collectively, the “Environmental Review”). On November 10, 2011, City’s Planning Commission certified, by Motion No. 18485, the Final Environmental Impact Report for the Museum Expansion Project (“Final EIR”), and by Motion No. 18486, adopted CEQA Findings including a Statement of Overriding Consideration, and adopted a Mitigation Monitoring and Reporting Program (“MMRP”) for the Museum Expansion Project. On January 10, 2012, City’s Board of Supervisors affirmed, by Motion No. M12-007, certification of the Final Environmental Impact Report for the Museum Expansion Project. Since the certification of the Final EIR, no changes have occurred with respect to the Museum Expansion Project or the circumstances surrounding the Museum Expansion, and no new information has been put forward that would result in new significant environmental impacts not adequately analyzed in the Final EIR, cause a substantial increase in impacts previously identified in the Final EIR, or require additional review under CEQA prior to the execution of this Agreement. In authorizing the Successor Agency and City to enter into this Agreement, the Oversight Board of the Successor Agency and the San Francisco Board of Supervisors, respectively, have each adopted and incorporated by reference the CEQA Findings contained in Planning Commission Motion No. 18486 as well as the findings set forth in this paragraph.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Successor Agency and City hereby agree as follows:

ARTICLE 1: TRANSFER OF PROPERTY

1.1 Transfer of Property

Successor Agency agrees to sell, and City agrees to purchase, all Property described in the attached Exhibit A, subject to (a) the terms, covenants, and conditions set forth in this Agreement, (b) the understanding that City will then transfer the Airspace Parcel to the Museum under the same terms and conditions as contained in this Agreement, and subject to the Museum’s covenant to restrict use of the Airspace Parcel to museum, cultural, educational, and ancillary uses in accordance with the use restrictions and covenants set forth in the grant deed from City to the Museum, which will conform to the grant deed from the Successor Agency to City as set forth in Exhibit C, Airspace Parcel Grant Deed, and (c) Section 1.3 below. Pursuant to Section 2.3 of this Agreement, Successor Agency shall convey, and City shall accept, the Property on an “As-Is, With All Faults” basis.

1.2 Purchase Price

Successor Agency and City agree that the full purchase price of the Airspace

Parcel is One Dollar (\$1.00) (“Purchase Price”).

1.3 Use Restrictions and Covenants Upon Conveyance

The Successor Agency requires, and City hereby covenants, that it will include the use restrictions in Sections 1.3 and 1.4 of this Agreement in its purchase and sale agreement and grant deed with the Museum. The Airspace Parcel, and any improvements constructed thereon, shall be used, operated, and maintained in strict accordance with the following provisions of this Section 1.3, and for no other purposes:

(a) As a “**First Class Fine Arts Museum**” which, for the purposes of this Agreement shall mean a museum comparable in quality to the existing SFMOMA and fine arts museums in comparable urban areas in the United States (as defined in the DDA); and

(b) For cultural, educational, and ancillary (i.e., retail and restaurant and/or café uses) uses directly related to SFMOMA’s operations.

Further, the purchase and sale agreement and grant deed with the Museum will provide that the restrictions and covenants of Museum and its successors and assigns may be enforced by City, the Successor Agency, and any of their respective successors and assigns.

1.4 Violation of Use Restrictions After Conveyance

Successor Agency shall transfer the Airspace Parcel to City for the Purchase Price, and City shall accept the Airspace Parcel from Successor Agency for the Purchase Price, subject to the use restrictions outlined above in Section 1.3 and City shall include such use restrictions and covenants in the grant deed from City to the Museum. If, after conveyance, the Museum uses the Airspace Parcel for an Income-Generating Use (as defined below), the Museum shall pay City the then fair market value for the Airspace Parcel. At that time, the fair market value will be based on a City-approved third-party appraisal, which will determine the highest and best use of the Airspace Parcel without restrictions of any kind. City and the Museum shall document the fair market value and the terms of the Museum’s payment in an agreement to be approved by City. City agrees to treat any funds received from the Museum pursuant to this Section 1.4 as CDBG program income as required under the YBC Closeout Agreement. “**Income-Generating Use**” is defined as any income-generating use not directly related to SFMOMA’s operations, including but not limited to:

- (a) residential or commercial condominiums;
- (b) hotel uses;
- (c) retail uses other than those allowed under Section 1.3 above; and
- (d) retail or office space or other income-generating uses used by any third parties.

ARTICLE 2: AS-IS, WITH ALL FAULTS TRANSFER; RELEASE OF SUCCESSOR AGENCY

2.1 City's Independent Investigation of the Property

City represents and warrants to the Successor Agency that City has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through its Agents, including, without limitation, the following matters related to the Property (collectively, the "**Property Conditions**"):

- (a) All matters relating to title including, without limitation, the existence, quality, nature, and adequacy of Successor Agency's interest in the Property and the existence of physically open and legally sufficient access to the Property.
- (b) The condition of title to the Property and any survey matters relating to the Property.
- (c) The zoning and other legal matters concerning the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, resolutions, and private or public covenants, conditions, and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, and building and fire codes..
- (d) The suitability of the Property for City's intended uses.
- (e) The economics and development potential of the Property.
- (f) All other matters of material significance affecting the Property.

Nothing contained in this Section 2.1 shall limit any of the provisions of this Article 2 or relieve City of its obligation to conduct a diligent inquiry hereunder, nor shall any such matters limit any of the provisions of Section 2.4 below. Without reliance on any information provided by Successor Agency, City has determined that the Property is satisfactory to City in all respects.

2.2 Results of Investigations

If the Closing (defined in Section 4.3 below) does not occur for any reason, City shall promptly deliver, or cause to be delivered to the Successor Agency, all copies of any data, surveys, reports, or other documents relating to any testing or other inspection or investigation of the Property performed by City or its Agents.

2.3 As-Is, With All Faults Conveyance

CITY HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE (DEFINED IN SECTION 4.3 BELOW) ON AN "AS-IS, WITH ALL FAULTS" BASIS. THE SUCCESSOR AGENCY AND CITY AGREE THAT THE PROPERTY WILL BE SOLD "AS-IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND CITY IS RELYING SOLELY ON ITS

INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SUCCESSOR AGENCY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS, AND CITY DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY. SUCCESSOR AGENCY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, RESOLUTION OR REGULATION.

2.4 Release of Successor Agency

As part of its agreement to accept the Property in its "As-Is, With All Faults" condition, City, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges Successor Agency and its Agents and their respective heirs, successors, legal representatives, and assigns, to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, legal or administrative proceedings, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with this Agreement and the Property (including without limitation the physical, geological, or environmental condition of the Property, and any federal, state, local, or administrative law, rule, regulation, order, or requirement applicable thereto), except matters arising from Successor Agency's intentional misrepresentation.

2.5 Indemnification

City shall defend, hold harmless, and indemnify the Successor Agency from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature, and description directly or indirectly arising out of or connected with the performance of this Agreement and any of City's operation or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

ARTICLE 3: CONDITIONS PRECEDENT TO CLOSING

3.1 Successor Agency's Conditions Precedent to Closing

The following are conditions precedent to the Successor Agency's obligation to convey the Property to City (each, a "Successor Agency Condition Precedent," and collectively, the "Successor Agency's Conditions Precedent"):

(a) No event of default (or event which, upon the giving of notice or the passage of time or both, shall constitute an event of default) under this Agreement shall exist on the part of City under this Agreement.

(b) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by City under this Agreement.

(c) The Oversight Board of the Successor Agency shall have adopted a resolution directing the Successor Agency to dispose of the Airspace Parcel for a governmental purpose pursuant to the Transaction contemplated under this Agreement, and the State of California's Department of Finance ("DOF") shall not have objected, within the statutory period provided for its review, to the Oversight Board's authorization of the Transaction.

3.2 Failure of Successor Agency's Conditions Precedent

Each Successor Agency Condition Precedent is intended solely for the benefit of the Successor Agency. If any Successor Agency Condition Precedent is not satisfied on or before the Closing Date, the Successor Agency's Executive Director may, at its option, extend the Closing Date or terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder, except for those that expressly survive termination of this Agreement.

3.3 City's Conditions Precedent to Closing

The following are conditions precedent to City's obligations under this Agreement to acquire the Property (each, a "City Condition Precedent," and collectively, the "City's Conditions Precedent"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) under this Agreement shall exist on the part of the Successor Agency under this Agreement.

(b) The Successor Agency shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing.

(c) City's Board of Supervisors shall have enacted a resolution approving and authorizing the Transaction contemplated by this Agreement.

3.4 Failure of City's Conditions Precedent

Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied as provided above by the Closing Date, City's Director of Property may, at its option, extend the Closing Date or terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

ARTICLE 4: TITLE, ESCROW, CLOSING, AND EXPENSES

4.1 Airspace Parcel Permitted Title Exceptions

At Closing, the Successor Agency shall convey all of its right, title, and interest in and to the Airspace Parcel to City by deed in substantially the form of the Airspace Parcel Grant Deed. Title to the Airspace Parcel shall be subject to (i) liens of local real estate taxes and assessments not yet due or payable, (ii) all existing exceptions and encumbrances, whether or not disclosed by a current title report or public records, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Airspace Parcel, (iii) all items of which City has actual or constructive notice or knowledge, (iv) all use restrictions set forth in the Airspace Parcel Grant Deed and this Agreement, and (v) such other title exceptions as are approved by City at its sole discretion and will not affect the value or intended use of the Airspace Parcel. All of the foregoing exceptions to title shall be referred to collectively as the “**Airspace Parcel Permitted Title Exceptions.**”

4.2 Escrow

Within thirty (30) days following the Effective Date (as defined in Section 6.13 below), Successor Agency and City shall open an escrow for the Transaction (“**Escrow**”) with a title company mutually selected by the Successor Agency and City and deposit an original, executed counterpart of this Agreement with the title company. This Agreement shall serve as instructions to the title company as the escrow holder for consummation of the Transaction. The Successor Agency and City agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the title company to comply with the terms of this Agreement and effect Closing; provided, however, in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

4.3 Closing Date

“**Closing**” shall mean the consummation of the Transaction pursuant to the terms and conditions of this Agreement, and the date on which the Closing shall occur shall be City’s designation by at least fifteen (15) days’ written notice to the Successor Agency of a closing date (the “**Closing Date**”). City may extend the designated Closing Date, with written notice to the Successor Agency. If the Closing does not occur on or before the Closing Date, the title company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return each item deposited into Escrow to the party that deposited such item. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

4.4 Deposit of Documents and Funds into Escrow

(a) At or before the Closing, City shall deposit into escrow, or cause to be deposited into escrow, the following items:

(i) any funds City is required to deposit into Escrow in accordance with the Agreement;

- (ii) an original executed Preliminary Change of Ownership Report;
- (iii) a copy of the duly adopted Board of Supervisors' resolution authorizing and approving the conveyance of the Airspace Parcel to City in accordance with this Agreement;
- (iv) an original executed Transfer Tax Affidavit; and
- (v) any other instruments as are reasonably required by the title company or otherwise required to effect Closing in accordance with the terms hereof.

(b) At or before the Closing, the Successor Agency shall deposit into escrow, or cause to be deposited into escrow, the following items:

- (i) the original Airspace Parcel Grant Deed, duly executed and acknowledged by Successor Agency, conveying the Airspace Parcel to City;
- (ii) a copy of the duly adopted Successor Agency's Oversight Board resolution authorizing and approving the conveyance of the Airspace Parcel to City in accordance with this Agreement; and
- (iii) any other instruments as are reasonably required by the Title company or otherwise required to effect Closing in accordance with the terms hereof.

4.5 Title Company Requirements

As of Closing, the title company shall record in the Official Records the Airspace Parcel Grant Deed.

4.6 Expenses

City shall pay any transfer taxes applicable to the sale, personal property taxes, escrow fees, recording charges and any other costs and charges of the escrow for the sale, including, if any, a title insurance policy.

4.7 No Brokers or Finders

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this Transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the Transaction contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with the Successor Agency or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify, protect, defend, and hold harmless the indemnified party from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

ARTICLE 5: DEFAULT AND REMEDIES

5.1 Default

In the event that either party fails to perform such party's obligations hereunder (except as excused by the other party's default), the party claiming default will make written demand for performance. If either party fails to comply with such written demand within thirty (30) days after receipt thereof, the party claiming default will have the option to (a) waive such default, (b) demand specific performance, or (c) terminate this Agreement.

5.2 City's Default; Museum's Cure

Prior to Successor Agency exercising its right to terminate this Agreement because of any default by City and the expiration of any applicable cure period as set forth in Section 5.1 above, Successor Agency shall give written notice of the default ("**Default Notice**") to Museum and afford Museum the opportunity after service of the Default Notice to cure any default by City within thirty (30) days after the receipt of the Default Notice from Successor Agency, or within such longer period of time as may be reasonably required to cure such default provided that Museum commences such cure within 30 days after receipt of the Default Notice from Successor Agency and thereafter diligently prosecutes such cure to completion. The foregoing provisions of this Section 5.2 shall not be construed to impose any personal liability on Museum for any failure to cure, or election not to cure, any default by City.

5.3 Termination

On any termination provided for in this Section, the parties will be discharged from any further obligations and liabilities under this Agreement, except for those that expressly survive the termination of this Agreement.

ARTICLE 6: GENERAL PROVISIONS

6.1 Notices

Any notice, consent, or approval required or permitted to be given under this Agreement shall be in writing shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior, written notice in the manner provided above. The parties' initial addresses are:

If to Successor Agency:	Successor Agency to the Redevelopment Agency of the City and County of San Francisco One South Van Ness Avenue, Fifth Floor San Francisco, CA 94103 Attn: Tiffany Bohee, Executive Director Facsimile: (415) 749-2585 Telephone: (415) 749-2458
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If to City:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94103
Attn: Director of Property
Facsimile: (415) 552-9216
Telephone: (415) 554-9860

With a copy to:

Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Richard Handel
Facsimile: (415) 554-4747
Telephone: (415) 554-6760

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

Every notice given to a party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given and the action or response required, if any; (b) if applicable, the period of time within which the recipient of the notice must respond thereto; (c) if approval is being requested, shall be clearly marked "Request for Approval"; and (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefore.

6.2 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, legal representatives, administrators, and assigns. A party's rights and obligations hereunder shall not be assignable without the prior, written consent of the other party.

6.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Successor Agency and City. The Successor Agency's Executive Director and City's Director of Property shall have the authority to consent to any non-material changes to this Agreement. For purposes hereof, "non-material change" shall mean any change that does not materially reduce the consideration to either party under this Agreement or otherwise materially increase the liabilities or obligations of either party under this Agreement. Material changes to the Agreement shall require approval by City's Board of Supervisors and Mayor, as required by applicable law, and the Successor Agency's Oversight Board.

6.4 Governing Law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California.

6.5 Entire Agreement

This Agreement, together with the exhibits hereto, contain any and all representations, warranties, and covenants made by the Successor Agency and City and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement together with the exhibits hereto.

6.6 Parties and Their Agents

As used herein, the term "Agent" or "Agents" when used with respect to either party shall include the commissioners, members, officers, employees, agents, contractors, and representatives of such party.

6.7 Interpretation of Agreement

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

6.8 Exhibits and Recitals

Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. The Recitals set forth above are true and correct and are incorporated into this Agreement.

6.9 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

6.10 No Merger

The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

6.11 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by the Successor Agency or City.

6.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

6.13 Effective Date

This Agreement shall become effective upon the date the Agreement is fully executed by both parties, after approval by the Successor Agency's Oversight Board and City's Board of Supervisors and the Mayor ("**Effective Date**") The parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

6.14 Relationship of the Parties.

The relationship between the parties hereto is solely that of transferor and transferee of real property.

6.15 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

6.16 Sunshine Ordinance.

Successor Agency understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder are public records subject to public disclosure. Successor Agency hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

6.17 Other City Clauses.

Successor Agency agrees to comply with the provisions specified in the San Francisco Administrative Code, Environmental Code, or City Charter relating to Resource

Efficient City Buildings (E.C. Section 705 as of the Effective Date), Prevailing Wages for Construction (SF City Charter Section A7.204 and A.C. Section 6.24), First Source Hiring (A.C. Chapter 83), and Equal Benefits (A.C. Section 12C).

6.18 Prohibition Against Making Contributions to City.

Successor Agency acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties have duly executed this Agreement as of the respective dates written below.

TRANSFeree:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____
John Updike, Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

TRANSFEROR:

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO, a public body organized and
existing under the laws of the State of
California

By: _____
Tiffany Bohee, Executive Director

APPROVED AS TO FORM:

By: _____

EXHIBIT A

**LEGAL DESCRIPTION
(Airspace Parcel)**

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

NOTE: ALL ELEVATIONS HEREINAFTER MENTIONED REFER TO THE CITY AND COUNTY OF SAN FRANCISCO DATUM.

ALL THAT REAL PROPERTY ABOVE A SLOPED PLANE, THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 185.5 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE AND BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 275 FEET; THENCE AT THE RIGHT ANGLE SOUTHEASTERLY LINE 215.333 FEET TO THE MOST NORTHERLY CORNER OF HUNT STREET, AS HUNT STREET NOW EXISTS, AFTER THE VACATION OF A PORTION THEREOF PURSUANT TO RESOLUTION NOS. 755-79, 599-81, 569-83 AND 912-84, ADOPTED ON AUGUST 6, 1979, JUNE 29, 1981, AUGUST 1, 1983, AND NOVEMBER 26, 1984, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID CORNER BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF THIRD STREET; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID HUNT STREET AND ALONG ITS SOUTHWESTERLY PROLONGATION 275 FEET TO THE NORTHEASTERLY LINE OF THIRD STREET; THENCE NORTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF THIRD STREET 215.333 FEET TO THE POINT OF BEGINNING.

BEGIN A PORTION OF 100 VARA BLOCK NO. 355 AND ALL OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 735-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 6, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

EXCEPTING THEREFROM:

ALL THAT REAL PROPERTY BETWEEN TWO SLOPED PLANES, ONE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 165.5 AND THE OTHER SLOPED PLANE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 70.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 141.0 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 132.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 166.7 FEET, WHICH SPACE IS

BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID SLOPED PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 70.90 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 71.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF MINNA STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 60.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 60.50 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 355 AND A PORTION OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 756-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 8, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

APN: 3722/078 (portion)

EXHIBIT B

**PROPERTY MAP
(Airspace Parcel)**

[Attach Property Map]

EXHIBIT C

FORM OF AIRSPACE PARCEL GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

The undersigned hereby declares this instrument to be
exempt from Recording Fees (CA Govt. Code § 27383)
and Documentary Transfer Tax (CA Rev. & Tax Code
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

Assessor's Parcel No. 3722-078 (portion)

(Space above this line reserved for Recorder's use only)

AIRSPACE PARCEL GRANT DEED

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California ("**Successor Agency**" or "**Transferor**") pursuant to Resolution No. 13-2012, adopted by the Oversight Board of the Successor Agency on October 12, 2012 hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Transferee**"), any and all right, title, and interest the Transferor may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "**Property**" or "**Airspace Parcel**").

THIS AIRSPACE PARCEL GRANT DEED IS MADE UPON AND ACCEPTED SUBJECT TO THE FOLLOWING RESTRICTIONS:

- A. As a material part of the consideration for the sale of the Property, the Successor Agency imposes the following use restrictions upon the Property, and City hereby covenants that it will include the following restrictions and covenants in its purchase and sale agreement and grant deed subsequently conveying the Property to the San Francisco Museum of Modern Art ("**Museum**"):

1. The Property, and any improvements constructed thereon, shall be used, operated, and maintained in strict accordance with the following provisions and for no other purposes:

- (i) As a **“First Class Fine Arts Museum”** which, for the purposes of this Airspace Parcel Grant Deed shall mean a museum comparable in quality to the existing San Francisco Museum of Modern Art (**“SFMOMA”**) and fine arts museums in comparable urban areas in the United States as defined in the Disposition and Development Agreement dated as of January 15, 1991 and recorded in the Official Records of the City and County of San Francisco (**“Official Records”**) on January 16, 1991 as Document No. E848701 at Reel F293, Image 408 (**“Original DDA”**), as amended by that certain First Amendment to Disposition and Development Agreement dated as of March 10, 1992 and recorded in the Official Records on March 25, 1992 as Document No. F090282 at Reel F591, Image 318 (**“First Amendment”**), and as further amended by that certain Second Amendment to Disposition and Development Agreement dated as of December 17, 1996 and recorded in the Official Records on May 23, 1997 as Document No. G165545 at Reel G889, Image 467 (which, together with the Original DDA and the First Amendment, shall be referred to as the **“DDA”**); and
- (ii) For cultural, educational, and ancillary (i.e., retail and restaurant and/or café uses) uses directly related to SFMOMA’s operations.

2. If, after conveyance of the Property from City to the Museum, the Museum uses the Airspace Parcel for an Income-Generating Use (as defined below), the Museum shall pay City the then fair market value for the Airspace Parcel. At that time, the fair market value will be based on a City-approved third-party appraisal, which will determine the highest and best use of the Airspace Parcel without restrictions of any kind. City and the Museum shall document the fair market value and the terms of the Museum’s payment in an agreement to be approved by City. City agrees to treat any funds received from the Museum for the Airspace Parcel as Community Development Block Grant program income as required under the Yerba Buena Center Redevelopment Project Closeout Agreement (1983). **“Income-Generating Use”** is defined as any income-generating use not directly related to SFMOMA’s operations, including but not limited to:

- (i) residential or commercial condominiums;
- (ii) hotel uses;
- (iii) retail uses other than those allowed under Section A. 1. above; and

(iv) retail or office space or other income-generating uses used by any third parties.

3. The restrictions and covenants of Museum and its successors and assigns may be enforced by City, the Successor Agency, and any of their respective successors and assigns.

B. City herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

C. The Successor Agency and City intend that the benefits and burdens of these covenants, agreements, conditions, and restrictions above shall run with the land and that all of the provisions of this Airspace Parcel Grant Deed shall be binding upon and inure to the benefit of the parties and their respective personal representatives, heirs, successors, and assigns. No failure by the Successor Agency to insist upon the strict performance of any obligation of City hereunder or to exercise any right, power, or remedy arising out of a violation of any restrictions herein, irrespective of the length of time for which such violation continues, shall constitute a waiver of such violation or of Successor Agency's right to demand strict compliance with such restriction. City acknowledges that Successor Agency would not have sold the Property unless the Property were burdened by the covenants, agreements, conditions, and restrictions contained herein.

Executed as of this _____ day of _____, 20__.

Authorized by Successor Agency
Oversight Board Resolution adopted....

SUCCESSOR AGENCY TO THE SAN
FRANCISCO REDEVELOPMENT AGENCY,
a public body organized and existing under the
laws of the State of California

By: _____

Its: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Airspace Parcel Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. _____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____ By: _____
Director of Property

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____ (Seal)
State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

**LEGAL DESCRIPTION
(Airspace Parcel)**

All that certain real property situated in the City and County of San Francisco, State of California, described as follows:

NOTE: ALL ELEVATIONS HEREINAFTER MENTIONED REFER TO THE CITY AND COUNTY OF SAN FRANCISCO DATUM.

ALL THAT REAL PROPERTY ABOVE A SLOPED PLANE, THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 185.5 FEET; BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE AND BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 275 FEET; THENCE AT THE RIGHT ANGLE SOUTHEASTERLY LINE 215.333 FEET TO THE MOST NORTHERLY CORNER OF HUNT STREET, AS HUNT STREET NOW EXISTS, AFTER THE VACATION OF A PORTION THEREOF PURSUANT TO RESOLUTION NOS. 755-79, 599-81, 569-83 AND 912-84, ADOPTED ON AUGUST 6, 1979, JUNE 29, 1981, AUGUST 1, 1983, AND NOVEMBER 26, 1984, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID CORNER BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF THIRD STREET; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID HUNT STREET AND ALONG ITS SOUTHWESTERLY PROLONGATION 275 FEET TO THE NORTHEASTERLY LINE OF THIRD STREET; THENCE NORTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF THIRD STREET 215.333 FEET TO THE POINT OF BEGINNING.

BEGIN A PORTION OF 100 VARA BLOCK NO. 355 AND ALL OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 735-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 6, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

EXCEPTING THEREFROM:

ALL THAT REAL PROPERTY BETWEEN TWO SLOPED PLANES, ONE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 165.5 AND THE OTHER SLOPED PLANE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 70.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 141.0 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 132.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 166.7 FEET, WHICH SPACE IS

BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID SLOPED PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 70.90 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 71.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF MINNA STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 60.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 60.50 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 355 AND A PORTION OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 756-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 8, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

APN: 3722/078 (portion)

AGREEMENT FOR TRANSFER OF AIR SPACE PARCEL

by and between

THE CITY AND COUNTY OF SAN FRANCISCO

as Transferor

and

THE SAN FRANCISCO MUSEUM OF MODERN ART

as Transferee

For the transfer of

an Airspace Parcel above a sloping plane between elevations 109.5 and 165.5
at 151 Third Street
(Portion of Assessor's Block 3722, Lot 078)

San Francisco, California

December __, 2012

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- EXHIBIT A – Legal Description of Property
- EXHIBIT B – Form of Quitclaim Deed
- EXHIBIT C – Preliminary Title Report

AGREEMENT FOR TRANSFER OF AIRSPACE PARCEL
(Portion of Assessor's Block 3722, Lot 078)

This AGREEMENT FOR TRANSFER OF AIRSPACE PARCEL (this "**Agreement**") dated as of December __, 2012 for reference purposes, is entered into by and between THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and THE SAN FRANCISCO MUSEUM OF MODERN ART, a California non-profit corporation (the "**Museum**"), with reference to the following facts and circumstances:

RECITALS

A. Pursuant to that certain Agreement for Transfer of Airspace Parcel dated as of December __, 2012 by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California ("**Successor Agency**"), and City, City owns of all of that certain real property identified as an airspace parcel above a sloping plane between elevations 109.5 feet and 165.5 feet within a portion of Lot 078, Assessor's Block 3722, located at 151 Third Street in the City and County of San Francisco, State of California, and described more particularly in the attached **Exhibit A** (Legal Description) (the "**Property**" or "**Airspace Parcel**").

B. The Property is located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1, which was duly adopted in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011.

C. The former San Francisco Redevelopment Agency of the City and County of San Francisco and the Museum entered into that certain Disposition and Development Agreement dated as of January 15, 1991 and recorded in the Official Records of the City and County of San Francisco ("**Official Records**") on January 16, 1991 as Document No. E848701 at Reel F293, Image 408 ("**Original DDA**"), as amended by that certain First Amendment to Disposition and Development Agreement dated as of March 10, 1992 and recorded in the Official Records on March 25, 1992 as Document No. F090282 at Reel F591, Image 318 ("**First Amendment**"), and as further amended by that certain Second Amendment to Disposition and Development Agreement dated as of December 17, 1996 and recorded in the Official Records on May 23, 1997 as Document No. G165545 at Reel G889, Image 467 ("**Second Amendment**," and together with the Original DDA and the First Amendment, the "**DDA**").

D. Pursuant to the DDA, City transferred to the Museum that certain real property referred to therein as the "EB-2 Museum Site," located below the Airspace Parcel for development of a first-class museum known as the San Francisco Museum of Modern Art ("**SFMOMA**"). Since then, Museum constructed and currently operates the SFMOMA, which is widely recognized as a valuable cultural resource that benefits San Francisco. SFMOMA includes, but is not limited to, gallery, auditorium, library, retail, administrative, support, public visitor, conservation, curatorial staff, and art storage space.

E. The Museum is undertaking a major expansion of SFMOMA that involves the construction by Museum of a new high-rise building that will extend onto three adjacent parcels (670 Howard Street, 676 Howard Street, and a portion of Hunt Street) (the "**Museum Expansion Project**"). In connection with the Museum Expansion Project, Museum and its affiliate New Florian, LLC, a California limited liability company ("**Florian**") and City entered into Conditional Land Disposition and Acquisition Agreement dated as of October 15, 2010 (the "**Land Swap Agreement**"), which provides, *inter alia*, for the transfer of City's real property known as 676 Howard Street (Block 3722, Lot 028) and the City's fire station known as "Fire Station No. 1" located on such real property, together with an adjoining section of right-of-way known as Hunt Street also located within Block 3722, in San Francisco, California in exchange for (i) a 9,000-square-foot parcel of real property owned by Florian (the "**Replacement Property**") located at 935 Folsom Street (Block 3753, Lot 140) in San Francisco, (ii) a new fire station to be constructed by Museum, at Museum's sole cost and expense (the "**Replacement Fire Station**"), on the Replacement Property, and (iii) a parking easement on Florian property that is adjacent to the Replacement Property.

F. The parties recognize that the City's acquisition of the Replacement Fire Station and the Museum's expansion contemplated by the Museum Expansion Project both serve important governmental purposes. In approving the Land Swap Agreement and the transactions contemplated thereby, City's Board of Supervisors (the "**BOS**") enacted Ordinance No. 218-10 (as amended by Ordinance No. 31-12, the "**Ordinance**"), which found that City's entering into the Land Swap Agreement with Museum and Florian was appropriate and in City's best interests based upon factors that included the following: (i) the existing fire station was expected to require renovations to achieve improved seismic performance and meet current standards for fire station operations; (ii) the location of the proposed Replacement Fire Station is expected to result in improved response times in the area serviced by the existing fire station; (iii) the design and construction of the Replacement Fire Station is expected to result in more efficient and comfortable fire station operations and compliance with building standards applicable to critical facilities; and (iv) the expansion of the Museum's facility will improve the City's cultural landscape, enhance City's revenues, and constitute a valuable public addition to the City's civic well being. Further, pursuant to the Ordinance, the BOS also found that the transactions contemplated by the Land Swap Agreement are in the City's best financial interest based on its findings that the value of the property to be transferred by City to Museum was independently appraised at Two Million Forty Thousand Dollars (\$2,040,000) while the property to be transferred to City by Museum was independently appraised at Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000), which value will be increased by Museum's improvement of the Replacement Property pursuant to the construction of the Replacement Fire Station, the cost of which the BOS found is expected to exceed Six Million Dollars (\$6,000,000 in construction costs.

G. In order to complete the Museum Expansion Project, the Museum needs to acquire the Airspace Parcel because the proposed Museum expansion will necessarily require construction of a portion of the new Museum facilities contemplated by the Museum Expansion Project within the boundaries of the Airspace Parcel.

F. City wishes to support the Museum Expansion Project by transferring the Property to the Museum for One Dollar (\$1.00) (the “**Transaction**”), subject to the Museum’s covenant to restrict use of the Airspace Parcel to museum, cultural, educational, and ancillary uses in accordance with the use restrictions set forth in the attached **Exhibit B** (Form of Quitclaim Deed) (the “**Airspace Parcel Quitclaim Deed**”). The Transaction will coincide with the closings of the transactions contemplated by the Land Swap Agreement.

G. City has completed its environmental review for the Museum Expansion Project and the transactions contemplated under the Land Swap Agreement pursuant to the California Environmental Quality Act (“**CEQA**”) (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code (collectively, the “**Environmental Review**”). On November 10, 2011, City’s Planning Commission certified, by Motion No. 18485, the Final Environmental Impact Report for the Museum Expansion Project (“**Final EIR**”), and by Motion No. 18486, adopted CEQA Findings including a Statement of Overriding Consideration, and adopted a Mitigation Monitoring and Reporting Program (“**MMRP**”) for the Museum Expansion Project. On January 10, 2012, City’s Board of Supervisors affirmed, by Motion No. M12-007, certification of the Final Environmental Impact Report for the Museum Expansion Project. Since the certification of the Final EIR, no changes have occurred with respect to the Museum Expansion Project or the circumstances surrounding the Museum Expansion, and no new information has been put forward that would result in new significant environmental impacts not adequately analyzed in the Final EIR, cause a substantial increase in impacts previously identified in the Final EIR, or require additional review under CEQA prior to the execution of this Agreement. In authorizing the Successor Agency and City to enter into this Agreement, the Oversight Board of the Successor Agency and the San Francisco Board of Supervisors, respectively, have each adopted and incorporated by reference the CEQA Findings contained in Planning Commission Motion No. 18486 as well as the findings set forth in this paragraph.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and the Museum hereby agree as follows:

ARTICLE 1: TRANSFER OF PROPERTY

1.1 Transfer of Property

City agrees to sell, and the Museum agrees to purchase all Property described in the attached **Exhibit A**, subject to the terms, covenants, and conditions set forth in this Agreement, including the Museum’s covenant to restrict use of the Airspace Parcel to museum, cultural, educational, and ancillary uses as set forth in the Airspace Parcel Quitclaim Deed and Section 1.3 below. Pursuant to Section 2.4 of this Agreement, City shall convey, and the Museum shall accept the Property on an “As-Is, With All Faults” basis.

1.2 Purchase Price

City and the Museum agree that the full purchase price of the Airspace Parcel is One Dollar (\$1.00) ("**Purchase Price**").

1.3 Use Restrictions Upon Conveyance

The Museum hereby covenants that the Airspace Parcel, and any improvements constructed thereon, shall be used, operated, and maintained in strict accordance with the following provisions of this Section 1.3, and for no other purposes:

(a) As a First Class Fine Arts Museum which, for the purposes of this Agreement shall mean a museum comparable in quality to the existing San Francisco Museum of Modern Art and fine arts museums in comparable urban areas in the United States (as defined in the DDA); and

(b) For cultural, educational, and ancillary (i.e., retail and restaurant and/or café uses) uses directly related to SFMOMA's operations.

1.4 Violation of Use Restrictions After Conveyance

City shall transfer the Airspace Parcel to the Museum for the Purchase Price, and the Museum shall accept the Airspace Parcel from City for the Purchase Price, subject to the use restrictions outlined above in Section 1.3. If, after conveyance, the Museum uses the Airspace Parcel for an Income-Generating Use (as defined below), the Museum shall pay City the then fair market value for the Airspace Parcel. At that time, the fair market value will be based on a City-approved third-party appraisal, which will determine the highest and best use of the Airspace Parcel without restrictions of any kind. City and the Museum shall document the fair market value and the terms of the Museum's payment in an agreement to be approved by City. "**Income-Generating Use**" is defined as any income-generating use not directly related to SFMOMA's operations, including but not limited to:

- (a) residential or commercial condominiums;
- (b) hotel uses;
- (c) retail uses other than those allowed under Section 1.3 above; and
- (d) retail or office space or other income-generating uses used by any third parties.

1.5 Enforcement of Use Restrictions and Covenants

The restrictions and covenants of Museum and its successors and assigns set forth in Section 1.3 and Section 1.4 may be enforced by City, the Successor Agency, and any of their respective successors and assigns.

ARTICLE 2: AS-IS, WITH ALL FAULTS TRANSFER; RELEASE OF CITY

2.1 Museum's Independent Investigation of the Property

The Museum represents and warrants to City that the Museum has performed a diligent and thorough inspection and investigation of each and every aspect of the Property, either independently or through its Agents, including, without limitation, the following matters related to the Property (collectively, the "**Property Conditions**"):

- (a) All matters relating to title including, without limitation, the existence, quality, nature, and adequacy of City's interest in the Property and the existence of physically open and legally sufficient access to the Property.
- (b) The condition of title to the Property and any survey matters relating to the Property.
- (c) The zoning and other legal matters concerning the Property, including, without limitation, the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, resolutions, and private or public covenants, conditions, and restrictions, and all governmental and other legal requirements such as taxes, assessments, use permit requirements, and building and fire codes.
- (d) The quality, nature, adequacy, and physical condition of the Property.
- (e) The suitability of the Property for the Museum's intended uses.
- (f) The economics and development potential of the Property.
- (g) All other matters of material significance affecting the Property.

Nothing contained in this Section 2.1 shall limit any of the provisions of this Article 2 or relieve the Museum of its obligation to conduct a diligent inquiry hereunder, nor shall any such matters limit any of the provisions of Section 2.4 below. Without reliance on any information provided by City, the Museum has determined that the Property is satisfactory to the Museum in all respects.

2.2 Entry Onto the Property – Insurance

In connection with any entry by the Museum or its Agents (as defined in Section 7.6 below) onto the Property prior to the Closing Date (Closing and Closing Date are defined in Section 5.6 below), the Museum shall maintain, and shall require that its Agents maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of the Museum and its Agents, arising out of any entry or inspection of the Property in connection with the Transaction, and the Museum shall provide City with evidence of such insurance coverage upon request from City.

2.3 Results of Investigations

If the Closing does not occur for any reason, the Museum shall promptly deliver, or cause to be delivered to City, all copies of any data, surveys, reports, or other documents relating to any testing or other inspection or investigation of the Property performed by the Museum or its Agents.

2.4 As-Is, With All Faults Conveyance

THE MUSEUM HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE ON AN "AS-IS, WITH ALL FAULTS" BASIS. CITY AND THE MUSEUM AGREE THAT THE PROPERTY WILL BE SOLD "AS-IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND THE MUSEUM IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND EXCEPT AS SET FORTH IN SECTION 3.2 OF THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, ITS SUITABILITY FOR THE MUSEUM'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS, AND THE MUSEUM DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, OR OTHER CONDITIONS OF THE PROPERTY, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY STATUTE, RESOLUTION OR REGULATION.

2.5 Release of City

As part of its agreement to accept the Property in its "As-Is, With All Faults" condition, the Museum, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges City and its Agents and their respective heirs, successors, legal representatives, and assigns, to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, legal or administrative proceedings, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with this Agreement and the Property (including without limitation the physical, geological, or environmental condition of the Property, and any federal, state, local, or administrative law, rule, regulation, order, or requirement applicable thereto), except matters arising from City's intentional misrepresentation.

In connection with the foregoing release, the Museum expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, THE MUSEUM SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES MADE ABOVE AND THE FACT THAT THE MUSEUM WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THE ABOVE RELEASES.

INITIALS: MUSEUM'S AUTHORIZED REPRESENTATIVE: _____

2.6 Indemnification

The Museum shall defend, hold harmless, and indemnify City, the former Redevelopment Agency of the City and County of San Francisco, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, and their respective commissioners, members, oversight boards, officers, agents, employees, successors, and assigns of and from all claims, loss, damage, injury, actions, causes of action, and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Agreement and any of the Museum's operation or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Museum

The Museum represents and warrants to and covenants with City as of the Effective Date and as of the Closing Date:

(a) The Museum is an entity duly organized and validly existing under the laws of the State of California and in good standing under the laws of the State of California; this Agreement and all documents executed by the Museum that are to be delivered to City at the Closing (i) are, or at the time of Closing will be, duly authorized, executed, and delivered by the Museum, (ii) are, or at the time of Closing will be, legal, valid, and binding obligations of the Museum, enforceable against the Museum in accordance with their respective terms, and (iii) do not, and at the time of Closing will not, violate any provision of any agreement or judicial order to which the Museum is a party.

(b) The Museum is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code and Museum is not subject to withholding under Section 18662 of the California Revenue and Taxation Code.

(c) The Museum has not been suspended by or prohibited from

contracting with, any federal, state, or local governmental agency. If the Museum has been so suspended or prohibited from contracting with any governmental agency, it shall immediately notify City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension or prohibition may result in the termination or suspension of this Agreement.

For the purposes of this Agreement, the phrase “**Museum’s actual knowledge**” shall mean, at the time of the applicable representation, the actual knowledge of Neal Benezra (Museum Director).

3.2 Representations and Warranties of City

City represents and warrants to and covenants with the Museum as of the Effective Date and as of the Closing Date:

(a) To City’s knowledge, City has received no written notice of any currently outstanding violations of any applicable laws related to the Airspace Parcel.

(b) To City’s knowledge, City has received no written notice of (i) any easements or rights of way that are not of record with respect to the Airspace Parcel, (ii) any disputes with regard to the location of the Airspace Parcel’s boundary, or (iii) any encroachments onto the Airspace Parcel.

(c) To City’s knowledge, City has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Airspace Parcel.

(d) To City’s knowledge, City has not received any written notice of any existing or threatened litigation involving the Airspace Parcel.

(e) To City’s knowledge, City has received no written notice of any presently pending or contemplated proceedings to condemn the Airspace Parcel or any part of it.

(f) To City’s knowledge, this Agreement and all documents executed by City that are to be delivered to Museum at the Closing (i) are, or at the time of Closing will be, duly executed and delivered by City and (ii) do not, and at the time of Closing will not, violate any provision of any agreement or judicial order to which City is a party.

For the purposes of this Section, the phrase “**City’s knowledge**” will be limited to the actual knowledge of City’s Director of Property, without duty of inquiry or investigation into the matter so qualified.

ARTICLE 4: CONDITIONS PRECEDENT TO CLOSING

4.1 City’s Conditions Precedent to Closing

The following are conditions precedent to City’s obligation to convey the Property to the Museum (each, a “**City Condition Precedent**,” and collectively, the “**City’s**

Conditions Precedent²):

(a) No event of default (or event which, upon the giving of notice or the passage of time or both, shall constitute an event of default) under this Agreement shall exist on the part of the Museum under this Agreement, and each of the Museum's representations and warranties under this Agreement shall be true and correct in all material respects.

(b) The Museum shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by the Museum under this Agreement.

(c) The Museum's compliance with all applicable laws with respect to the Transaction.

(d) Adoption by City's Board of Supervisors of a resolution authorizing the Transaction contemplated under this Agreement.

4.2 Failure of City's Conditions Precedent

Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied on or before the Closing Date, City's Director of Real estate may, at its option, extend the Closing Date or terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder, except for those that expressly survive termination of this Agreement.

4.3 Museum's Conditions Precedent to Closing

The following are conditions precedent to the Museum's obligations under this Agreement to acquire the Property (each, a "**Museum Condition Precedent**", and collectively, the "**Museum's Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) under this Agreement shall exist on the part of City under this Agreement and each of City's representations and warranties under this Agreement shall be true and correct in all material respects.

(b) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing.

(c) The Title Company (as defined in Section 5.1) shall be irrevocably committed to issue the Museum Title Policy (as defined in Section 5.4) to the Museum at Closing on payment by the Museum of all required premiums, as set forth in Sections 5.8 and 5.9.

(d) There shall be no pending or threatened (i) condemnation, environmental, or other pending governmental proceedings in respect of the Property that would materially and adversely affect the Museum's intended use thereof or (ii) litigation affecting the Property.

(e) The Museum's acceptance of the Property shall be subject to the Museum's review and acceptance of any and all documents relating to title not previously disclosed and reviewed pursuant to Section 5.2.

4.4 Failure of the Museum's Conditions Precedent

Each Museum Condition Precedent is intended solely for the benefit of the Museum. If any Museum Condition Precedent is not satisfied as provided above by the Closing Date, the Museum may, at its option, extend the Closing Date or terminate this Agreement. Upon any such termination, neither party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

ARTICLE 5: TITLE, ESCROW, CLOSING, AND EXPENSES

5.1 Title Investigation

The Museum represents and warrants to City that, prior to entering into this Agreement, the Museum performed, either independently or through the Museum's Agents a diligent and thorough inspection and investigation of all matters affecting title to the Airspace Parcel, including all documents and matters identified in that certain current preliminary title report for the Airspace Parcel, prepared by Old Republic Title Company ("**Title Company**") under Order No. 0224020898-CB, and dated December 7, 2010 (the "**Airspace Parcel Title Report**"), as set forth in the attached **Exhibit C**.

5.2 Airspace Parcel Permitted Title Exceptions

At Closing, City shall convey all of its right, title, and interest in and to the Airspace Parcel to the Museum by deed in substantially the form of the Airspace Parcel Quitclaim Deed. Title to the Airspace Parcel shall be subject to (i) liens of local real estate taxes and assessments not yet due or payable, (ii) all existing exceptions and encumbrances, whether or not disclosed by the Airspace Parcel Title Report or public records, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Airspace Parcel, (iii) all items of which the Museum has actual or constructive notice or knowledge, (iv) all use restrictions set forth in the Airspace Parcel Quitclaim Deed, and (v) such other exceptions as are approved by the Museum at its sole discretion and will not affect the value or intended use of the Airspace Parcel. All of the foregoing exceptions to title shall be referred to collectively as the "**Airspace Parcel Permitted Title Exceptions**." Without limiting the foregoing, the Museum acknowledges receipt of the Airspace Parcel Title Report and approves all of the exceptions contained therein, which exceptions are deemed to be Airspace Parcel Permitted Title Exceptions.

5.3 Museum's Responsibility for Title Insurance

The Museum understands and agrees that the right, title, and interest in the Property shall not exceed that vested in City, and City is under no obligation to furnish any policy of title insurance in connection with this transfer of Property. City shall not be responsible

for any discrepancies in the parcel area or location of the Property lines or any other matters which an accurate survey or inspection might reveal.

5.4 Museum Title Policy

At Closing, the Museum will receive title insurance from the Title Company insuring good and marketable title, under an ALTA owner's form extended coverage policy in an amount reasonably acceptable to the Museum, subject only to the Airspace Parcel Permitted Title Exceptions and containing such endorsements the Museum may request (the "**Museum Title Policy**"). At the Museum's election, the Museum Title Policy may consist of an update or re-issuance of the Museum's existing title insurance policy covering the Museum's SFMOMA property.

5.5 Escrow

Within thirty (30) days following the Effective Date (as defined in Section 7.16 below), City and the Museum shall open an escrow for the Transaction ("**Escrow**") with the Title Company (or another title company mutually selected by City and the Museum) and deposit an original, executed counterpart of this Agreement with the Title Company. This Agreement shall serve as instructions to the Title Company as the escrow holder for consummation of the Transaction. City and the Museum agree to execute such additional or supplementary instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided, however, in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

5.6 Closing Date

"**Closing**" shall mean the consummation of the Transaction pursuant to the terms and conditions of this Agreement, and the date on which the Closing shall occur shall be the Museum's designation by at least thirty (30) days' written notice to City of a closing date, which may be no earlier than December 15, 2012 and no later than June 1, 2013 (the "**Closing Date**"). The Museum may extend the designated Closing Date, with written notice to City, provided the re-designated Closing Date is no later than June 1, 2013. The Closing Date may not be extended beyond June 1, 2013 without the prior, written approval of City and the Museum, except as otherwise expressly provided for in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return each item deposited into Escrow to the party that deposited such item. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

5.7 Deposit of Documents and Funds into Escrow

(a) At or before the Closing, the Museum shall deposit into escrow, or cause to be deposited into escrow, the following items:

(i) any funds the Museum is required to deposit into Escrow in accordance with the Agreement;

(ii) an original executed Preliminary Change of Ownership Report;

(iii) an original executed Transfer Tax Affidavit; and

(iv) any other instruments as are reasonably required by the Title Company or otherwise required to effect Closing in accordance with the terms hereof.

(b) At or before the Closing, City shall deposit into escrow, or cause to be deposited into escrow, the following items:

(i) the original Airspace Parcel Quitclaim Deed, duly executed and acknowledged by City, conveying the Airspace Parcel to the Museum;

(ii) a copy of the resolution authorizing and approving the conveyance of the Airspace Parcel to the Museum in accordance with this Agreement as duly adopted by City; and

(iii) any other instruments as are reasonably required by the Title Company or otherwise required to effect Closing in accordance with the terms hereof.

5.8 Title Company Requirements

(a) As of Closing, the Title Company shall record in the Official Records the Airspace Parcel Quitclaim Deed.

(b) As of Closing, the Title Company shall issue the Museum Title Policy to the Museum, at the Museum's expense.

5.9 Expenses

The Museum will pay at Closing all premiums for the Museum Title Policy, survey costs, all escrow costs, and recording fees arising out of any aspect of the Transaction. Additionally, the Museum shall pay any transfer tax applicable to its acquisition of the Airspace Parcel.

5.10 No Brokers or Finders

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this Transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the Transaction contemplated by this Agreement. If any person brings a claim for a commission or finder's fee based on any contact, dealings, or communication with the Museum or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify, protect, defend, and hold harmless the indemnified party from any and all costs, damages, claims, liabilities, or expenses (including, without limitation, reasonable attorneys' fees and disbursements) that the indemnified party incurs in defending against the claim. The provisions

of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

ARTICLE 6: DEFAULT AND REMEDIES

6.1 Default

In the event that either party fails to perform such party's obligations hereunder (except as excused by the other party's default), the party claiming default will make written demand for performance. If either party fails to comply with such written demand within thirty (30) days after receipt thereof, the party claiming default will have the option to (a) waive such default, (b) demand specific performance, or (c) terminate this Agreement.

6.2 Termination

On any termination provided for in this Section, the parties will be discharged from any further obligations and liabilities under this Agreement, except for those that expressly survive the termination of this Agreement.

ARTICLE 7: GENERAL PROVISIONS

7.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing shall be in writing and shall be given by (i) hand delivery, against receipt, (ii) reliable next-business-day courier service that provides confirmation of delivery, or (iii) United States registered or certified mail, postage prepaid, return receipt required, to the address(es) set forth below or to such other address as either party may from time to time specify in writing to the other upon five (5) days' prior written notice in the manner provided above. The parties' initial addresses are:

If to Museum: San Francisco Museum of Modern Art
 151 Third Street
 San Francisco, CA 94103
 Attn: Neal Benezra, Director
 Facsimile: (415) 947-1102
 Telephone: (415) 357-4015

With a copy to: Steven L. Vettel
 Farella Braun + Martel LLP
 235 Montgomery Street
 San Francisco, CA 94104
 Facsimile: (415) 954-4480
 Telephone: (415) 954-4902

If to City: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Facsimile: (415) 552-9216
Telephone: (415) 554-9860

With a copy to: Office of the City Attorney
City and County of San Francisco
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Richard Handel
Facsimile: (415) 554-4747
Telephone: (415) 554-6760

A properly addressed notice transmitted by one of the foregoing methods shall be deemed received upon confirmed delivery or rejected delivery. Any fax numbers are provided for convenience of communication only; neither party may give official or binding notice by fax. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a faxed copy of a notice.

Every notice given to a party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given and the action or response required, if any; (b) if applicable, the period of time within which the recipient of the notice must respond thereto; (c) if approval is being requested, shall be clearly marked "Request for Approval"; and (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefore.

7.2 Successors and Assigns

The Museum's rights and obligations hereunder shall not be assignable without City's express, prior, written approval, which City may grant, withhold, or condition at its sole discretion; provided, however, Museum will be permitted to assign its rights and obligations under this Agreement in whole or in part to an entity wholly owned or controlled by Museum, without City's consent. Even if City approves any proposed assignment as described herein, in no event shall the Museum be released of any of its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the Museum and City, and their respective successors, heirs, legal representatives, administrators and assigns.

7.3 Amendments

This Agreement may be amended or modified only by a written instrument signed by the Museum and City. City's Director of Property shall have the authority to consent to any non-material changes to this Agreement. For purposes hereof, "non-material change"

shall mean any change that does not materially reduce the consideration to City under this Agreement or otherwise materially increase the liabilities or obligations of City under this Agreement. Material changes to the Agreement shall require approval by City's Board of Supervisors and Mayor, as required by applicable law.

7.4 Governing Law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. The parties agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California.

7.5 Entire Agreement

This Agreement, together with the exhibits hereto, contain any and all representations, warranties, and covenants made by the Museum and City and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement together with the exhibits hereto.

7.6 Parties and Their Agents

As used herein, the term "Agent" or "Agents" when used with respect to either party shall include the commissioners, members, officers, employees, agents, contractors, and representatives of such party.

7.7 Interpretation of Agreement

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purposes of the parties and this Agreement.

7.8 Exhibits and Recitals

Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. The Recitals set forth above are true and correct and are incorporated into this Agreement.

7.9 Attorneys' Fees

If either party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or

interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. For purposes of this Agreement, the reasonable fees of City's attorneys and the Museum's attorneys shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered.

7.10 Time of Essence

Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

7.11 No Merger

The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled.

7.12 Non-Liability of Parties' Officials, Employees, and Agents

Notwithstanding anything to the contrary in this Agreement, (a) no elective or appointed board, commission, member, officer, employee, or agent of City shall be personally liable to the Museum, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to the Museum, its successors and assigns, or for any obligation of City under this Agreement; and (b) no officer, director, member, shareholder, employee, or agent of the Museum (or of its successors or assigns) shall be personally liable to City, its successors and assigns, in the event of any default or breach by the Museum or for any amount which may become due to City, or its successors and assigns, or for any obligation of the Museum under this Agreement.

7.13 No Joint Venture

The relationship between the Museum and City hereunder is solely that of transferor and transferee. None of the terms or provisions hereof shall be deemed to create a partnership between the Museum and City, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

7.14 No Recording

Neither this Agreement nor any memorandum or short form thereof may be recorded by City or the Museum.

7.15 Counterparts

This Agreement may be executed in any number of counterparts, each of which

shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7.16 Effective Date

This Agreement shall become effective upon the first day (“**Effective Date**”) on which each of the following events has occurred: (i) the parties have duly executed and delivered this Agreement, and (ii) the approval, as required by applicable law, by City’s Board of Supervisors and Mayor, at their sole and absolute discretion, of a resolution authorizing the execution of this Agreement. The parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the “Effective Date” will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, MUSEUM ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OR ORDINANCE OF CITY’S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION OR ORDINANCE, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY’S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT AT THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

7.17 Tropical Hardwoods and Virgin Redwoods.

City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

7.18 Sunshine Ordinance. Museum understands and agrees that under City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder are public records subject to public disclosure. Museum hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

7.19 MacBride Principles - Northern Ireland.

City urges companies doing business in Northern Ireland to move toward resolving

employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges companies to do business with corporations that abide by the MacBride Principles. Museum acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

7.20 Other City Clauses. Museum agrees to comply with the provisions specified in the San Francisco Administrative Code, Environmental Code, or City Charter relating to Resource Efficient City Buildings (E.C. Section 705 as of the Effective Date), Prevailing Wages for Construction (SF City Charter Section A7.204 and A.C. Section 6.24), First Source Hiring (A.C. Chapter 83), and Equal Benefits (A.C. Section 12C).

7.21 Relationship of the Parties.

The relationship between the parties hereto is solely that of transferor and transferee of real property.

7.22 Prohibition Against Making Contributions to City.

Museum acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY:

THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
John Updike
Director of Real Estate

Authorized by City's Board of Supervisors
Resolution No. _____-12
adopted on _____, 2012.

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Richard Handel, Deputy City Attorney

MUSEUM:

SAN FRANCISCO MUSEUM OF MODERN ART, a California non-profit corporation

By: _____
Neal Benezra
Director

CONSENT OF TITLE COMPANY:

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement. Title Company's failure to execute below shall not invalidate the Agreement between City and the Museum.

TITLE COMPANY:

OLD REPUBLIC TITLE COMPANY

By: _____
[name]
[position]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

NOTE: ALL ELEVATIONS HEREINAFTER MENTIONED REFER TO THE CITY AND COUNTY OF SAN FRANCISCO DATUM.

ALL THAT REAL PROPERTY ABOVE A SLOPED PLANE, THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 185.5 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE AND BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 275 FEET; THENCE AT THE RIGHT ANGLE SOUTHEASTERLY LINE 215.333 FEET TO THE MOST NORTHERLY CORNER OF HUNT STREET, AS HUNT STREET NOW EXISTS, AFTER THE VACATION OF A PORTION THEREOF PURSUANT TO RESOLUTION NOS. 755-79, 599-81, 569-83 AND 912-84, ADOPTED ON AUGUST 6, 1979, JUNE 29, 1981, AUGUST 1, 1983, AND NOVEMBER 26, 1984, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID CORNER BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF THIRD STREET; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID HUNT STREET AND ALONG ITS SOUTHWESTERLY PROLONGATION 275 FEET TO THE NORTHEASTERLY LINE OF THIRD STREET; THENCE NORTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF THIRD STREET 215.333 FEET TO THE POINT OF BEGINNING.

BEGIN A PORTION OF 100 VARA BLOCK NO. 355 AND ALL OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 735-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 6, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

EXCEPTING THEREFROM:

ALL THAT REAL PROPERTY BETWEEN TWO SLOPED PLANES, ONE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 165.5 AND THE OTHER SLOPED PLANE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 70.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 141.0 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 132.9 FEET

NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 166.7 FEET, WHICH SPACE IS BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID SLOPED PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 70.90 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 71.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF MINNA STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 60.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 60.50 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 355 AND A PORTION OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 756-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 8, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

APN: 3722/078 (portion)

EXHIBIT B

QUITCLAIM DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

MAIL TAX STATEMENTS TO:

San Francisco Museum of Modern Art
151 Third Street
San Francisco, CA 94105
Attn: Ikuko Satoda, Deputy Director

The undersigned hereby declares this instrument to be exempt from Recording Fees (CA Govt. Code § 27383) and Documentary Transfer Tax (CA Rev. & Tax Code § 11922 and S.F. Bus. & Tax Reg. Code § 1105)

(Space above this line reserved for Recorder's use only)

**QUITCLAIM DEED [WITH RESTRICTIONS
AND EASEMENT RESERVATIONS]
[(Assessor's Parcel No. _____)]**

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), pursuant to Ordinance No. _____, adopted by the Board of Supervisors on _____, 20__ and approved by the Mayor on _____, 20__, hereby RELEASES, REMISES, AND QUITCLAIMS to THE SAN FRANCISCO MUSEUM OF MODERN ART, a California non-profit corporation ("**Museum**"), any and all right, title and interest City may have in and to the real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and made a part hereof (the "**Property**").

THIS QUITCLAIM DEED IS MADE UPON AND ACCEPTED SUBJECT TO THE FOLLOWING RESTRICTIONS:

A. As a material part of the consideration for the sale of the Property, Museum, on behalf of itself and its successors and assigns, its and their tenants and licensees, and all persons claiming by and through them, agrees and covenants with City, its successors, and assigns, and for the benefit of the adjoining City-owned real property described in the attached Exhibit B (the "**City Property**"), that the Property and any improvements constructed thereon, shall be used, operated, and maintained in strict accordance with the following provisions, and for no other purposes:

(i) As a First Class Fine Arts Museum, which, for the purposes of this Quitclaim Deed shall mean a museum comparable in quality to the existing San Francisco Museum of

Modern Art and fine arts museums in comparable urban areas in the United States; and

(ii) For cultural, educational, and ancillary (i.e., retail and restaurant and/or café uses) uses directly related to Museum's operations.

B. If, after conveyance, the Museum uses the Property for an Income-Generating Use (as defined below), the Museum shall pay City the then fair market value for the Property. At that time, the fair market value will be based on a City-approved third-party appraisal, which will determine the highest and best use of the Property without restrictions of any kind. City and the Museum shall then document the fair market value and the terms of the Museum's payment in an agreement to be approved by City. "**Income-Generating Use**" is defined as any income-generating use not directly related to Museum's operations, including but not limited to:

- (i) residential or commercial condominiums;
- (ii) hotel uses;
- (iii) retail uses other than those allowed under Paragraph A above; and
- (iv) retail or office space or other income-generating uses used by any third parties.

Except as limited by the terms hereof, Museum shall have the right to exercise or enjoy any and all rights as owner of the Property that are not inconsistent with the purposes of the restrictions contained herein.

City and Museum intend that the benefits and burdens of all of the covenants, agreements, conditions, and restrictions above shall run with the land and that all of the provisions of this Quitclaim Deed shall be binding upon and inure to the benefit of the parties and their respective personal representatives, heirs, successors, and assigns. No failure by City to insist upon the strict performance of any obligation of Museum hereunder or to exercise any right, power, or remedy arising out of a violation of any restrictions herein, irrespective of the length of time for which such violation continues, shall constitute a waiver of such violation or of City's right to demand strict compliance with such restriction. Museum acknowledges that City would not have been sold the Property unless the Property were burdened by the covenants, agreements, conditions, and restrictions contained herein. Further, Museum acknowledges and covenants that the restrictions and covenants of Museum and its successors and assigns contained in this Quitclaim Deed may be enforced by City, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California ("**Successor Agency**"), and any of their respective successors and assigns

GRANTEE ACKNOWLEDGES AND AGREES THAT ITS BREACH OF THE COVENANT DESCRIBED ABOVE WILL CAUSE THE CITY IRREPARABLE INJURY AND THAT NO ADEQUATE LEGAL REMEDY IS OR WILL BE AVAILABLE TO COMPENSATE CITY FOR SUCH INJURY. ACCORDINGLY, GRANTEE AGREES THAT IN ADDITION TO ANY AND ALL OTHER REMEDIES THAT MAY BE AVAILABLE TO CITY OR SUCCESSOR AGENCY, BOTH CITY AND SUCCESSOR AGENCY SHALL BE ENTITLED TO INJUNCTIVE AND OTHER EQUITABLE RELIEF (INCLUDING, BUT NOT LIMITED TO, PROHIBITORY INJUNCTIVE RELIEF) TO PREVENT A BREACH, OR THREATENED BREACH, BY GRANTEE OF THE COVENANTS CONTAINED

HEREIN.

Initials of Grantee: _____

Executed as of this _____ day of _____, 201_.

CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation

By: _____
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Richard Handel, Deputy City Attorney

DESCRIPTION CHECKED/APPROVED:

By: _____
[NAME]
City Engineer

THE SAN FRANCISCO MUSEUM OF
MODERN ART, a California non-profit
corporation

By: _____
Name: _____
Its: _____

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A TO QUITCLAIM DEED

REAL PROPERTY DESCRIPTION

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

NOTE: ALL ELEVATIONS HEREINAFTER MENTIONED REFER TO THE CITY AND COUNTY OF SAN FRANCISCO DATUM.

ALL THAT REAL PROPERTY ABOVE A SLOPED PLANE, THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 185.5 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE AND BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 275 FEET; THENCE AT THE RIGHT ANGLE SOUTHEASTERLY LINE 215.333 FEET TO THE MOST NORTHERLY CORNER OF HUNT STREET, AS HUNT STREET NOW EXISTS, AFTER THE VACATION OF A PORTION THEREOF PURSUANT TO RESOLUTION NOS. 755-79, 599-81, 569-83 AND 912-84, ADOPTED ON AUGUST 6, 1979, JUNE 29, 1981, AUGUST 1, 1983, AND NOVEMBER 26, 1984, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID CORNER BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF THIRD STREET; THENCE SOUTHEASTERLY ALONG THE NORTHWESTERLY LINE OF SAID HUNT STREET AND ALONG ITS SOUTHWESTERLY PROLONGATION 275 FEET TO THE NORTHEASTERLY LINE OF THIRD STREET; THENCE NORTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF THIRD STREET 215.333 FEET TO THE POINT OF BEGINNING.

BEGIN A PORTION OF 100 VARA BLOCK NO. 355 AND ALL OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 735-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 6, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

EXCEPTING THEREFROM:

ALL THAT REAL PROPERTY BETWEEN TWO SLOPED PLANES, ONE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING THE NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 109.5 FEET AND THE NORTHEASTERLY LINE BOUNDING

SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 275 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 165.5 AND THE OTHER SLOPED PLANE WITH THE SOUTHWESTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 70.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 141.0 FEET AND THE NORTHEASTERLY LINE BOUNDING SAID SLOPED PLANE BEING PERPENDICULARLY DISTANT 132.9 FEET NORTHEASTERLY FROM SAID NORTHEASTERLY LINE OF THIRD STREET AT ELEVATION 166.7 FEET, WHICH SPACE IS BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID SLOPED PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF THIRD STREET WITH THE SOUTHEASTERLY LINE OF MINNA STREET; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MINNA STREET 70.90 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 71.60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF MINNA STREET 62 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 60.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 62 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 60.50 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 355 AND A PORTION OF MASSET PLACE AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF PURSUANT TO RESOLUTION NO. 756-79 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO ON AUGUST 8, 1979, AND APPROVED BY THE MAYOR ON AUGUST 10, 1979, AS AMENDED BY RESOLUTION NO. 599-81, ADOPTED BY SAID BOARD OF SUPERVISORS ON JUNE 29, 1981, AND APPROVED BY THE MAYOR ON JULY 3, 1981, AND AS AMENDED BY RESOLUTION NO. 669-83, ADOPTED BY SAID BOARD OF SUPERVISORS ON AUGUST 1, 1983, AND APPROVED BY THE MAYOR ON AUGUST 4, 1983, AND AS FURTHER AMENDED BY RESOLUTION NO. 912-84, ADOPTED BY SAID BOARD OF SUPERVISORS ON NOVEMBER 26, 1984, AND APPROVED BY THE MAYOR ON DECEMBER 3, 1984.

APN: 3722/078 (portion)

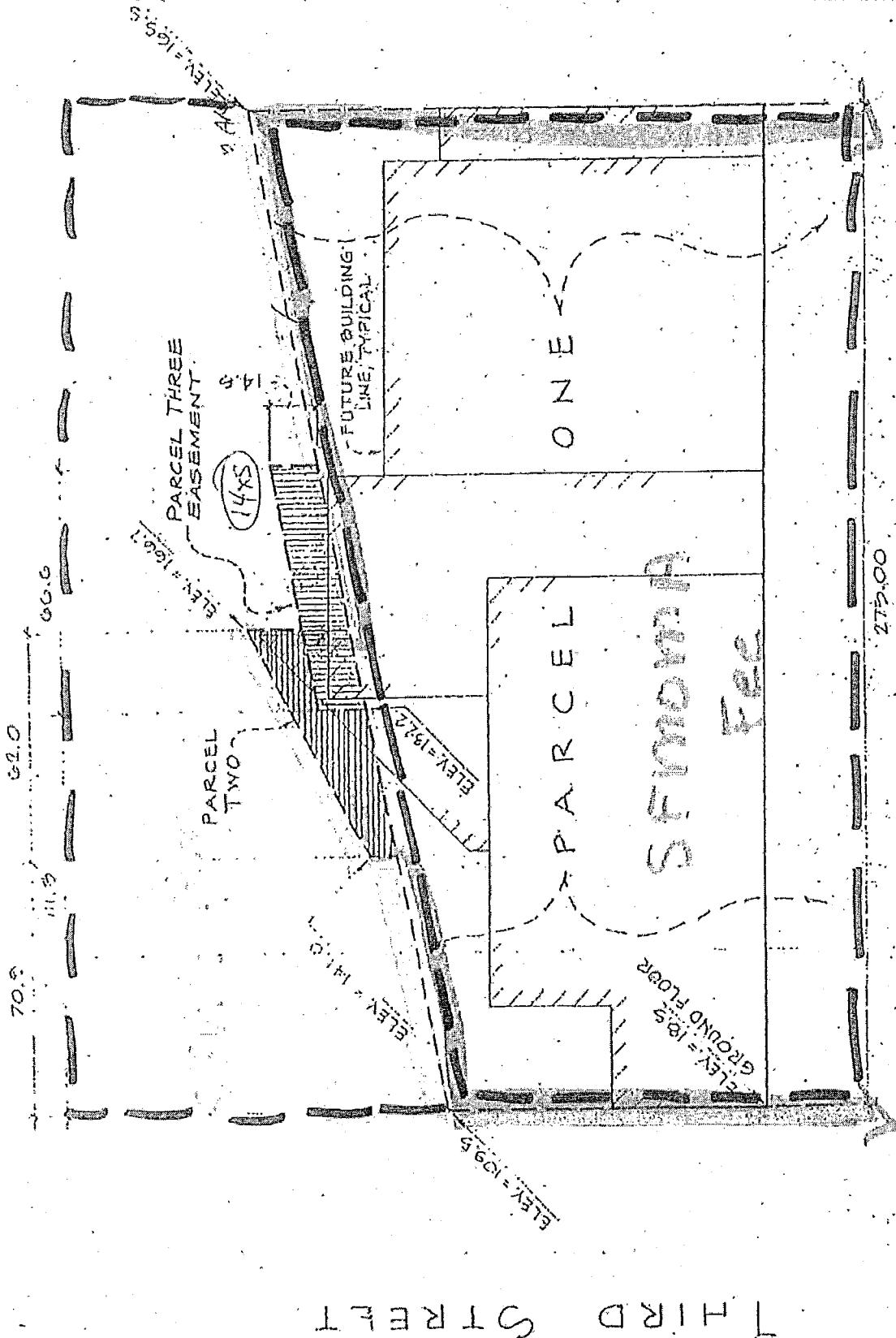
EXHIBIT B TO QUITCLAIM DEED

[ATTACH DESCRIPTION OF CITY REAL PROPERTY (MINNA STREET?)]

EXHIBIT C

PRELIMINARY TITLE REPORT

[Attach Preliminary Title Report]



PROFILE OF CURRENT BLOCK AND LOT DEVELOPMENT OF SFMOMA PROJECT

SOUTH EASTERLY ELEVATION

NO SCALE

CLIFFORD ADVISORY, LLC

SFMOMA Airspace Parcel

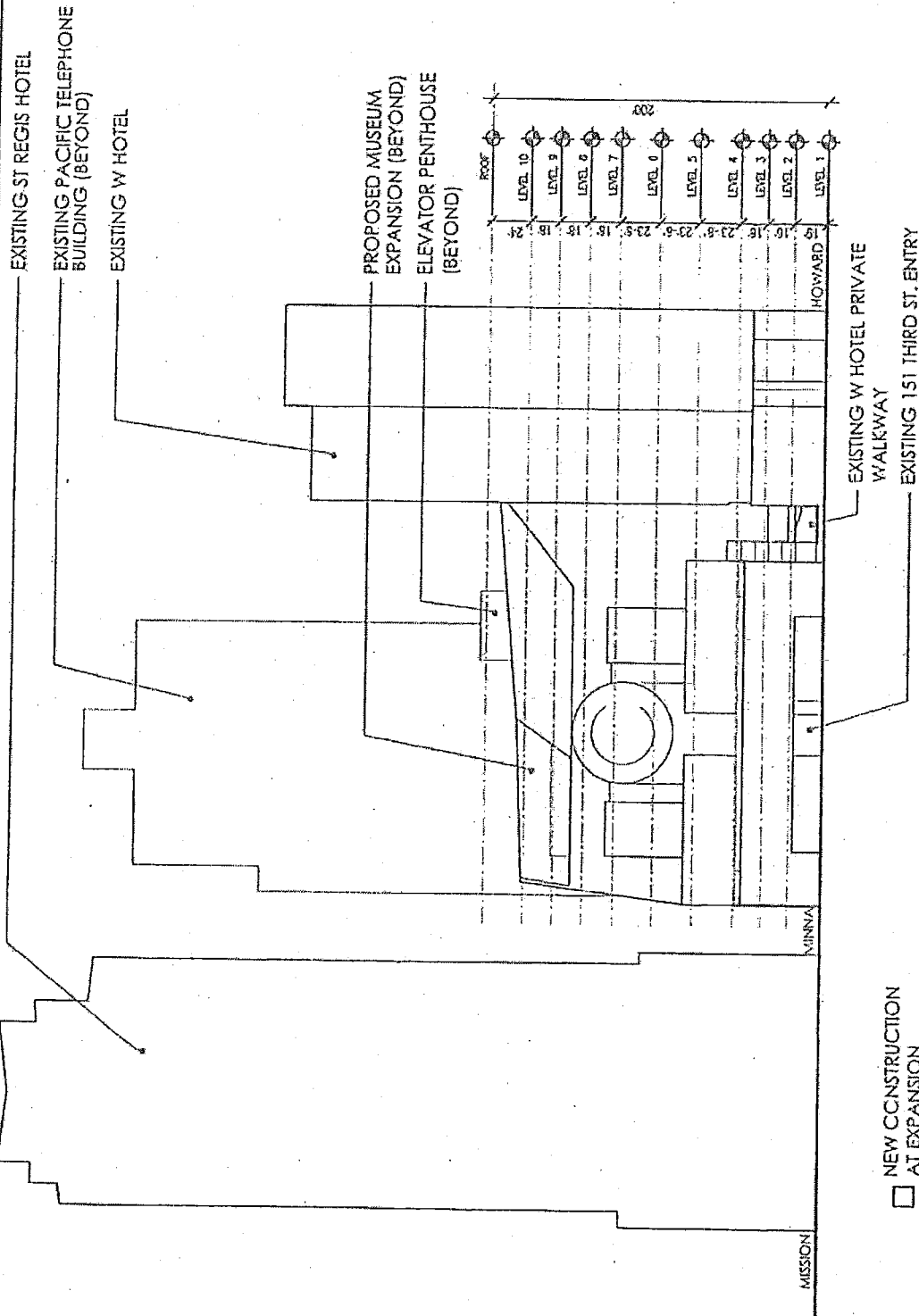


FIGURE 1-13

SFMOMA Expansion and Fire Station Relocation and Housing Project EIR Conceptual Third Street Elevation

NOT TO SCALE

SOURCE: SNOJHETTA, 2011

RESOLUTION NO. 13-2012
Adopted October 12, 2012

RESOLUTION (1) DIRECTING THE SUCCESSOR AGENCY TO TRANSFER, PURSUANT TO SECTION 34181(A) OF THE CALIFORNIA HEALTH & SAFETY CODE, AN AIRSPACE PARCEL LOCATED ABOVE THE SAN FRANCISCO MUSEUM OF MODERN ART AT 151 THIRD STREET FOR THE APPRAISED VALUE AS MUSEUM SPACE OF \$1.00 TO THE CITY AND COUNTY OF SAN FRANCISCO AS AN ASSET USED FOR A GOVERNMENTAL PURPOSE, (2) AUTHORIZING A TRANSFER AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND THE CITY AND COUNTY OF SAN FRANCISCO FOR THE SALE OF THAT ASSET, AND (3) ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA").

WHEREAS, The Redevelopment Agency of the City and County of San Francisco ("Redevelopment Agency") dissolved on February 1, 2012, pursuant to the California Assembly Bill known as AB 26 and the California Supreme Court's decision and order in the case entitled *California Redevelopment Association et al. v. Ana Matosantos*. Upon dissolution, all of the Redevelopment Agency's non-housing assets, including all real property, transferred to the Successor Agency to the Redevelopment Agency ("Successor Agency"); and,

WHEREAS, The Successor Agency owns all of that certain real property identified as an airspace parcel above a sloping plane between elevations 109.5 and 165.5 within a portion of Lot 078, Assessor's Block 3722, located at 151 Third Street (the "Property" or "Airspace Parcel"). The Airspace Parcel is located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1, which was duly adopted in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011 (the "Redevelopment Plan"); and,

WHEREAS, The Redevelopment Agency originally acquired the Airspace Parcel and the land and airspace beneath it (collectively "Parcel 3722-B") with urban renewal funds provided through a federal Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal (the "HUD Contract"). Under the HUD Contract, the Former Redevelopment Agency was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949. In 1974, urban renewal funding was phased out and replaced with the Community Development Block Grant ("CDBG") program; and,

WHEREAS, In 1983, the Redevelopment Agency and the City executed, with the concurrence of the U.S. Department of Housing and Urban Renewal ("HUD"), the Yerba Buena Center Redevelopment Project Closeout Agreement ("YBC Closeout Agreement") whereby the Redevelopment Agency agreed to retain Parcel 3722-B (and other parcels identified as "Project Property" in Exhibit A to the YBC Closeout Agreement) for disposition, subject to applicable federal law and subject further to restrictions on the use of any proceeds received from the sale or lease of

the Project Property (See Section 1(b) & (c) of the YBC Closeout Agreement). The YBC Closeout Agreement also describes the permissible uses of the proceeds (See Exhibit B, "Description of Proposed Project Completion and Economic Development Activities"). In approving the YBC Closeout Agreement, HUD emphasized that "all future proceeds from the sale or lease of Project land must be treated as program income under the CDBG [Community Development Block Grant] program." (See letter date stamped August 15, 1983 from Henry Dishroom, HUD Area Manager, to Dianne Feinstein, Mayor); and,

WHEREAS, The Redevelopment Agency held Parcel 3722-B for the governmental purposes described in the YBC Closeout Agreement and the CDBG program (See 24 C.F.R. §§ 570.201 (completion of urban renewal projects under Title I of the Housing Act of 1949) and 24 C.F.R. § 570.800 (pre-1996 federal urban renewal regulations continue to apply to completion of urban renewal projects)) ("CDBG Program Requirements"); and,

WHEREAS, In 1991, the Redevelopment Agency and the San Francisco Museum of Modern Art, a California nonprofit corporation (the "Museum") entered into that certain Disposition and Development Agreement dated as of January 15, 1991 and recorded in the Official Records of the City and County of San Francisco ("Official Records") on January 16, 1991 as Document No. E848701 at Reel F293, Image 408 ("Original DDA"), as amended by that certain First Amendment to Disposition and Development Agreement dated as of March 10, 1992 and recorded in the Official Records on March 25, 1992 as Document No. F090282 at Reel F591, Image 318 ("First Amendment"), and as further amended by that certain Second Amendment to Disposition and Development Agreement dated as of December 17, 1996 and recorded in the Official Records on May 23, 1997 as Document No. G165545 at Reel G889, Image 467 ("Second Amendment," and together with the Original DDA and the First Amendment, the "DDA"); and,

WHEREAS, Pursuant to the DDA and the YBC Closeout Agreement, the Agency transferred to the Museum portions of Parcel 3722-B, namely that certain real property referred to therein as the "EB-2 Museum Site," located below the Airspace Parcel for development of a first-class museum known as the San Francisco Museum of Modern Art (the "SFMOMA") – an economic development use consistent with the CDBG Program Requirements. At that time, the Agency retained ownership of the Airspace Parcel, which remains subject to the governmental purposes described in the YBC Closeout Agreement and the CDBG Program Requirements. The Museum subsequently constructed the SFMOMA on the EB-2 Museum Site; and,

WHEREAS, On June 27, 2012, California's Governor approved follow-up legislation to AB 26: Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) ("AB 1484"). AB 1484 imposes on successor agencies additional requirements, including a requirement that suspends certain dispositions of former redevelopment agency property until certain state-imposed requirements are met. Cal. Health & Safety Code § 34191.3. Excluded from such suspension are certain transfers of property used for governmental purposes to other governmental entities if the oversight board for a successor agency directs the successor agency to transfer the property. Cal. Health & Safety Code § 34181 (a); and,

WHEREAS, The Successor Agency now seeks to transfer the Airspace Parcel to the City in furtherance of the governmental purpose of completion of urban renewal projects under the YBC Closeout Agreement and the CDBG Program Requirements; and,

WHEREAS, The City will transfer the Airspace Parcel to the Museum, which is embarking on a major expansion of the SFMOMA to better display to the public its growing collections of modern and contemporary art. This expansion involves the construction of a new high-rise building that will extend into the Airspace Parcel and onto three adjacent parcels (the "Museum Expansion Project"). The Museum needs to acquire the Successor Agency's Airspace Parcel to complete the Museum Expansion Project. The Museum Expansion Project serves a critical economic development purpose by improving the City's cultural landscape and enhancing City revenues, and constitute a valuable public addition to the City's civic well-being; and,

WHEREAS, The Museum Expansion Project also fulfills another governmental purpose: the disposition of the Airspace Parcel facilitates the construction and use of a new City fire station, a governmental purpose described in AB 1484, which is part of the Museum Expansion Project. One of the adjacent parcels needed for the Museum Expansion Project is 676 Howard Street, a City-owned parcel that is improved with an obsolete City fire station. The City has agreed to sell the Howard Street property to the Museum, and allow the Museum to demolish the obsolete fire station, to facilitate construction of the Museum Expansion Project. In exchange, the Museum has agreed to build and convey to the City a new \$10.0 million fire station at 935 Folsom Street, a parcel of land owned by a Museum affiliate (the "Replacement Fire Station"). This "land swap" was formalized in the Conditional Land Disposition and Acquisition Agreement dated October 15, 2010 between the City, the Museum, and the Museum affiliate (the "Land Swap Agreement"). The Replacement Fire Station is expected to improve response times and streamline operations and will obviate the need for the City to seismically upgrade the obsolete fire station at 676 Howard Street, at considerable governmental expense. Under the Land Swap Agreement, conveyance to the City of the Replacement Fire Station is contingent upon Museum obtaining a building permit for the Museum Expansion Project, which Museum would not do unless and until it has the right to acquire the Air Space Parcel; and,

WHEREAS, The Successor Agency is transferring the Airspace Parcel to the City at its appraised value as museum space (March 1, 2012 appraisal by Clifford Advisory, LLC, values the Airspace Parcel at \$1.00, assuming the Property is encumbered with a deed restriction that limited its use to museum space) (the "Transfer Agreement"). Although Section 34181(a) of the California Health & Safety Code states that assets disposition may be accomplished by distribution of income to the taxing entities in proportionate to their property tax share, proceeds from the disposition of the Airspace Parcel are not available for distribution to the taxing entities identified in AB 26 and AB 1484 because the federal restrictions on the use of the proceeds described in the YBC Closeout Agreement and the CDBG Program Requirements supersede the state law; and,

WHEREAS, The Successor Agency is transferring the Airspace Parcel to the City with the understanding that the City will then transfer the Airspace Parcel to the Museum under the same use restrictions contained in the Transfer Agreement, and subject to the Museum's covenant to restrict use of the Airspace Parcel to museum,

cultural, educational, and ancillary uses in accordance with the use restrictions and covenants set forth in the grant deed from the City to the Museum; and,

WHEREAS, The City has completed its environmental review for the Museum Expansion Project and the transactions contemplated under the Land Swap Agreement pursuant to the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code (collectively, the "Environmental Review"). On November 10, 2011, the City Planning Commission certified, by Motion No. 18485, the Final Environmental Impact Report for the Museum Expansion Project (Final EIR), and by Motion No. 18486, adopted CEQA Findings including a Statement of Overriding Consideration, and adopted a Mitigation Monitoring and Reporting Program (MMRP) for the Museum Expansion Project. On January 10, 2012, the City Board of Supervisors affirmed, by Motion No. M12-007, certification of the Final Environmental Impact Report for the Museum Expansion Project. The San Francisco Planning Department is the custodian of record for the Museum Expansion Project's environmental review, located in the File for Case Nos. 2009.0291E and 2010.0275E, at 1650 Mission Street, Fourth Floor, San Francisco, California. "The Final EIR, entitled "SFMOMA Expansion/Fire Station Relocation and Housing Project," can be found on the San Francisco Planning Department's webpage at <http://www.sf-planning.org/index.aspx?page=1828>;" and,

WHEREAS, The City, through the Mayor's Office of Housing, as a Responsible Entity under the National Environmental Policy Act ("NEPA"), 42 U.S.C. Section 4321 *et seq.*, has determined that the transference and sale of the Airspace Parcel to the City is categorically excluded from further environmental review under NEPA; and,

WHEREAS, Successor Agency staff, having consulted with the City Attorney's Office, recommends that the Oversight Board approve the transfer of assets for a governmental purpose pursuant to Section 34181(a) of the California Health & Safety Code and authorize a Transfer Agreement with the City; now, therefore, be it

RESOLVED, That this Oversight Board adopts as its own the CEQA Findings, including the Statement of Overriding Consideration and MMRP found in Planning Commission Motion No. 18486, attached hereto as Exhibit A; and be it further,

RESOLVED, That this Oversight Board finds that no changes have occurred with respect to the Museum Expansion Project or the circumstances surrounding the Museum Expansion, and no new information has been put forward that would result in new significant environmental impacts or cause a substantial increase in previously identified significant environmental impacts that have not been adequately analyzed in the Final EIR for the Museum Expansion Project or that would require additional review under CEQA prior to the transfer of the Airspace Parcel; and be it further,

RESOLVED, That this Oversight Board directs the Successor Agency to transfer the Airspace Parcel to the City for the above-described governmental purposes under Section 34181(a) of the California Health & Safety Code and authorizes the Executive Director to execute a Transfer Agreement with the City in substantially the form of the agreement on file with the Secretary of the Oversight Board; provided the

Executive Director may make any modifications to the agreement that the Executive Director determines are in the Successor Agency's best interest, do not materially decrease the Successor Agency's benefit with respect to the transfer, do not materially increase the Successor Agency's obligations or liabilities in connection with the agreement, and are consistent with Section 34181(a) of the California Health and Safety Code, such determination to be conclusively evidenced by execution and delivery by the Executive Director of any such modification; and be it further,

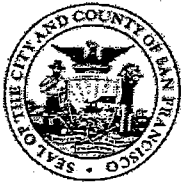
RESOLVED, That this Oversight Board authorizes the Successor Agency to take such actions as may be necessary or appropriate, in consultation with the City Attorney, to effectuate the purpose and intent of this resolution.

Exhibit A: Planning Commission Motion No. 18486 CEQA Findings

I hereby certify that the forgoing resolution was adopted by the Oversight Board at its meeting of October 12, 2012.

Natasha Jones

Board Secretary



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.5378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion 18486 CEQA Findings

HEARING DATE: NOVEMBER 10, 2011

Date: November 3, 2011
Case No.: 2009.0291EMRZ; 2010.0275EMRZ
Project Address: 151 THIRD STREET; 670-676 HOWARD STREET;
935 FOLSOM STREET
Zoning: 151 Third Street:
C-3-O (Downtown, Office)
500-I Height and Bulk District
670 Howard Street:
C-3-S (Downtown, Support)
320-I Height and Bulk District
676 Howard Street:
P (Public)
320-I Height and Bulk District
935 Folsom Street:
MUR (Mixed Use-Residential)
45-X/85-X Height and Bulk District
SOMA Youth and Family Special Use District
Block/Lot: 676 Howard Street: 3722/028; 935 Folsom Street: 3753/140
Project Sponsor: Greg Johnson
San Francisco Museum of Modern Art
151 Third Street
San Francisco, CA 94103
Staff Contact: Kevin Guy - (415) 558-6163
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Recommendation: Adopt Findings

ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, INCLUDING FINDINGS REJECTING ALTERNATIVES AS INFEASIBLE, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING MITIGATION, MONITORING, AND REPORTING PROGRAMS, RELATING TO THE EXPANSION OF THE EXISTING SAN FRANCISCO MUSEUM OF MODERN ART LOCATED AT 151 THIRD

STREET (ASSESSOR BLOCK 3722, LOT 78) AND RELOCATION OF THE EXISTING FIRE STATION NO. 1 FROM ITS EXISTING 676 HOWARD STREET LOCATION (ASSESSOR'S BLOCK 3722, LOT 27) TO 935 FOLSOM STREET (ASSESSOR'S BLOCK 3753, LOT 140), AS WELL AS THE CONSTRUCTION OF A FUTURE RESIDENTIAL BUILDING CONTAINING UP TO 13 RESIDENTIAL UNITS ON THE SOUTHERLY PORTION OF THE 935 FOLSOM STREET SITE. THE 151 THIRD STREET SITE IS LOCATED IN A C-3-O (DOWNTOWN OFFICE) USE DISTRICT AND A 500-I HEIGHT AND BULK DISTRICT. THE 670 HOWARD STREET SITE IS LOCATED IN A C-3-S (DOWNTOWN SUPPORT) USE DISTRICT AND A 320-I HEIGHT AND BULK DISTRICT. THE 676 HOWARD STREET SITE IS LOCATED IN A P (PUBLIC) DISTRICT AND A 320-I HEIGHT AND BULK DISTRICT. THE 935 FOLSOM STREET SITE IS LOCATED IN A MUR (MIXED-USE RESIDENTIAL) DISTRICT AND A 85-X/45-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 9, 2009, Joel Roos, acting on behalf of the San Francisco Museum of Modern Art (SFMOMA, "Project Sponsor"), submitted an Environmental Evaluation Application with the Planning Department ("Department"), Case No. 2009.0291E, in connection with a project to demolish the existing 7,620-square-foot, 4-story-over-basement building at 670 Howard Street (Assessor's Block 3722, Lot 027), demolish the existing 4,400-square-foot, two-story Fire Station No. 1 at 676 Howard Street, and vacate a 115-by-30-foot land-locked portion of Hunt Street located between 151 Third and 670 and 676 Howard Street, in order to accommodate an expansion of SFMOMA, measuring approximately 230,000 square feet and reaching a height of approximately 200 feet, located at the rear of the existing SFMOMA building located at 151 Third Street. On March 24, 2011, Joel Roos, acting on behalf of the Project Sponsor, submitted an Environmental Evaluation Application with the Department, Case No. 2010.0275E, in connection with a project to demolish an existing building at 935 Folsom Street (Assessor's Block 3753, Lot 140), subdivide the property, and construct a fire station, measuring approximately 15,000 square feet and reaching a height of approximately 34 feet on the northern portion of the site, and construct a future residential containing up to 13 dwelling units, reaching a height of approximately 43 feet, on the southern portion of the site (collectively, "Project").

The Department issued a Notice of Preparation of Environmental Review on October 25, 2010 to owners of properties within 300 feet, adjacent tenants, and other potentially interested parties.

On July 12, 2010, the Project Sponsor submitted a request for a General Plan Referral, Case No. 2009.0291R, in association with a Conditional Land Disposition and Acquisition Agreement between SFMOMA and the City and County of San Francisco to convey the property located at 676 Howard Street (Fire Station No. 1) and the Hunt Street right-of-way within Block 3722 to SFMOMA, in exchange for conveyance by SFMOMA to the City and County of San Francisco of the property located at 935 Folsom Street and a new fire station to be constructed by or on behalf of SFMOMA. On July 13, 2010, the Department issued a determination finding that the actions described in the Conditional Land Disposition and Acquisition Agreement are consistent with the objectives and policies of the General Plan and the Priority Policies of Planning Code Section ("Section") 101.1.

On February 22, 2011, the Project Sponsor submitted a request for review of a proposed development on the Project Site exceeding 40 feet in height, pursuant to Section 295, analyzing the potential shadow impacts of the proposed expansion of SFMOMA to properties under the jurisdiction of the Department of Recreation and Parks (Case No. 2009.0291K). Department staff prepared a shadow fan depicting the potential shadow cast by the development and concluded that the Project would have no impact to properties subject to Section 295.

On March 23, 2011, the Project Sponsor applied for a Planning Code Section ("Section") 309 Determination of Compliance and Request for Exceptions, Application No. 2009.0291X, for the expansion of SFMOMA.

On August 26, 2011, the Project Sponsor applied for a General Plan Referral (Application Nos. 2009.0291R and 2010.0275R), for the vacation of Hunt Street, subdivision of 935 Folsom Street, and construction of a new fire station on the northerly portion of 935 Folsom Street.

On October 4, 2011, the Board of Supervisors initiated a rezoning to amend Sectional Map ZN01 of the Zoning Maps of the San Francisco Planning Code to change the use classification of 676 Howard Street from Public (P) to Downtown—Support District (C-3-S) and a portion of 935 Folsom Street from Mixed Use—Residential (MUR) to Public (P) (Board of Supervisors File No. 111080, Case Nos. 2009.0291Z and 2010.0275Z).

On October 20, 2011, the Planning Commission ("Commission") initiated a General Plan Amendment to amend Map 2 of the Community Facilities Element of the San Francisco General Plan to delete the reference to 676 Howard Street as a fire facility and add a reference to 935 Folsom Street as a fire facility (Resolution R-18463, Case Nos. 2009.0291M and 2010.0275M).

On July 11, 2011, the Department published a Draft Environmental Impact Report (EIR) for public review (Case Nos. 2009.0291E and 2010.0275E). The Draft EIR was available for public comment until August 25, 2011. On August 11, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to solicit comments regarding the Draft EIR. On October 27, 2011, the Department published a Comments and Responses document, responding to comments made regarding the Draft EIR prepared for the Project.

On October 25, 2011, the Board of Supervisors approved a motion urging the Commission to review and consider the above-referenced General Plan Amendment to Map 2 of the Community Facilities Element of the General Plan (Board of Supervisors File No. 111121, Case Nos. 2009.0291M and 2010.0275M).

On November 10, 2011, the Commission reviewed and considered the Final EIR and found that the contents of said report and the procedures through which the Final EIR was prepared, publicized, and reviewed complied with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), 14 California Code of Regulations Sections 15000 et seq. ("the CEQA Guidelines"), and Chapter 31 of the San Francisco Administrative Code ("Chapter 31").

The Commission found the Final EIR was adequate, accurate and objective, reflected the independent analysis and judgment of the Department and the Commission, and that the summary of comments and responses contained no significant revisions to the Draft EIR, and approved the Final EIR for the Project in compliance with CEQA, the CEQA Guidelines and Chapter 31.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. Case Nos. 2009.0291E and 2010.0275E, at 1650 Mission Street, Fourth Floor, San Francisco, California.

Department staff prepared Mitigation Monitoring and Reporting programs ("MMRP's") for the SFMOMA Expansion Project and the Fire Station Relocation and Housing Project, and these materials were made available to the public and this Commission for this Commission's review, consideration and action.

On November 10, 2011, the Commission adopted Resolution No. 18488, recommending that the Board of Supervisors approve the General Plan Amendment to amend Map 2 of the Community Facilities Element of the San Francisco General Plan to delete the reference to 676 Howard Street as a fire facility and add a reference to 935 Folsom Street as a fire facility.

On November 10, 2011, the Commission adopted Resolution No. 18489, recommending that the Board of Supervisors approve the rezoning to amend Sectional Map ZN01 of the Zoning Maps of the San Francisco Planning Code to change the use classification of 676 Howard Street from Public (P) to Downtown—Support District (C-3-S) and a portion of 935 Folsom Street from Mixed Use—Residential (MUR) to Public (P).

On November 10, 2011, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Case Nos. 2009.0291R and 2010.0275R. The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, the Planning Department staff, and other interested parties.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby adopts findings under the California Environmental Quality Act, including rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations, and adopting Mitigation, Monitoring, and Reporting Programs attached as Exhibits A and B, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

In determining to approve the San Francisco Museum of Modern Art (SFMOMA) Expansion / Fire Station Relocation and Housing Projects ("Projects") described in Section I, Project Description below, the San Francisco Planning Commission ("Commission") makes and adopts the following findings of fact and decisions regarding mitigation measures and alternatives, and adopts the statement of overriding considerations, based on substantial evidence in the whole record of this proceeding and under the California Environmental Quality Act ("CEQA"), California Public Resources Code Sections 21000 et seq., particularly Sections 21081 and 21081.5, the Guidelines for Implementation of CEQA ("CEQA Guidelines"), 14 California Code of Regulations Sections 15000 et seq., particularly Sections 15091 through 15093, and Chapter 31 of the San Francisco Administration Code.

This document is organized as follows:

Section I provides a description of the Projects proposed for adoption, the environmental review process for the Project, the approval actions to be taken, and the location of records;

Section II identifies potentially significant impacts that are avoided or reduced to less-than-significant levels and makes findings regarding Mitigation Measures;

Section III identifies significant, unavoidable historic resource and air quality impacts of the Project that cannot be avoided or reduced to less-than-significant levels through Mitigation Measures;

Section IV evaluates the different project alternatives and the economic, legal, social, technological, and other considerations that support approval of the Project as proposed and the rejection of these alternatives; and

Section V makes a Statement of Overriding Considerations setting forth the specific economic, legal, social, technological, or other benefits of the Project that outweigh the significant and unavoidable adverse environmental effects and support the rejection of the project alternatives.

The **Mitigation Monitoring and Reporting Programs ("MMRPs")** for the mitigation measures that have been proposed for adoption are attached with these findings as Exhibit A (SFMOMA Expansion) and Exhibit B (Fire Station Relocation and Housing). The MMRPs are required by CEQA Section 21081.6 and CEQA Guidelines Section 15091. The MMRPs provide a tables setting forth each mitigation measure listed in the Final Environmental Impact Report for the Project ("Final EIR") that is required to reduce or avoid a significant adverse impact. The MMRPs also specifies the agency responsible for implementation of each measure and establishes monitoring actions and a monitoring schedule. The full text of the mitigation measures is set forth in the MMRPs.

These findings are based upon substantial evidence in the entire record before the Commission. The references set forth in these findings to certain pages or sections of the Draft Environmental Impact Report ("Draft EIR" or "DEIR") or the Comments and Responses document ("C&R"), which together comprise the Final EIR, are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

I. PROJECT DESCRIPTION

SFMOMA proposes to increase its gallery space by up to approximately 130,000 square feet, including galleries to house the Doris and Donald Fisher Collection, and increase support space to allow the museum to consolidate its back-of-house functions that currently are housed partly in the museum and partly at a nearby off-site location on Mission Street (the Minna Annex). In order to accomplish this expansion, SFMOMA proposes to utilize the property at 676 Howard Street, which is currently developed with Fire Station No. 1, an active San Francisco Fire Department (SFFD) fire station. Accordingly, in consultation with the SFFD, SFMOMA acquired the site at 935 Folsom Street to accommodate the proposed relocation of Fire Station No. 1.

A. The Fire Station Relocation and Housing Project

The Fire Station Relocation and Housing Project site is located at 935 Folsom Street at the corner of Falmouth Street between Fifth and Sixth Streets on Assessor's Block 3753, Lot 140. The 14,400-square-foot site is a through lot with frontages on both Folsom and Shipley Streets and is currently developed with a 1-story (with mezzanine), 25-foot tall, 18,210-gross-square-foot industrial building. The building was constructed in 1923 and is currently vacant, but was previously used as a commercial laundry facility and later as an apparel sewing factory. The site is generally flat and is approximately 4 feet above SF Datum.

The first phase of project construction would be the demolition of the existing commercial building at 935 Folsom Street and the construction of a new fire station on the site. This would allow the fire company currently housed in Fire Station No. 1 at 676 Howard Street to relocate so that the 676 Howard Street property may be made available to the San Francisco Museum of Modern Art (SFMOMA) for the SFMOMA Expansion Project, and to ensure minimal interruption in fire protection services. As the fire station would not require the entire 14,400-square-foot property, the lot at 935 Folsom Street would be subdivided into two parcels and would include two uses: the new fire station fronting Folsom Street and a multi-family residential building with up to 13 units fronting Shipley Street. The replacement fire station would be built on the northerly 9,025-square-foot parcel referred to as Lot A and the multi-family residential project would be built on Lot B, the 5,444 square foot southerly portion of the lot, and a portion of both Lots A and B would provide at-grade parking for firefighters (15 spaces for cars parked in tandem; the personal vehicles of fire fighters would remain parked for each fire-fighter's 24-hour shift). The eight spaces of surface parking on Lot B would be provided pursuant to a parking easement.

The new fire station would be 2 stories plus a mezzanine level. It would be an approximately 34-foot-tall structure with a gross area up to 15,000 square feet and a footprint of approximately 6,750 square feet. The fire station's staffing level and equipment would not differ from the current condition at Fire Station No. 1. (The existing fire station is staffed by 13 firefighters and houses three vehicles.) The fire station would have three bay doors (as opposed to two bay doors at the existing fire station) fronting on Folsom Street and a surface area for firefighter parking located at the rear of the station. The three apparatus bays would dominate the Folsom Street façade, and the large red doors would be accentuated by three light metal screens suspended

above them, which would provide visual privacy and sun shading for the captains' sleeping rooms. The exterior walls would be clad with a lightweight cement board rain screen and a prismatic glass bay would project from the building mass above the public entry. Traffic signal preemption would be installed at the intersections of Folsom/Fifth Street and Folsom/Sixth Street to enable emergency vehicles to safely exit the station with reduced use of sirens and horns.

No detailed design has yet been prepared for the residential building fronting Shipley Street. However, conceptual plans indicate that the building would be a 4-story, approximately 43-foot-tall structure with a subterranean parking garage. The garage would comprise approximately 5,550 square feet and would be accessed from Falmouth Street. The above-grade structure would have a gross area of approximately 17,000 square feet, and would include up to 13 residential units. The residential units would consist of approximately two studios (ranging from approximately 420 to 600 square feet in size); five one-bedroom units (ranging from approximately 680 to 830 square feet in size); and six two-bedroom units (ranging from approximately 1,000 to 1,050 square feet in size). Approximately 1,040 square feet of open space to serve the residential uses would be provided on the site. Excavation to a depth of 10 feet below grade would be required for construction of the building's basement-level garage, which would contain approximately 10 vehicle spaces with a portion of the subterranean parking area located beneath the 20-foot at-grade parking easement provided for the fire fighters' vehicles.

B. The SFMOMA Expansion Project

The SFMOMA Expansion site is bordered by Third Street to the west; Minna Street to the north; the 147-151 Minna Street Parking Garage, Natoma Street, and office uses to the east; and the W Hotel and Howard Street to the south. The total footprint of the irregularly-shaped expansion site (including the existing 151 Third Street museum footprint) is 74,355 square feet. The site is generally flat and is approximately 18 feet above San Francisco Datum (SF Datum). The SFMOMA Expansion site includes the following four properties:

- *151 Third Street, Assessor's Block 3722, Lot 78.* This 59,195-square-foot lot is currently developed with the SFMOMA building, a 5-story, 145-foot tall, 225,000 gross-square-foot art museum designed by Mario Botta and completed in 1995. The building contains galleries, a retail area, a café, a theater, an education center, public areas such as the lobby and event space, support spaces, art storage, loading and receiving areas, and basement parking. An approximately 17,250-square-foot sculpture garden and a coffee bar are located on the roof of an adjacent parking garage at 147-151 Minna Street and are accessed from the fifth floor of the 151 Third Street building. Portions of the easterly wing of 151 Third Street would be demolished to make land available for the Project.
- *670 Howard Street (also known as the Heald Building site and 15 Hunt Street), Block 3722 Lot 27.* This irregularly-shaped 7,260-square-foot lot is currently developed with a 4-story building and basement. The building, constructed of heavy timber with a masonry façade, was built in 1906 (after the earthquake), is owned by an affiliate of SFMOMA, and is currently used for museum support functions. 670 Howard would be demolished.

- *676 Howard Street, Block 3722 Lot 28.* This 4,400-square-foot lot is currently developed with Fire Station No. 1, an active San Francisco Fire Department (SFFD) fire station. The 2-story, 14,410-square-foot double-bay facility with a basement was constructed in 1958. Fire Station No. 1 would be relocated to 935 Folsom Street and the existing fire station at 676 Howard Street would be demolished.
- *Hunt Street.* Hunt Street is an approximately 3,500-square-foot landlocked City-owned right-of-way that is located between 151 Third Street and 676 and 670 Howard Street. The dimensions of Hunt Street within the site are approximately 115 feet by 30 feet. A portion of Hunt Street extending west to Third Street was previously vacated by the City on August 6, 1979, and conveyed to the developer of the W Hotel, such that the right-of-way does not connect to any other public street (Board of Supervisors Resolution No. 755-79). Hunt Street would be vacated and the underlying land conveyed by the City to SFMOMA.

SFMOMA has expanded its collection and programming since the 151 Third Street building opened in 1995. In response, the museum seeks additional space for galleries and public spaces; enhanced and expanded curatorial, conservation, and library programs, and consolidation of its support functions. Approximately 60 percent of the museum's support functions are currently housed off-site across Minna Street in 20,000 square feet of leased office space on Mission Street (also known as the Minna Annex) and at Fort Mason (where space is used by the museum for rental art and storage functions). In February 2010, SFMOMA and the Doris and Donald Fisher Foundation entered into an agreement to present the Fisher Collection, containing approximately 1,100 pieces of contemporary art, at SFMOMA. This agreement, along with other advances in the SFMOMA collection, has increased the demand for expansion of SFMOMA's galleries, as well as its public and support spaces.

The Project would extend along a north/south axis from Minna Street to Howard Street (a length of 347 feet), and would rise to a maximum height of approximately 200 feet (plus rooftop mechanical, elevator, and stair penthouses up to 20 feet high). It would connect to and be integrated with the existing 151 Third Street museum building. The expanded portion of the museum would thus function as a backdrop to the existing 145-foot-tall museum. The SFMOMA Expansion would also extend the existing 151 Third Street basement area under Hunt Street, the Heald Building site, and the Fire Station No. 1 site. Excavation to approximately 19 to 20 feet below surface grade would be required for the construction of the expansion project's mat foundation and basement areas (basements currently exist at 670 Howard Street and 676 Howard Street, but would require additional excavation to meet the level of the museum basement).

SFMOMA proposes approximately 230,000 square feet of new construction. The design for the SFMOMA Expansion is intended to meet the additional space needs of the museum while responding to the irregular shape of the site and the existing Mario Botta-designed structure. The Project architects are Snøhetta and EHDD.

The SFMOMA Expansion would increase SFMOMA's gallery space by up to approximately 130,000 square feet (comprising 13,500 square feet of renovated space in the existing museum and 116,500 square feet of new development), including galleries to house the Fisher Collection,

and would increase support space to allow the museum to consolidate its back-of-house functions that currently are housed partly in the museum and partly at a nearby off-site location on Mission Street (the Minna Annex).

C. Environmental Review

On July 11, 2011, the Planning Department prepared and published a Draft EIR, which describes the Project and the environmental setting, identifies potential impacts, present mitigation measures for impacts found to be significant or potentially significant, and evaluates Project alternatives. The Draft EIR was available for a 45-day public comment period, ending on August 25, 2011. The Commission held a duly advertised public hearing on the Draft EIR on August 11, 2011, at which opportunity for public comment, both oral and written, was given, and public comment was received.

The Planning Department prepared responses to comments on environmental issues received at the public hearing and in writing during the public review period for the Draft EIR, prepared revisions to the text of the Draft EIR, and published the Comments and Responses document on October 26, 2011. Together the Draft EIR and the Comments and Responses document comprise the Final EIR for the Project. During a public hearing, the Planning Commission certified the Final EIR on November 10, 2011.

The Final EIR fully analyzed the Project proposed for approval herein. No new impacts have been identified that have not been analyzed in the Final EIR.

D. Approval Actions

1. Planning Commission Actions

The Planning Commission is taking the following actions and approvals to implement the Projects:

- Certification of the Final EIR, adoption of CEQA findings and adoption of the MMRPs;
- General Plan consistency determination for the proposed Project;
- Recommend approval to the Board of Supervisors of the rezoning of 676 Howard Street from P (Public) to C-3-S (Downtown Support) and the rezoning of the fire station portion of 935 Folsom Street from MUR (Mixed Use Residential) to P (Public);
- Recommend approval to the Board of Supervisors of an amendment to Map 2 of the Community Facilities Element of the San Francisco General Plan; and
- Planning Code Section 309 Downtown Project Approval (SFMOMA Expansion Project);

2. Planning Commission or Zoning Administrator Action

Either the Planning Commission or the Zoning Administrator will approve a Planning Code Section 307(h)/329 Eastern Neighborhoods Project Approval for Housing Project (Fire Station Relocation and Housing Project).

- construction noise;
- construction air quality;
- hazards from handling, hauling and disposal of lead-contaminated soil and PCBs; and
- archeological resources.

The potentially significant impacts of the Fire Station Relocation and Housing Project that will be mitigated through implementation of mitigation measures include impacts related to:

- noise from construction, stationary sources and traffic;
- hazards from handling, hauling and disposal of lead-contaminated soil and PCBs; and
- damage to, or destruction of, archeological resources.

The Project Sponsor has agreed to implement all mitigation measures identified in the Final EIR. The required mitigation measures are fully enforceable and will be included as conditions of approval by and the Commission and other City decisionmakers. Pursuant to CEQA Section 21081.6, adopted mitigation measures will be implemented and monitored as described in the MMRPs, which are incorporated herein by reference.

With the required mitigation measures, all potential project impacts, with the exception of impacts of the Fire Station Relocation and Housing Project related to historic resources and construction air quality as described in Section III below, would be avoided or reduced to a less-than-significant level.

As authorized by CEQA Section 21081 and CEQA Guidelines Section 15091, 15092, and 15093, based on substantial evidence in the whole record of this proceeding, the City finds that, unless otherwise stated, all of the changes or alterations to the Project listed herein have been or will be required in, or incorporated into, the project to mitigate or avoid the significant or potentially significant environmental impacts listed herein, as identified in the Final EIR, that these mitigation measures will be effective to reduce or avoid the potentially significant impacts as described in the EIR, and these mitigation measures are feasible to implement and are within the responsibility and jurisdiction of the City and County of San Francisco to implement or enforce.

III. SIGNIFICANT IMPACTS THAT CANNOT BE AVOIDED OR REDUCED TO A LESS-THAN-SIGNIFICANT LEVEL

Based on substantial evidence in the whole record of these proceedings, the Commission finds that, where feasible, changes or alterations have been required, or incorporated into, the Project to reduce the significant environmental impacts. The Commission finds that the mitigation measures in the Final EIR and described below are feasible and appropriate, and that changes have been required in, or incorporated into, the Project that, pursuant to Public Resources Code section 21002 and CEQA Guidelines section 15091, may substantially lessen, but do not avoid (i.e., reduce to less than significant levels), the potentially significant environmental effect associated with implementation of the Project. The Commission adopts all of the mitigation measures proposed in the Final EIR and set forth in the MMRP. The Commission further finds, however, for the impacts listed below, despite the implementation of mitigation measures, the effects remain significant and unavoidable.

The Commission determines that the following significant impacts on the environment, as reflected in the Final EIR, are unavoidable, but under Public Resources Code Section 21081(a)(3) and (b), and CEQA Guidelines 15091(a)(3), 15092(b)(2)(B), and 15093, the Commission determines that the impacts are acceptable due to the overriding considerations described in Section V below. This finding is supported by substantial evidence in the record of this proceeding.

A. Significant and Unavoidable Impacts to Historic Resources.

By demolishing the industrial building at 935 Folsom Street, the proposed Fire Station Relocation and Housing Project will result in significant and unavoidable impacts to a historic resource. That is because the building at 935 Folsom Street is considered individually eligible for listing in the California Register of Historical Resources based on its association with the redevelopment of the SoMa neighborhood following the 1906 earthquake and fire (California Register Criterion 1), as well as for its representation of industrial architecture designed by a notable local architect (California Register Criterion 3).

- *Mitigation Measure CP-4. Architectural survey in accordance with HABS level II documentation standards.*

Completing a historical resources survey to HABS level II documentation standards would reduce this impact, but not to a less-than-significant level. Thus, this impact remains significant and unavoidable.

B. Significant and Unavoidable Impacts to Air Quality.

Construction of the proposed Fire Station Relocation and Housing Project will result in significant and unavoidable impacts to air quality due to exposure of sensitive receptors to substantial air pollutant concentrations and the making of a considerable contribution to cumulatively significant levels of small particulate matter (PM_{2.5}) and toxic air contaminants.

- *Mitigation Measure AQ-6. To reduce the health risk associated with construction of the Fire Station Relocation and Housing Project, all off-road construction equipment shall be equipped with Tier 3 (Tier 2 if greater than 750 hp) diesel engines or better.*

For certain types of specialty equipment, it may not be feasible for construction contractors to modify their current, older equipment to accommodate the particulate filters required by the mitigation measure, or for them to provide newer models with these filters preinstalled. Therefore full implementation of this mitigation measure may be infeasible. Thus, this impact remains significant and unavoidable.

These impacts could only be eliminated by selection of the No Project Alternative. However, selection of the No Project Alternative was determined to be infeasible, as discussed below in Section IV. Furthermore, although the Adaptive Reuse Alternative would incrementally reduce impacts to historic resources associated with demolition of the 935 Folsom Street building, this

impact would continue to be significant. Also, unavoidable air quality impacts associated with construction of the Adaptive Reuse Alternative would remain approximately the same as under the Project. Finally, as with the No Project Alternative, the Adaptive Reuse Alternative was determined to be infeasible, as discussed below in Section IV.

Accordingly, pursuant to Section 21067 of CEQA and Sections 15040, 15081, and 15082 of the State CEQA Guidelines, the Commission finds that the proposed Project would result in impacts that cannot be avoided if the Project is implemented: demolition of the 935 Folsom building, an historic resource, and construction related air quality impacts. These impacts would remain significant and unavoidable if the Project were implemented.

IV. CONSIDERATION OF PROJECT ALTERNATIVES

This Section describes the Project objectives as well as alternatives and the reasons for approving the Project and for rejecting the alternatives. CEQA mandates that an EIR evaluate a reasonable range of alternatives to the Project or the Project location that generally reduce or avoid potentially significant impacts of the Project. CEQA requires that every EIR also evaluate a "No Project" alternative. Alternatives provide a basis of comparison to the Project in terms of their significant impacts and their ability to meet Project objectives. This comparative analysis is used to consider reasonable, potentially feasible options for minimizing environmental consequences of the Project.

The EIR analyzed and concluded that the Project would result in either no or less-than-significant impacts to Land Use, Aesthetics, Transportation and Circulation, Noise, Greenhouse Gas Emissions, Wind and Shadow and Public Services. In addition, the Initial Study (Appendix A to the EIR) concluded that impacts in the following areas would be less-than-significant (some with the mitigation measures identified in the Initial Study) and thus these areas were not evaluated in the EIR: Population and Housing, Paleontological Resources, Recreation, Utilities and Service Systems, Biological Resources, Geology and Soils, Hydrology and Water Quality, Hazards/Hazardous Materials, Minerals/Energy Resources, and Agriculture and Forestry Resources. As set forth in Section III above, the Project would result in significant and unavoidable impacts to Historic Resources and Air Quality, both due to the Fire Station Relocation and Housing Project.

Four alternatives were evaluated in the Final EIR: the No Project Alternative; the Preservation Alternative for the SFMOMA Expansion site; the Partial Fire Station Demolition Alternative for the SFMOMA Expansion site; and the Adaptive Reuse Alternative for the Fire Station Relocation and Housing site.

The Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the Final EIR and in the record. The Final EIR reflects the Commission's and the City's independent judgment as to the alternatives.

The Commission finds that the Project provide the best balance between satisfaction of the project objectives and mitigation of environmental impacts to the extent feasible, as described.

and analyzed in the EIR and adopts a statement of overriding considerations as set forth in Section IV below.

A. Project Objectives

The Project is intended to provide a substantial increase in gallery space in order to exhibit SFMOMA's growing collections (which currently totals approximately 26,000 pieces), the ongoing program of special exhibitions, and the Doris and Donald Fisher Collection (pursuant to an agreement between SFMOMA and the Fisher family). In addition, the SFMOMA Expansion would allow SFMOMA to consolidate and enhance its administrative, support, and visitor spaces contiguous to the existing museum building at 151 Third Street. Currently, the museum contains approximately 55,400 square feet of gallery space, 67,000 square feet of public visitor space, and 130,000 square feet of support space, plus additional administrative and support space off-site in leased space at 667 Mission Street and at Fort Mason.

In order to accomplish this expansion, SFMOMA proposes to utilize the property at 676 Howard Street, which is currently developed with Fire Station No. 1, an active San Francisco Fire Department (SFFD) fire station. Accordingly, in consultation with the SFFD, SFMOMA acquired the site at 935 Folsom Street to accommodate the potential relocation of Fire Station No. 1 and would construct a new fire station facility, as well as housing, at 935 Folsom Street.

1. SFMOMA Objectives Relative to the SFMOMA Expansion

- a) Provide up to 130,000 square feet of additional indoor gallery space to enable the museum to better exhibit its permanent collection, provide galleries to display the Doris and Donald Fisher Collection, increase space for special exhibitions, and attract donations to the museum of additional works of modern art and modern art collections.
- b) Provide the additional gallery space immediately contiguous to the museum's existing galleries to enhance the visitor experience, enable efficient museum operations, and provide easy access for museum staff to the galleries.
- c) Provide new galleries in column-free spaces in a range of sizes to maximize the flexibility of the galleries and provide appropriately-sized galleries to display the larger sculptures and paintings in the SFMOMA permanent collection and the Fisher Collection, including a publicly-accessible ground floor lobby or gallery space to exhibit "Sequence," a Richard Serra sculpture, which measures approximately 65 by 41 feet and rises to height of approximately 13 feet.
- d) Provide galleries no higher than the seventh floor of the expanded museum, to optimize the visitor experience.
- e) Consolidate on-site and enlarge the museum's administrative and support functions, to provide up to 220,000 square feet of administrative and support space on-site, including space for art conservation, curatorial staff, art storage, library, and marketing and administrative operations.

2. SFMOMA Objectives Relative to the Fire Station Relocation and Housing Project

- a) Provide the SFFD with a replacement station for Fire Station No. 1, meeting the Department's criteria set forth below, at no cost to the Fire Department and in a cost-effective manner for SFMOMA.
- b) Defray a portion of the costs incurred in acquiring the 935 Folsom Street site by maximizing the development potential (within existing zoning constraints) of the Shipley Street frontage of the 935 Folsom Street site that is not needed for the relocated fire station.

3. SFFD Objectives Relative to the Fire Station Relocation and Housing Project

- a) Locate a new fire station to conveniently serve Fire Station No. 1's service area.
- b) Locate the new fire station mid-block on an east-west thoroughfare between Mission and Harrison Streets to enhance ease of egress and ingress of emergency vehicles and to allow traffic signal preemption in order to minimize the need to sound sirens and air horns on vehicles exiting the station.
- c) Replace the seismically vulnerable existing Fire Station No. 1 with a structurally sound fire station meeting life safety standards applicable to an "essential facility."
- d) Enlarge Fire Station No. 1 from two vehicle bays to three vehicle bays and locate all essential firefighting and emergency services equipment on the ground floor adjacent to the vehicle bays.
- e) Provide adequate sleeping, living, cooking, fitness, locker, and bathroom facilities for both male and female firefighters.
- f) Provide off-street parking for approximately 12 to 15 firefighters at one time.

B. Alternatives Rejected and the Reasons for Rejection

The Commission rejects the Alternatives set forth in the Final EIR and listed below because the Commission finds that there is substantial evidence, including evidence of economic, legal, social, technological, and other considerations described in this Section in addition to those described in Section V below under CEQA Guidelines 15091(a)(3), that make infeasible such Alternatives. In making these determinations, the Commission is aware that CEQA defines "feasibility" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors." The Commission is also aware that under CEQA case law the concept of "feasibility" encompasses (i) the question of whether a particular alternative promotes the underlying goals and objectives of a project and (ii) the question of whether an alternative is "desirable" from a policy standpoint to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, legal, and technological factors.

The Commission adopts the EIR's analysis and conclusions regarding alternatives eliminated from further consideration, both during the scoping process and in response to comments.

1. No Project Alternative

Under the No Project Alternative, the SFMOMA Expansion site would not be redeveloped with new museum uses and would generally remain in its existing condition. The existing SFMOMA, located at 151 Third Street, would continue to function as a museum, and internal building space could be reconfigured to allow for an evolving series of exhibits. However, the museum would not be expanded on the site to accommodate the museum's growing permanent collection and special exhibitions. In addition, the Doris and Donald Fisher collection would not be able to be exhibited on a permanent basis at SFMOMA. Off-site administrative and support space for the museum (currently located at 667 Mission Street and Fort Mason) would not be relocated to the SFMOMA Expansion site and the 4-story building located at 670 Howard Street, currently owned by an SFMOMA affiliate, would continue to be used for museum support activities.

Because the museum would not be expanded, Fire Station No. 1 would not be relocated from 676 Howard Street to 935 Folsom Street. Thus, in the near-term, Fire Station No. 1 would continue to operate at 676 Howard Street. However, the existing structure is seismically unsound and sustained damage when, in 1997, a large concrete wall segment being lifted by a crane during construction of the W Hotel fell through the roof of the building. The Department of Public Works estimates that bringing the station to modern seismic standards for an essential facility would cost approximately \$9.5 million. Therefore, under the No Project Alternative, the SFFD may explore the options of retrofitting the existing building and the fire station use.

In addition, under the No Project Alternative, the commercial/industrial building located at 935 Folsom Street would also remain in its existing condition. Because the building is in poor shape due to deferred maintenance, its potential for reuse in the near-term is limited. Therefore, this alternative assumes that the building would remain vacant, and that additional deterioration of the structure could potentially occur.

The No Project Alternative is hereby found by the Commission to be infeasible and is rejected because it does not implement many of the objectives and goals of the General Plan to the same degree as the proposed Project, including but not limited to:

Arts Element

- Objective I-1: Recognize the arts as necessary to the quality of life for all segments of San Francisco.
- Policy I-1.3: Increase public awareness of the arts in San Francisco by greater promotion of existing arts programs and services in the community and schools.
- Objective I-2: Increase the contribution of the arts to the economy of San Francisco.
- Policy I-2.1: Encourage and promote opportunities for the arts and artists to contribute to the economic development of San Francisco.

Policy I-2.2: Continue to support and increase the promotion of the arts and arts activities throughout the City for the benefit of visitors, tourists and residents.

Objective III-2: Strengthen the contribution of arts organizations to the creative life and vitality of San Francisco.

Policy III-2.2: Assist in the improvement of arts organizations' facilities and access in order to enhance the quality and quantity of arts offerings.

Policy VI-1.11: Identify, recognize, and support existing arts clusters and, wherever possible, encourage the development of clusters of arts facilities and arts related businesses throughout the city.

Commerce and Industry Element

Objective 1: Manage economic growth and change to ensure enhancement of the total city living and working environment.

Policy 1.1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Objective 2: Maintain and enhance a sound and diverse economic base and fiscal structure for the city.

Policy 2.3: Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

Objective 3: Provide expanded employment opportunities for city residents, particularly the unemployed and economically disadvantaged.

Downtown Area Plan

Objective 1: Manage economic growth and change to ensure enhancement of the total city living and working environment.

Policy 1.1: Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

Objective 4: Enhance San Francisco's role as a tourist and visitor center.

Objective 13: Create an urban form for downtown that enhances San Francisco's stature as one of the world's most visually attractive cities.

Additionally, the No Project Alternative is hereby found by the Commission to be infeasible and is rejected because it does not implement many of the objectives and goals of the General Plan as well as the Fire Station Relocation and Housing Project, including but not limited to:

Community Facilities Element

Objective 5: Development of a system of firehouses which will meet the operating requirements of the fire department in providing fire protection services and which will be in harmony with related public service facilities and with all other features and facilities of land development and transportation provided for in other sections of the General Plan.

Community Safety Element

Objective 2: Reduce structural and non-structural hazards to life safety, minimize property damage and resulting social, cultural and economic dislocations resulting from future disasters.

Policy 2.5: Assess the risks presented by other types of potentially hazardous structures and reduce the risks to the extent possible.

Policy 2.7: Abate structural and non-structural hazards in City-owned structures.

Objective 3: Ensure the protection of life and property from disasters through effective emergency response. Provide public education and training about earthquakes and other natural disasters and how individuals, businesses and communities can reduce the impacts of disasters.

Policy 3.6: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Community Safety Element 2007 Draft Update

Objective 1: Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.

Policy 1.13: Abate structural and non-structural hazards in City-owned structures.

Objective 2: Be prepared for the onset of disaster by providing public education and training about earthquakes and other natural and man-made disasters, by readying the city's infrastructure and by ensuring the necessary coordination is in place for ready response.

Policy 2.7: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Policy 2.21: Develop partnerships with private businesses, public service organizations and local nonprofits to meet disaster-time needs.

East SoMa Area Plan

The No Project Alternative would not advance key goals of the East SoMa Area Plan; this Plan focuses on the creation of a mix of land uses in the neighborhood while increasing the neighborhoods supply of family housing and providing the neighborhood with essential community services. These goals include but are not limited to:

Objective 1.1: Encourage production of housing and other mixed-use development in East SoMa while maintaining its existing special mixed-use character.

Objective 1.2: Maximize housing development potential in keeping with neighborhood character.

Policy 1.2.1: Encourage development of new housing throughout East SoMa.

Objective 2.4: Lower the cost of the production of housing.

Policy 2.4.4: Facilitate housing production by simplifying the approval process wherever possible.

Objective 3.1: Promote an urban form that reinforces East SoMa's distinctive place in the city's larger form and strengthens its physical fabric and character.

Objective 3.2: Promote an urban form and architectural character that supports walking and sustains a diverse, active and safe public realm.

Objective 7.1: Provide essential community services and facilities.

Housing Element

Objective 1: Identify and make available for development adequate sites to meet the city's housing needs, especially permanently affordable housing.

Policy 1.10: Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

Objective 4: Foster a housing stock that meets the needs of all residents across lifecycles.

Policy 4.1: Develop new housing, and encourage the remodeling of existing housing, for families with children.

Policy 4.6: Encourage an equitable distribution of growth according to infrastructure and site capacity.

Objective 11: Support and respect the diverse and distinct character of San Francisco's neighborhoods.

Policy 11.1: Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Objective 13: Prioritize sustainable development in planning for and constructing new housing.

Policy 13.1: Support "smart" regional growth that locates new housing close to jobs and transit.

Policy 13.3: Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

Finally, the No Project Alternative is infeasible because it fails to achieve any of SFMOMA's objectives with regard to the SFMOMA Expansion Project, including but not limited to:

- Provide up to 130,000 square feet of additional indoor gallery space to enable the museum to better exhibit its permanent collection, provide galleries to display the Doris and Donald Fisher Collection, increase space for special exhibitions, and attract donations to the museum of additional works of modern art and modern art collections.
- Provide the additional gallery space immediately contiguous to the museum's existing galleries to enhance the visitor experience, enable efficient museum operations, and provide easy access for museum staff to the galleries.
- Provide new galleries in column-free spaces in a range of sizes to maximize the flexibility of the galleries and provide appropriately-sized galleries to display the larger sculptures and paintings in the SFMOMA permanent collection and the Fisher Collection, including a publicly-accessible ground floor lobby or gallery space to exhibit "Sequence," a Richard Serra sculpture, which measures approximately 65 by 41 feet and rises to height of approximately 13 feet.
- Consolidate on-site and enlarge the museum's administrative and support functions, to provide up to 220,000 square feet of administrative and support space on-site, including space for art conservation, curatorial staff, art storage, library, and marketing and administrative operations.

The No Project Alternative is infeasible because it fails to achieve SFMOMA's objectives and meet any of SFFD's criteria with regard to the Fire Station Relocation and Housing Project, including but not limited to:

- Provide the SFFD with a replacement station for Fire Station No. 1, meeting the Department's criteria set forth below, at no cost to the Fire Department and in a cost-effective manner for SFMOMA.

- Locate a new fire station to conveniently serve Fire Station No. 1's service area.
- Locate the new fire station mid-block on an east-west thoroughfare between Mission and Harrison Streets to enhance ease of egress and ingress of emergency vehicles and to allow traffic signal preemption in order to minimize the need to sound sirens and air horns on vehicles exiting the station.
- Replace the seismically vulnerable existing Fire Station No. 1 with a structurally sound fire station meeting life safety standards applicable to an "essential facility."
- Enlarge Fire Station No. 1 from two vehicle bays to three vehicle bays and locate all essential firefighting and emergency services equipment on the ground floor adjacent to the vehicle bays.
- Provide adequate sleeping, living, cooking, fitness, locker, and bathroom facilities for both male and female firefighters.
- Provide off-street parking for approximately 12 to 15 firefighters at one time.

2. Preservation Alternative (SFMOMA Expansion Site)

The primary objective of the Preservation Alternative is to retain the building located at 676 Howard Street (currently occupied by Fire Station No. 1) in order to reduce less-than-significant Project effects that would result from the demolition of that structure (which is a contributor to a potential non-contiguous San Francisco 1952 Firehouse Bond Thematic Historic District), while allowing SFMOMA to expand. The Preservation Alternative would thus remove 676 Howard Street from the SFMOMA Expansion site and retain Fire Station No. 1 in its existing location and configuration. Fire Station No. 1 would continue to have vehicle access via Howard and Hunt Streets. Under the alternative, 676 Howard Street would remain operational as Fire Station No. 1 and would function independently of SFMOMA operations (thus avoiding construction of a new fire station at 935 Folsom Street). However, as discussed under the "No Project Alternative," above, the existing fire station is seismically unsound and the Department of Public Works estimates that bringing the building to modern seismic standards for an essential facility would cost approximately \$9.5 million.

As with the proposed project, the building located at 670 Howard Street (the Heald Building, which is not considered a historic resource under CEQA) would be demolished, and the museum addition would partially extend over Hunt Street to connect the 151 Third Street structure to the new narrower (than proposed as part of the project) wing fronting onto Howard Street.

Under the Preservation Alternative, the width of the museum's frontage on Howard Street would be reduced from 97 feet to 57 feet; however, the height of the Howard Street frontage would increase from approximately 200 feet (10 stories) to approximately 218 feet (11 stories). The museum would expand to the same degree as the proposed project, with up to approximately 230,000 square feet of additional gallery and support space. Off-site administrative and support space for the museum (currently located at 667 Mission Street and

Fort Mason) would be relocated to the expanded museum. No promenade, and associated open space, would be developed that would connect Natoma and Howard Streets, as under the proposed project.

The Preservation Alternative would reduce identified less-than-significant effects associated with demolition of the building located at 676 Howard Street which would occur as a result of the proposed project. However, the remaining impacts resulting from the Preservation Alternative and including impacts to Land Use, Transportation and Circulation, Noise, Air Quality, and Greenhouse Gas Emissions, would remain relatively the same as under the proposed Project. In addition, impacts to Wind and Shadow and Public Services would increase somewhat as compared to the proposed Project.

Because the Preservation Alternative would result in the construction of an 11-story building (instead of a 10-story building, as proposed as part of the Project), and would create a larger gap between the proposed Howard Street tower and W Hotel than would occur as part of the Project, wind conditions would worsen slightly compared to the Project (including cumulative wind conditions). In particular, the alternative would likely create stronger winds relative to existing conditions on the south side of Howard Street, where winds currently exceed the hazard criterion. In addition, rooftop wind speeds would also increase relative to the proposed project. The 11-story addition would slightly increase shadow coverage on Howard Street compared to the Project during the Summer solstice, and Spring and Fall equinoxes.

Further, under the Preservation Alternative, because Fire Station No. 1 would remain at its existing location, it would remain subject to the existing constraints of its location and design. Operations would continue to be hindered by vehicle and pedestrian congestion that occurs around the existing station. In addition, operations would continue to be constrained by the existence of only two vehicle bays in the fire station (requiring one of the station's three fire trucks to be "parked in" or parked on Howard Street) and the lack of modern design features, such as a design that is in accordance with current seismic standards for an essential facility, a dedicated communications room, a design that is accessible to the disabled, enhanced locker and shower facilities for both male and female firefighters, and on-site parking. Therefore, under the Preservation Alternative, Fire Station No. 1 would not function as well as it would under the proposed Project, and would be less effective at responding to cumulative demand for emergency services.

With a similar less-than-significant impact to historic resources as the Project with regard to 676 Howard Street, the Preservation Alternative would provide less publicly accessible gallery space, reduced open space and would preclude the SFFD from acquiring a new fire station meeting essential facility seismic standards at no cost to the SFFD. The Preservation Alternative is also rejected because it is less consistent than the proposed Project with many of the objectives and goals of the General Plan, including but not limited to:

Urban Design Element

Objective 3: Moderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environment.

- Policy 3.1: Promote harmony in the visual relationships and transitions between new and older buildings.
- Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.
- Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.
- Policy 4.4: Design walkways and parking facilities to minimize danger to pedestrians.

Community Safety Element

- Objective 2: Reduce structural and non-structural hazards to life safety, minimize property damage and resulting social, cultural and economic dislocations resulting from future disasters.
- Policy 2.5: Assess the risks presented by other types of potentially hazardous structures and reduce the risks to the extent possible.
- Objective 3: Ensure the protection of life and property from disasters through effective emergency response. Provide public education and training about earthquakes and other natural disasters and how individuals, businesses and communities can reduce the impacts of disasters.
- Policy 3.6: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Community Safety Element 2007 Draft Update

- Objective 1: Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.
- Policy 1.13: Abate structural and non-structural hazards in City-owned structures.
- Objective 2: Be prepared for the onset of disaster by providing public education and training about earthquakes and other natural and man-made disasters, by readying the city's infrastructure and by ensuring the necessary coordination is in place for ready response.
- Policy 2.7: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Downtown Area Plan

The Preservation Alternative would also be less consistent with key goals of the Downtown Area Plan including, but not limited to:

- Objective 9: Provide quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents, and visitors.
- Policy 9.1: Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.
- Policy 9.2: Provide different kinds of open space downtown.
- Objective 10: Assure that open spaces are accessible and usable.
- Policy 10.2: Encourage the creation of new open spaces that become a part of an interconnected pedestrian network.
- Objective 14: Create and maintain a comfortable pedestrian environment.
- Policy 14.1: Promote building forms that will maximize sun access to open spaces and other public areas.
- Policy 14.2: Promote building forms that will minimize the creation of surface winds near the base of buildings.
- Objective 16: Create and maintain attractive, interesting urban streetscapes.
- Policy 16.4: Use designs and materials and include activities at the ground floor to create pedestrian interest.
- Policy 16.5: Encourage the incorporation of publicly visible art works in new private development and in various public spaces downtown.
- Objective 23: Reduce hazards to life safety and minimize property damage and economic dislocation resulting from future earthquakes.
- Policy 23.4: Review and amend at regular intervals all relevant public codes to incorporate the most current knowledge and highest standards of seismic design, and support seismic research through appropriate actions by all public agencies.

Finally, the Preservation Alternative is infeasible because it fails to achieve some of the key objectives of the SFMOMA Expansion Project. As described below, galleries in the Howard Street wing of the building would not meet the space requirements needed to fully accommodate the larger sculptures and paintings in the SFMOMA permanent collection and the Fisher

Collection. In addition, SFMOMA would not be able to proceed with the alternative while meeting established time and budget constraints due to the complexity of engineering and constructing the alternative.:

- The width of the museum's Howard Street frontage would be reduced from 97 feet under the proposed Project to 57 feet. Structural elements would further reduce the street entry to approximately 45 feet at the ground level, eliminating the museum's proposed entrance along the promenade connecting Natoma and Howard Streets, and the lobby. The public exhibition of "Sequence," by Richard Serra (one of the major works from the Fisher Collection) in a ground floor publicly-accessible gallery space would not be possible under this alternative because the width of the lobby gallery would be too small. (Sequence is a 13-foot-tall steel plate sculpture with horizontal dimensions of 65 feet by 41 feet that must be located at the ground level both for structural and seismic safety reasons.) Therefore, under the Preservation Alternative, Sequence could not be exhibited in the museum.
- The promenade connecting Natoma and Howard Streets, associated open space, and museum access point would not be developed because insufficient space would be available for such a feature.
- Above the ground floor, the bay widths of the galleries fronting Howard Street would be reduced to approximately 45 feet wide, 20 feet narrower than the museum's preference for new galleries. The smaller floor plates, combined with the undesirability of placing galleries any higher than the seventh floor, would require eliminating nearly all support space from the lower seven floors of the expansion, such that those galleries would be without nearby back-of-house support space, compromising their utility.

3. Partial Fire Station Demolition Alternative (SFMOMA Expansion Site)

The primary objective of the Partial Fire Station Demolition Alternative is to retain the front half of Fire Station No. 1 (located at 676 Howard Street) in order to reduce less-than-significant impacts to historic resources associated with demolition of the building (which is a contributor to a potential non-contiguous San Francisco 1952 Firehouse Bond Thematic Historic District), while allowing SFMOMA to expand. The alternative would demolish the northern half of Fire Station No. 1 (along Hunt Street) and retain and adaptively reuse the front half of the fire station extending 50 feet north from Howard Street. The first and second floors of the fire station would become part of the museum expansion project. The 8 levels of the museum expansion above the second floor of the fire station would step around the retained footprint, resulting in a setback of approximately 50 feet at 676 Howard Street. As would occur under the proposed Project, the structure located at 670 Howard Street (the Heald Building) would be demolished, and the museum addition would extend over Hunt Street to connect the 151 Third Street structure to the new notched wing fronting onto Howard Street. The museum would expand to the same degree as the proposed Project, with up to approximately 230,000 square feet of additional gallery and support space. Under this alternative, the height of the expansion would be approximately the same as the proposed project, at approximately 200 feet (10 stories).

The 676 Howard Street building is a 2-story, reinforced concrete structure and would need to be significantly modified to accommodate the removal of half the existing structure. New structural walls or columns would be introduced to stabilize the north (cut) face of the existing structure. Because the existing and new buildings would have different structural systems, rows of new structural elements would be introduced parallel to the east and north faces of the preserved 676 Howard Street building, and these elements would be seismically separated from the retained portion of the structure.

The interior of the 676 Howard Street building at the ground floor would not become part of the Howard Street lobby/gallery, but instead would be a separate gallery differentiated and separated from the rest of the ground floor, resulting in a fragmented Howard Street frontage. Alternatively, the museum could locate a satellite retail store in the ground floor of 676 Howard Street. The second floor of the partially preserved 676 Howard Street building, which would have a ceiling height of less than 9 feet (making it unusable as a gallery), would be used for support, administrative, or storage functions. Similar to the Preservation Alternative, no promenade would be developed that would connect Natoma and Howard Streets, as under the proposed Project. Finally, because the retained portion of 676 Howard Street would not accommodate Fire Station No. 1, the Fire Station Relocation and Housing Project would be implemented similar to the proposed project, and Fire Station No. 1 would relocate to 935 Folsom Street.

This alternative would incrementally reduce identified less-than-significant effects to historic resources associated with demolition of Fire Station No. 1 at 676 Howard Street, which is a contributor to the potential 1952 Firehouse Bond Act Thematic Historic District. However, the remaining impacts resulting from this alternative and including impacts to Land Use, Cultural Resources, Noise, Air Quality, Greenhouse Gas Emissions, Wind and Shadow and Public Services would be almost identical to those impacts resulting from the proposed Project.

In addition, as with the Preservation Alternative, because the Partial Fire Station Demolition Alternative would eliminate both the development of the promenade connecting Natoma and Howard Streets (and associated open space) and the public exhibit of "Sequence," by Richard Serra (one of the major works from the Fisher Collection) in a ground floor publicly accessible gallery space, this alternative would reduce publicly accessible gallery space and open space. The Partial Fire Station Demolition Alternative is thus rejected because it is less consistent than the proposed Project with many of the objectives and goals of the General Plan, including but not limited to:

Urban Design Element

- Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.
- Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.
- Policy 4.4: Design walkways and parking facilities to minimize danger to pedestrians.

Policy 4.8: Provide convenient access to a variety of recreation opportunities.

Policy 4.13: Improve pedestrian areas by providing human scale and interest.

Downtown Area Plan

The Partial Fire Station Demolition Alternative would also be less consistent than the proposed Project with key goals of the Downtown Area Plan including, but not limited to:

Objective 9: Provide quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents, and visitors.

Policy 9.1: Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.

Policy 9.2: Provide different kinds of open space downtown.

Objective 10: Assure that open spaces are accessible and usable.

Policy 10.2: Encourage the creation of new open spaces that become a part of an interconnected pedestrian network.

Objective 13: Create an urban form for downtown that enhances San Francisco's stature as one of the world's most visually attractive cities.

Objective 14: Create and maintain a comfortable pedestrian environment.

Objective 16: Create and maintain attractive, interesting urban streetscapes.

Policy 16.4: Use designs and materials and include activities at the ground floor to create pedestrian interest.

Policy 16.5: Encourage the incorporation of publicly visible art works in new private development and in various public spaces downtown.

Finally, the Partial Fire Station Demolition Alternative is infeasible because it fails to achieve some of SFMOMA's key objectives with regard to the Project. As described below, as with the Preservation Alternative, galleries along the Howard Street frontage of the building would not meet the space requirements needed to fully accommodate the larger sculptures and paintings in the SFMOMA permanent collection and the Fisher Collection. In addition, SFMOMA would not be able to proceed with the alternative while meeting established time and budget constraints due to the complexity of engineering and constructing the alternative.

- The museum's Howard Street frontage would be segregated into the partially preserved 676 Howard Street frontage (40 feet wide) and the new construction occupying the site of the Heald Building (670 Howard Street) (57 feet wide). Structural elements would further reduce the street entry to approximately 45 feet at the ground level, eliminating the museum's proposed entrance along the promenade connecting Natoma and Howard Streets and lobby. The public exhibition of "Sequence," by Richard Serra (one of the major works from the Fisher Collection) in a ground floor publicly-accessible gallery space would not be possible under this alternative because the width of the lobby gallery would be too small. (Sequence is a 13-foot-tall steel plate sculpture with horizontal dimensions of 65 feet by 41 feet that must be located at the ground level both for structural and seismic safety reasons.) Therefore, under the Partial Fire Station Demolition Alternative, Sequence could not be exhibited in the museum.
- The promenade connecting Natoma and Howard Streets, associated open space, and museum access point would not be developed because insufficient space would be available for such a feature.
- Above the ground floor, gallery bay widths would be reduced to approximately 45 feet in width at the front 50 feet of the galleries fronting Howard Street. Gallery bay widths would be 20 feet narrower than the project sponsor's requirements for new galleries.

4. Adaptive Reuse Alternative (Fire Station Relocation and Housing Site)

The primary objective of the Adaptive Reuse Alternative is to retain—to the degree feasible—the existing structure located at 935 Folsom Street in order to reduce impacts to historic resources associated with the demolition of the building, while allowing Fire Station No. 1 to be relocated to the site. The Adaptive Reuse Alternative would thus convert the existing building at 935 Folsom Street to a new fire station. However, because the existing building (which comprises the entirety of the site) would be retained and used for the fire station, development of the 13-unit multifamily residential structure proposed as part of the Project would be precluded.

In order to accommodate a fire station, substantial changes to the existing building would be required. Because the soils underlying the site may be unstable and the existing building is not structurally sound due to lack of maintenance in recent years, the adaptive reuse of the existing 935 Folsom Street building for a code-compliant firehouse would require virtually all of the existing structure to be replaced. In particular, the Folsom Street façade would require substantial alteration to accommodate the new apparatus bay doors. Additionally, as part of this alternative, three new apparatus bay doors would be cut into the Folsom Street façade and other openings along Falmouth and/or Shipley Streets would be created and/or altered to accommodate new functions. The existing structure would require complete reconstruction in place, with a new deep pile and grade beam foundation, new floor and roof structures, and a full seismic retrofit to meet seismic standards for essential facilities. Further, large sections of the exterior concrete walls with severe cracking would require replacement.

There are also a variety of structural considerations that will need to be accounted for as a part of the Adaptive Reuse Alternative. The existing concrete and wood structure rests on poor soils and exhibits severe deterioration and differential settlement. The conversion of the structure into a code-compliant essential facility firehouse would require a major reconstruction of the existing structure in-place, with the following structural implications:

- **New Foundations/Exterior Walls.** A new deep pile (thus requiring pile driving, similar to the proposed Project) and grade beam foundation would be required beneath the existing exterior concrete walls. The new pile and foundation would require the existing heavy walls to be undermined, realigned to vertical and supported above the ground to allow for the installation of the new foundation beneath them. Given the poor condition of the existing concrete walls and the severity of current settlement, large portions of the walls would likely not survive this procedure and would need to be completely replaced.
- **New Floors.** Given the poor underlying soils and the heavy fire equipment loads anticipated as part of the Adaptive Reuse Alternative, the ground floor would require a new 24-inch mat slab over the entire building footprint. The entire mezzanine/second floor structure would need to either be removed or replaced with an all-new structure to meet current codes.
- **New Roof and Clerestory Structure.** As noted above, the existing combustible roof structure would need to be replaced with a non-combustible structure suitable to an essential services facility.
- **New Windows and Doors.** All openings would require new windows and doors meeting current energy code requirements.

It is estimated that the cost of the Adaptive Reuse Alternative would be approximately \$2.7 million more than the cost of the proposed Project. In addition, because the multi-family residential building would not be built, the estimated \$800,000 value of the land for that project would not be recouped by SFMOMA.

The Adaptive Reuse Alternative would reduce impacts to historic resources associated with demolition of the 935 Folsom Street building; however, this reduction will be incremental and will not reduce such impacts to a less-than-significant level given the amount of physical changes required to adapt the existing building to an essential facility. Aside from this incremental reduction in impacts to historic resources, the Adaptive Reuse Alternative would result in many of the same environmental effects that would result from the Project.

With relatively the same level of impact, then, the Adaptive Reuse Alternative would cost substantially more than the Project, would provide no housing units at the Project site to meet the City's target for new housing construction, and would provide a facility that will be less seismically sound than a new fire station as proposed under the Project due to the high degree of additional seismic and other structural reinforcement required. The Adaptive Reuse Alternative is thus rejected because it is less consistent than the proposed Project with many of the objectives and goals of the General Plan, including but not limited to:

Community Safety Element

Objective 2: Reduce structural and non-structural hazards to life safety, minimize property damage and resulting social, cultural and economic dislocations resulting from future disasters.

Policy 2.5: Assess the risks presented by other types of potentially hazardous structures and reduce the risks to the extent possible.

Community Safety Element 2007 Draft Update

Objective 1: Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.

Policy 1.13: Abate structural and non-structural hazards in City-owned structures.

East SoMa Area Plan

The Adaptive Reuse Alternative would also be less consistent with key goals of the East SoMa Area Plan including, but not limited to:

Objective 1.1: Encourage production of housing and other mixed-use development in East SoMa while maintaining its existing special mixed-use character.

Objective 1.2: Maximize housing development potential in keeping with neighborhood character.

Policy 1.2.1: Encourage development of new housing throughout East SoMa.

Objective 2.4: Lower the cost of the production of housing.

Policy 2.4.4: Facilitate housing production by simplifying the approval process wherever possible.

Housing Element

Objective 1: Identify and make available for development adequate sites to meet the city's housing needs, especially permanently affordable housing.

Policy 1.10: Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

Objective 4: Foster a housing stock that meets the needs of all residents across lifecycles.

Policy 4.1: Develop new housing, and encourage the remodeling of existing housing, for families with children.

Policy 4.6: Encourage an equitable distribution of growth according to infrastructure and site capacity.

Objective 11: Support and respect the diverse and distinct character of San Francisco's Neighborhoods.

Policy 11.1: Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Objective 13: Prioritize sustainable development in planning for and constructing new housing.

Policy 13.1: Support "smart" regional growth that locates new housing close to jobs and transit.

Policy 13.3: Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

Finally, the Adaptive Reuse Alternative is infeasible because it fails to meet some of SFMOMA's key objectives with respect to the Project. The alternative, because it would cost approximately \$2.7 million above the cost of the proposed Project (and would not allow for the recoupment of costs associated with the housing site) would not be considered to be cost-effective for SFMOMA. Similarly, because the alternative would retain the footprint of the existing 935 Folsom Street building, the development potential of the Shipley Street frontage of the site would be eliminated. In addition, the alternative would achieve the objective related to the construction of a seismically sound essential facility to a lesser degree than the proposed Project due to the high degree of additional seismic and other structural reinforcement required.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to CEQA section 21081 and CEQA Guideline 15093, the Commission hereby finds, after consideration of the Final EIR and the evidence in the record, that each of the specific overriding economic, legal, social, technological and other benefits of the Project as set forth below independently and collectively outweighs the significant and unavoidable impacts and is an overriding consideration warranting approval of the Project. Any one of the reasons for approval cited below is sufficient to justify approval of the Project. Thus, even if a court were to conclude that not every reason is supported by substantial evidence, the Commission will stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in the preceding findings, which are incorporated by reference into this Section, and in the documents found in the Record of Proceedings, as defined in Section I.

On the basis of the above findings and the substantial evidence in the whole record of this proceeding, the Commission specially finds that there are significant benefits of the Project in spite of the unavoidable significant impacts, and therefore makes this Statement of Overriding

Considerations. The Commission further finds that, as part of the process of obtaining Project approval, all significant effects on the environment from implementation of the Project have been eliminated or substantially lessened where feasible. All mitigation measures proposed in the Final EIR for the proposed Project are adopted as part of this approval action. Furthermore, the Commission has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to the following specific overriding economic, technical, legal, social and other considerations.

The SFMOMA Expansion will not result in any significant and unavoidable impacts, and will have the following benefits:

A. The Project will provide up to 130,000 square feet of additional indoor gallery space to enable SFMOMA to better exhibit its permanent collection, provide galleries to display the Doris and Donald Fisher Collection, increase space for special exhibitions, and attract donations to the museum of additional works of modern art and modern art collections. These galleries will be open to the public. Accordingly, the Project makes a significant contribution to the public's access to the visual arts in San Francisco.

B. By its Resolution No. 34-09 adopted on January 27, 2009, the Board of Supervisors acknowledged the magnitude that the exhibition of the Fisher Collection would have on the City's cultural landscape and the positive impacts it would have on tourist revenue and other key general fund revenue sources, found that the Fisher Collection would be a valuable public addition to the City's civic well being, and urged the City to evaluate locations within the City that might suitably house the Fisher Collection. The Project fulfills these policy goals of the City as set forth in Resolution No. 34-09.

C. The Project will allow SFMOMA, a major non-profit cultural institution, to expand, consolidate and enhance its gallery, administrative, support, and visitor spaces contiguous to the existing museum building at 151 Third Street.

D. The Project will enhance the cultural diversity of the city and the Yerba Buena neighborhood.

E. The Project will provide a publicly-accessible ground floor lobby or gallery space to exhibit "Sequence," a Richard Serra sculpture, which measures approximately 65 by 41 feet and rises to height of approximately 13 feet.

F. By replacing a vacant building and two surface parking pads with additional gallery, support and retail space, the Project will directly enhance the neighborhood's character.

G. SFMOMA proposes approximately 230,000 square feet of new construction, such that the project would occupy less than 70 percent of the building envelope permitted by existing zoning. In addition, although permitted at a height of 500 and 320 feet, the Project has a height of approximately 200 feet and consists of 10 levels and a basement. This overall height of the Project is within the range of development on the block, including the 42-story St. Regis Hotel and Residences, the 29-story W Hotel, and the Pacific Telephone & Telegraph Building.

H. The form of the new building would be compatible with many structures in the vicinity of the site. In addition, the design of the Project would maintain a visual connection from Yerba Buena Gardens between the foreground museum view and background view of other existing buildings.

I. The Project will be of a superior architecture and design. It will be clad in glass fiber reinforced concrete, which is known for its load-bearing properties and resistance to weathering elements. Both the Howard and Minna Street frontages would feature extensive glazing, allowing for views into the building from the street.

J. The Project will not degrade the vistas associated with any existing parks or open space. Additionally, the Project will not cast any new shadow on the Yerba Buena Gardens or any other public open space.

K. The Project will provide pedestrian access to the museum from all four surrounding streets (Third, Minna, Natoma, and Howard Streets) and will continue to provide convenient access from within the museum building to the existing sculpture garden on the roof of the 147-151 Minna Street parking garage.

L. With increased pedestrian access, easier access for museum staff and expanded gallery space, the Project would enhance arts activities and facilities within the existing SFMOMA and contribute to the cluster of arts facilities in the Yerba Buena Area.

M. The Project provides approximately 5,738 square feet of additional publicly accessible open space in a public plaza, terrace, and promenade to be located immediately east of the museum expansion on the ground and second floors accessed off of Howard and Natoma Streets. Additionally, private open space will be provided in the existing 17,250 square foot sculpture garden and two new sculpture gardens to be located on the third and seventh floors of the expansion (approximately 5,700 square feet and 3,500 square feet, respectively).

N. The Project will contribute to future opportunities for resident employment because the addition of gallery, retail and related space will create additional job openings at SFMOMA.

O. The Project will enhance San Francisco's role as a tourist and visitor center. It is anticipated that after visitorship stabilizes following opening of the Project to the public, annual visitor numbers would increase by approximately 20 percent.

P. As a component of the Project, SFMOMA will provide the SFFD with a replacement station for Fire Station No. 1 at no cost to the Fire Department and in a cost-effective manner for SFMOMA. This in turn will result in the replacement of the seismically vulnerable Fire Station No. 1 with a structurally sound fire station meeting current life safety standards applicable to an "essential facility."

Q. The Project is consistent with and implements many objectives and policies of the General Plan, including but not limited to the following:

Arts Element

- Objective I-1: Recognize the arts as necessary to the quality of life for all segments of San Francisco.
- Policy I-1.2: Officially recognize on a regular basis the contributions arts make to the quality of life in San Francisco.
- Policy I-1.3: Increase public awareness of the arts in San Francisco by greater promotion of existing arts programs and services in the community and schools.
- Objective I-2: Increase the contribution of the arts to the economy of San Francisco.
- Policy I-2.1: Encourage and promote opportunities for the arts and artists to contribute to the economic development of San Francisco.
- Policy I-2.2: Continue to support and increase the promotion of the arts and arts activities throughout the City for the benefit of visitors, tourists and residents.
- Objective III-2: Strengthen the contribution of arts organizations to the creative life and vitality of San Francisco.
- Policy III-2.2: Assist in the improvement of arts organizations' facilities and access in order to enhance the quality and quantity of arts offerings.
- Policy III-2.3: Recognize that arts organizations are representative of the City's diversity, creativity and vitality.
- Objective VI-1: Support the continued development and preservation of artists' and arts organizations' spaces.
- Policy VI-1.11: Identify, recognize, and support existing arts clusters and, wherever possible, encourage the development of clusters of arts facilities and arts related businesses throughout the city.

Commerce and Industry Element

- Objective 1: Manage economic growth and change to ensure enhancement of the total city living and working environment.
- Policy 1.1: Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.
- Objective 2: Maintain and enhance a sound and diverse economic base and fiscal structure for the city.

Policy 2.3: Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

Urban Design Element

Objective 3: Moderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environment.

Policy 3.1: Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.

Policy 4.4: Design walkways and parking facilities to minimize danger to pedestrians.

Policy 4.8: Provide convenient access to a variety of recreation opportunities.

Policy 4.10: Encourage or require the provision of recreation space in private development.

Policy 4.13: Improve pedestrian areas by providing human scale and interest.

Downtown Area Plan

The Project is also consistent with and implements many objectives and policies of the Downtown Area Plan, including but not limited to the following:

Objective 1: Manage economic growth and change to ensure enhancement of the total city living and working environment.

Policy 1.1: Encourage development which produces substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences which cannot be mitigated.

Objective 4: Enhance San Francisco's role as a tourist and visitor center.

Objective 9: Provide quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents and visitors.

Policy 9.1: Require usable indoor and outdoor open space, accessible to the public, as part of new downtown development.

- Policy 9.2: Provide different kinds of open space downtown.
- Policy 9.5: Improve the usefulness of publicly owned rights-of-way as open space.
- Objective 10: Ensure that open spaces are accessible and usable.
- Policy 10.2: Encourage the creation of new open spaces that become part of an interconnected pedestrian network.
- Objective 13: Create an urban form for downtown that enhances San Francisco's stature as one of the world's most visually attractive cities.
- Policy 13.1: Relate the height of buildings to important attributes of the city pattern and to the height and character of existing and proposed development.
- Objective 14: Create and maintain a comfortable pedestrian environment.
- Policy 14.2: Create building forms that will minimize the creation of surface winds near the base of buildings.
- Objective 15: Create a building form that is visually interesting and harmonizes with surrounding buildings.
- Policy 15.1: Assure that new buildings contribute to the visual unity of the city.
- Objective 16: Create and maintain attractive, interesting urban streetscapes.
- Objective 16.4: Use designs and materials and include activities at the ground floor to create pedestrian interest.
- Objective 16.5: Encourage the incorporation of publicly visible art works in new private development and in various public spaces downtown.
- Objective 22: Implement a downtown streetscape plan to improve the downtown pedestrian circulation system, especially within the core, to provide for efficient, comfortable, and safe movement.
- Policy 22.3: Ensure convenient and safe pedestrian crossings.
- Policy 22.5: Improve the ambience of the pedestrian environment.

Although the Fire Station Relocation and Housing Project will result in significant and unavoidable impacts to the environment, it will have the following benefits that outweigh those impacts:

A. The Project will replace the seismically vulnerable existing Fire Station No. 1 with a new structurally sound fire station meeting life safety standards applicable to an "essential facility." The fire station will be provided at no cost to the SFFD.

B. Location of the Replacement Fire Station No. 1 on Folsom Street between Fifth and Sixth Streets provides superior response times for most of the service calls received by Fire Station No. 1, compared to the existing station location at 676 Howard Street, which is a congested location further away from the location of most service calls.

C. The Project will enlarge Fire Station No. 1 from two vehicle bays to three vehicle bays, and all essential firefighting and emergency services equipment will be located on the ground floor adjacent to the vehicle bays.

D. The Project provides adequate sleeping, living, cooking, fitness, locker, and bathroom facilities for both male and female firefighters.

E. The Project provides 15 off-street parking spaces for firefighters, compared to no dedicated off-street parking spaces at the existing 676 Howard Street station.

F. The design of the new fire station expresses both the stability and dignity of an important civic building and the unique character of a fire house. The building will be set back from the property line by 5 feet to accommodate a bioswale along Falmouth Street, which would be planted with native plants.

G. The Project will provide up to 13 units of new housing with a large portion of these units being family-sized units.

H. The residential building will be consistent with the character of the neighborhood since surrounding uses include numerous live/work lofts and multi-family residential buildings.

Additionally, the Fire Station Relocation and Housing Project is consistent with and implements many objectives and policies of the General Plan, including but not limited to the following:

Community Facilities Element

Objective 5: Development of a system of firehouses which will meet the operating requirements of the fire department in providing fire protection services and which will be in harmony with related public service facilities and with all other features and facilities of land development and transportation provided for in other sections of the General Plan.

Community Safety Element

Objective 2: Reduce structural and non-structural hazards to life safety, minimize property damage and resulting social, cultural and economic dislocations resulting from future disasters.

Policy 2.5: Assess the risks presented by other types of potentially hazardous structures and reduce the risks to the extent possible.

Policy 2.7: Abate structural and non-structural hazards in City-owned structures.

Objective 3: Ensure the protection of life and property from disasters through effective emergency response. Provide public education and training about earthquakes and other natural disasters and how individuals, businesses and communities can reduce the impacts of disasters.

Policy 3.6: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Community Safety Element 2007 Draft Update

Objective 1: Reduce structural and non-structural hazards to life safety and minimize property damage resulting from future disasters.

Policy 1.13: Abate structural and non-structural hazards in City-owned structures.

Objective 2: Be prepared for the onset of disaster by providing public education and training about earthquakes and other natural and man-made disasters, by readying the city's infrastructure and by ensuring the necessary coordination is in place for ready response.

Policy 2.7: Maintain and expand the city's fire prevention and fire fighting capability with adequate personnel and training. Assure the provision of adequate water for fighting fires.

Policy 2.13: Support the recently developed Emergency Command Center, and ensure alternative command centers in case of an emergency.

Policy 2.21: Develop partnerships with private businesses, public service organizations and local nonprofits to meet disaster-time needs.

Urban Design Element

Objective 3: Moderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environment.

Policy 3.1: Promote harmony in the visual relationships and transitions between new and older buildings.

Policy 3.4: Promote building forms that will respect and improve the integrity of open spaces and other public areas.

Objective 4: Improvement of the neighborhood environment to increase personal safety, comfort, pride and opportunity.

Policy 4.13: Improve pedestrian areas by providing human scale and interest.

East SoMa Area Plan

Objective 1.1: Encourage production of housing and other mixed-use development in East SoMa while maintaining its existing special mixed-use character.

Objective 1.2: Maximize housing development potential in keeping with neighborhood character.

Policy 1.2.1: Encourage development of new housing throughout East SoMa.

Policy 1.2.2: Ensure that in-fill housing development is compatible with its surroundings.

Policy 1.2.4: In general, where residential development is permitted, control residential density through building height and bulk guidelines and bedroom mix requirements.

Objective 2.3: Ensure that new residential developments satisfy an array of housing needs with respect to tenure, unit mix and community services.

Policy 2.3.3: Require that a significant number of units in new developments have two or more bedrooms, except Senior Housing and SRO developments unless all Below Market Rate Units are two or more bedrooms.

Objective 2.4: Lower the cost of the production of housing.

Policy 2.4.4: Facilitate housing production by simplifying the approval process wherever possible.

Objective 3.1: Promote an urban form that reinforces East SoMa's distinctive place in the city's larger form and strengthens its physical fabric and character.

Policy 3.1.6: New buildings should epitomize the best in contemporary architecture, but should do so with full awareness of, and respect for, the height, mass, articulation and materials of the best of the older buildings that surrounds them.

Objective 3.2: Promote an urban form and architectural character that supports walking and sustains a diverse, active and safe public realm.

Policy 3.2.3: Minimize the visual impact of parking.

Objective 5.2: Ensure that new development includes high quality private open space.

Policy 5.2.1: Require new residential and mixed-use residential development to provide on-site private open space designated to meet the needs of residents.

Objective 7.1: Provide essential community services and facilities.

Housing Element

Objective 1: Identify and make available for development adequate sites to meet the city's housing needs, especially permanently affordable housing.

Policy 1.10: Support new housing projects, especially affordable housing, where households can easily rely on public transportation, walking and bicycling for the majority of daily trips.

Objective 4: Foster a housing stock that meets the needs of all residents across lifecycles.

Policy 4.1: Develop new housing, and encourage the remodeling of existing housing, for families with children.

Policy 4.6: Encourage an equitable distribution of growth according to infrastructure and site capacity.

Objective 5: Ensure that all residents have equal access to available units.

Policy 5.4: Provide a range of unit types for all segments of need, and work to move residents between unit types as their needs change.

Objective 11: Support and respect the diverse and distinct character of San Francisco's Neighborhoods.

Policy 11.1: Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

Policy 11.2: Ensure implementation of accepted design standards in project approvals.

Policy 11.3: Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

Policy 11.5: Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

Policy 11.6: Foster a sense of community through architectural design, using features that promote community interaction.

Policy 11.8: Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

Objective 12: Balance housing growth with adequate infrastructure that serves the city's growing population.

Policy 12.1: Encourage new housing that relies on transit use and environmentally sustainable patterns of movement.

Policy 12.2: Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

Policy 12.3: Ensure new housing is sustainably supported by the City's public infrastructure systems.

Objective 13: Prioritize sustainable development in planning for and constructing new housing.

Policy 13.1: Support "smart" regional growth that locates new housing close to jobs and transit.

Policy 13.3: Promote sustainable land use patterns that integrate housing with transportation in order to increase transit, pedestrian, and bicycle mode share.

Having considered these benefits, the Commission finds that the benefits of the Project outweigh the unavoidable adverse environmental effects and that the adverse environmental effects are therefore acceptable.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **ADOPTS FINDINGS** under the California Environmental Quality Act, including rejecting alternatives as infeasible, adopting a Statement of Overriding Considerations, and adopting Mitigation, Monitoring, and Reporting Programs attached as Exhibits A and B.

I hereby certify that the Planning Commission **ADOPTED** the foregoing Motion on November 10, 2011.

Motion 18486
November 10, 2011

CASE NOS. 2009.0291EMRZ AND 2010.0275EMRZ
151 THIRD STREET; 670-676 HOWARD STREET;
935 FOLSOM STREET

Linda D. Avery
Commission Secretary

AYES: Miguel, Antonini, Borden, Fong, Moore, Sugaya

NAYS:

ABSENT: Olague

ADOPTED: November 10, 2011

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>CULTURAL AND PALEONTOLOGICAL RESOURCES</p> <p>M-CP-2</p> <p>Based on a reasonable presumption that archaeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archaeological consultant from the Planning Department (Department) pool of qualified archaeological consultants as provided by the Department archaeologist. The archaeological consultant shall undertake an archaeological testing program as specified herein. In addition, the consultant shall be available to conduct an archaeological monitoring and/or data recovery program if required pursuant to this measure. The archaeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). [For the SFMOMA Expansion, the archaeological consultant's work shall be conducted in accordance with this mitigation measure, and with the requirements of the project archaeological research design and treatment plan (Far Western Anthropological Research Group, <i>Archaeological Research Design and Treatment Plan for the Transit Center District Plan Area</i>, February 2010) at the direction of the Environmental Review Officer (ERO). In instances of inconsistency between the requirement of the project archaeological research design and treatment plan and of this archaeological mitigation measure, the requirements of this archaeological mitigation measure shall prevail.] All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archaeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of 4 weeks. At the direction of the ERO, the suspension of construction can be extended beyond 4 weeks only if such a suspension is the only feasible means to reduce to a less-than-significant level potential effects on a significant archaeological resource as defined in CEQA Guidelines Section 15064.5 (a)(c).</p> <p><i>Archaeological Testing Program.</i> The archaeological consultant shall prepare and submit to the ERO for review and approval an archaeological testing plan (ATP). The archaeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archaeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archaeological testing program will be to determine to the extent possible the presence or absence of archaeological resources and to identify and to evaluate whether any archaeological resource encountered on the site constitutes an historical resource under CEQA.</p>	<p>Project sponsor and archaeological consultant.</p>	<p>Prior to any soil-disturbing activities.</p>	<p>The ERO to review and approve all plans and reports.</p>	<p>Considered complete upon ERO approval of plans and reports.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>M-CP-2</u> <i>Continued</i></p> <p>At the completion of the archaeological testing program, the archaeological consultant shall submit a written report of the findings to the ERO. If based on the archaeological testing program the archaeological consultant finds that significant archaeological resources may be present, the ERO in consultation with the archaeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archaeological testing, archaeological monitoring, and/or an archaeological data recovery program. If the ERO determines that a significant archaeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either:</p> <p>A. The proposed project shall be re-designed so as to avoid any adverse effect on the significant archaeological resource; or</p> <p>B. A data recovery program shall be implemented, unless the ERO determines that the archaeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.</p> <p><i>Archaeological Monitoring Program.</i> If the ERO, in consultation with the archaeological consultant, determines that an archaeological monitoring program shall be implemented, the archaeological monitoring program shall minimally include the following provisions:</p> <ul style="list-style-type: none"> • The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to the commencement of any project-related soils disturbing activities. The ERO, in consultation with the archaeological consultant, shall determine what project activities shall be archaeologically monitored. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archaeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context; • The archaeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archaeological resource; • The archaeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archaeological consultant and the ERO until the ERO has, in consultation with project archaeological consultant, determined that project construction activities could have no effects on significant archaeological deposits; 	<p>Project sponsor, archaeological consultant, archaeological monitor, ERO.</p>	<p>Prior to and during soil-disturbing activities.</p>	<p>The ERO to review and approve the archaeological monitoring program and findings from the monitoring program (as applicable).</p>	<p>Considered complete upon ERO's receipt of the written report of findings from the monitoring program.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>M-CP-2 Continued</p> <ul style="list-style-type: none"> The archaeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; If an intact archaeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archaeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archaeological monitor has cause to believe that the pile driving activity may affect an archaeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. The archaeological consultant shall immediately notify the ERO of the encountered archaeological deposit. The archaeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archaeological deposit, and present the findings of this assessment to the ERO. <p>Whether or not significant archaeological resources are encountered, the archaeological consultant shall submit a written report of the findings of the monitoring program to the ERO.</p> <p><i>Archaeological Data Recovery Program.</i> The archaeological data recovery program shall be conducted in accordance with an archaeological data recovery plan (ADRP). The archaeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft ADRP. The archaeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practical.</p> <p>The scope of the ADRP shall include the following elements:</p> <ul style="list-style-type: none"> <i>Field Methods and Procedures.</i> Descriptions of proposed field strategies, procedures, and operations. <i>Cataloging and Laboratory Analysis.</i> Description of selected cataloging system and artifact analysis procedures. 	<p>Project sponsor, archaeological consultant, ERO.</p>	<p>Prior to soil-disturbing activities.</p>	<p>The ERO to review and approve the archaeological data recovery program.</p>	<p>Considered complete upon ERO's receipt of the written report of findings from the archaeological data recovery program or ERO's direction to implement further measures.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>M-CP-2 Continued</p> <ul style="list-style-type: none"> <i>Discard and Deaccession Policy.</i> Description of and rationale for field and post-field discard and deaccession policies. <i>Interpretive Program.</i> Consideration of an on-site/off-site public interpretive program during the course of the archaeological data recovery program. <i>Security Measures.</i> Recommended security measures to protect the archaeological resource from vandalism, looting, and non-intentionally damaging activities. <i>Final Report.</i> Description of proposed report format and distribution of results. <i>Curation.</i> Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities. <p><i>Human Remains and Associated or Unassociated Funerary Objects.</i> The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC), who shall appoint a Most Likely Descendant (MLD) (Public Resources Code Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.</p> <p><i>Final Archaeological Resources Report.</i> The archaeological consultant shall submit a Draft Final Archaeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archaeological resource and describes the archaeological and historical research methods employed in the archaeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archaeological resource shall be provided in a separate removable insert within the final report.</p>	<p>Project sponsor, construction contractor, and archaeological consultant.</p>	<p>During soil-disturbing activities.</p>	<p>ERO and County Coroner.</p>	<p>Considered complete upon latter of ERO's drafting of memo or ERO's direction to implement further measures.</p>
	<p>Project sponsor and archaeological consultant.</p>	<p>Following completion of any archaeological field program.</p>	<p>ERO to review Draft FARR and transmittals to specified agencies.</p>	<p>Considered complete upon ERO approval of Draft FARR and review of evidence of distribution.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>M-CP-2</u> <i>Continued</i></p> <p>Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive one bound, one unbound, and one unlocked, searchable PDF copy on CD or DVD of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.</p>				
<p>NOISE</p> <p><u>M-NO-2a</u></p> <p>The following two-part measure shall be implemented:</p> <ul style="list-style-type: none"> • To reduce daytime noise impacts associated with construction activities to the maximum extent feasible, the following measures shall be implemented in addition to all measures set forth in the Noise Ordinance: <ul style="list-style-type: none"> ○ At least 10 days prior to the start of construction, the project sponsor shall notify occupants of properties within 100 feet of the project site's lot line (comprising the following addresses: 151 Third Street and 670 and 676 Howard Street). Notification shall include an estimation of the duration of construction activities, including anticipated start and completion dates and the daily construction times. ○ Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible). ○ Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, which could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible. 	Project sponsor and construction contractor.	At least 10 days prior to the start of construction, during construction, and prior to issuance of grading permits.	DBI to review notification procedure and vibration impact assessment.	Considered complete upon DBI approval of vibration impact assessment and review of evidence of notification.

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>M-NO-2a Continued</p> <ul style="list-style-type: none"> ○ Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds. Insulation barriers or other measures shall be incorporated to the extent feasible. ○ Ground clearing, excavation, foundation pouring, building erection and exterior finishing activities shall be limited to between the hours of 7:00 a.m. to 8:00 p.m. <p>The project applicant shall prepare a vibration impact assessment to determine potential construction-related groundborne vibration impacts for all structures located within 25 feet of construction activities expected to generate more than 90 VdB. Measures shall be identified and implemented that would reduce groundborne vibration impacts from extreme noise generators by prescribing methods of construction to be utilized so as not to exceed the FTA's groundborne vibration damage threshold of 90 VdB at the nearest façade of all adjacent structures. Such methods may include restrictions on the number or types of construction equipment that may operate at a time within 25 feet of structures, restrictions on equipment hours of operation, or requirements to use alternative construction techniques. The vibration impact assessment shall be submitted to the Planning Department for review and approval prior to issuance of grading permits.</p>				
<p>HAZARDS AND HAZARDOUS MATERIALS</p> <p>M-HZ-1a</p> <p>The following actions shall be implemented by the project sponsor:</p> <p><i>Step 1 (Preparation of a Phase II Environmental Site Assessment):</i> The project sponsor shall conduct a Phase II Environmental Site Assessment of the Hunt Street and Natoma Street parking pad portions of the project site. If residual contamination is identified on the project site that requires preparation and implementation of a Site Mitigation Plan, Step 2 (and subsequent steps) shall be implemented.</p>	Project sponsor.	Prior to issuance of grading or building permits.	DPH to review Phase II Environmental Site Assessment and subsequent mitigation plan(s), as warranted, for adequacy.	Considered complete upon approval of Phase II Environmental Site Assessment and subsequent mitigation plan(s) by DPH and Planning Department.

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>M-HZ-1a Continued</p> <p><i>Step 2 (Preparation of Site Mitigation Plan):</i> A Site Mitigation Plan shall be prepared, if warranted based on the results of the Phase II Environmental Site Assessment. The SMP shall include a discussion of the level of contamination of soils and groundwater on the project site and mitigation measures for managing contaminated soils on the site, including, but not limited to: 1) the alternatives for managing contaminated soils on the site (e.g., encapsulation, partial or complete removal, treatment, recycling for reuse, or a combination of methods); 2) the preferred alternative for managing contaminated soils on the site and a brief justification as to why; and 3) the specific practices to be used to handle, haul, and dispose of contaminated soils on the site. The SMP shall be submitted to the DPH for review and approval. A copy of the SMP shall be submitted to the Planning Department to become part of the case file.</p> <p><i>Step 3 (Handling, Hauling, and Disposal of Contaminated Soils):</i> The following measures shall be implemented:</p> <p>(a) Specific work practices: If, based on the results of the soil tests conducted, DPH determines that the soils on the project site are contaminated at or above potentially hazardous levels, the construction contractor shall be alert for the presence of such soils during excavation and other construction activities on the site (detected through soil odor, color, and texture and results of onsite soil testing), and shall be prepared to handle, profile (i.e., characterize), and dispose of such soils appropriately (i.e., as dictated by local, State, and federal regulations) when such soils are encountered on the site. If excavated materials contain over 1 percent friable asbestos, they shall be treated as hazardous waste, and shall be transported and disposed of in accordance with applicable State and federal regulations. These procedures are intended to mitigate any potential health risks related to chrysotile asbestos, which may or may not be located on the site.</p> <p>(b) Dust suppression: Soils exposed during excavation for site preparation and project construction activities shall be kept moist throughout the time they are exposed, both during and after construction work hours.</p> <p>(c) Surface water runoff control: Where soils are stockpiled, visqueen shall be used to create an impermeable liner, both beneath and on top of the soils, with a berm to contain any potential surface water runoff from the soil stockpiles during inclement weather.</p> <p>(d) Soils replacement: If necessary, clean fill or other suitable material(s) shall be used to bring portions of the project site, where contaminated soils have been excavated and removed, up to construction grade.</p>	<p>(see above)</p> <p>Project sponsor and construction contractor.</p>	<p>(see above)</p> <p>Prior to issuance of a grading permit and during construction.</p>	<p>(see above)</p> <p>DPH to review construction plans and specifications for inclusion of appropriate protocols regarding handling, hauling, and disposal of contaminated soils.</p>	<p>(see above)</p> <p>Considered complete upon approval of construction plans and specifications by DBL.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>M-HZ-1a Continued</u></p> <p>(e) Hauling and disposal: Contaminated soils shall be hauled off the project site by waste-hauling trucks appropriately certified with the State of California and adequately covered to prevent dispersion of the soils during transit, and shall be disposed of at a permitted hazardous waste disposal facility registered with the State of California.</p> <p><i>Step 4 (Preparation of Closure/Certification Report):</i> After construction activities are completed, the Project Applicant shall prepare and submit a closure/certification report to DPH for review and approval. The closure/certification report shall include the mitigation measures in the SMP for handling and removing contaminated soils from the project site, whether the construction contractor modified any of these mitigation measures, and how and why the construction contractor modified those mitigation measures.</p>	<p>Project sponsor.</p>	<p>Prior to issuance of occupancy permit.</p>	<p>DPH to review closure/certification report.</p>	<p>Considered complete upon approval of closure/certification report by DPH.</p>
<p><u>M-HZ-1b</u></p> <p>If, based on the results of the soil tests conducted, the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, any contaminated soils designated as hazardous waste and required by DPH to be excavated shall be removed by a qualified Removal Contractor and disposed of at a regulated Class I hazardous waste landfill in accordance with U.S. Environmental Protection Agency regulations, as stipulated in the SMP. The Removal Contractor shall obtain, complete, and sign hazardous waste manifests to accompany the soils to the disposal site. Other excavated hazardous waste manifests to accompany the soils to the disposal site. Other excavated soils shall be disposed of in an appropriate landfill, as governed by applicable laws and regulations, or other appropriate actions shall be taken in coordination with the DPH. If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, a Site Health and Safety (H&S) Plan shall be required by the California Division of Occupational Safety and Health (Cal-OSHA) prior to initiating any earthmoving activities at the site. The H&S Plan shall identify protocols for managing soils during construction to minimize worker and public exposure to contaminated soils. The protocols shall include at a minimum:</p> <ul style="list-style-type: none"> • Sweeping of adjacent public streets daily (with water sweepers) if any visible soil material is carried onto the streets. • Characterization of excavated native soils proposed for use on site prior to placement to confirm that the soil meets appropriate standards. • The dust controls specified in the Construction Dust Control Ordinance (176-08). • Protocols for managing stockpiled and excavated soils. The H&S Plan shall identify site access controls to be implemented from the time of surface disruption through the completion of earthwork construction. The protocols shall include as a minimum: 	<p>Project sponsor and qualified Removal Contractor.</p>	<p>Prior to issuance of grading permit and immediately following excavation activities.</p>	<p>DPH to review H&S Plan to ensure appropriate protocols have been included for managing potentially contaminated soil and groundwater during the construction period and that appropriate hazardous waste manifests have been provided.</p>	<p>Considered complete upon approval of H&S Plan and receipt of appropriate hazardous waste manifests by DPH.</p>

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>M-HZ-1b</u> <i>Continued</i></p> <ul style="list-style-type: none"> o Appropriate site security to prevent unauthorized pedestrian/vehicular entry, such as fencing or other barrier or sufficient height and structural integrity to prevent entry and based upon the degree of control required. o Posting of "no trespassing" signs. o Provision for on-site meetings with construction workers to inform them about security measures and reporting/contingency procedures. <p>If groundwater contamination is identified, the Site Health and Safety (H&S) Plan shall identify protocols for managing groundwater during construction to minimize worker and public exposure to contaminated groundwater. The protocols shall include procedures to prevent unacceptable migration of contamination from defined plumes during dewatering.</p> <p>The H&S Plan shall include a requirement that construction personnel be trained to recognize potential hazards associated with underground features that could contain hazardous substances, previously unidentified contamination, or buried hazardous debris. Excavation personnel shall also be required to wash hands and face before eating, smoking, and drinking.</p> <p>The H&S Plan shall include procedures for implementing a contingency plan, including appropriate notification and control procedures, in the event unanticipated subsurface hazards are discovered during construction. Control procedures shall include, but would not be limited to, investigation and removal of underground storage tanks or other hazards.</p>	<p>Project sponsor and construction contractor.</p>	<p>Prior to issuance of a grading permit and during construction.</p>	<p>DPH to review construction plans and specifications for inclusion of appropriate protocols regarding decontamination of equipment.</p>	<p>Considered complete upon approval of construction plans and specifications by DBI.</p>
<p><u>M-HZ-1c</u></p> <p>If the DPH determines that the soils on the project site are contaminated with contaminants at or above potentially hazardous levels, all trucks and excavation and soil handling equipment shall be decontaminated following use and prior to removal from the site. Gross contamination shall be first removed through brushing, wiping, or dry brooming. The vehicle or equipment shall then be washed clean (including tires). Prior to removal from the work site, all vehicles and equipment shall be inspected to ensure that contamination has been removed.</p>				

Mitigation Measures	Responsibility for Implementation	Mitigation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>M-HZ-1d</u></p> <p>The City shall condition future development approvals to require that the project sponsor ensures that any equipment containing PCBs or mercury, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, State, and local laws prior to the start of building demolition, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed. Any other hazardous materials identified, either before or during work, shall be abated according to applicable federal, State, and local laws.</p>	<p>Planning Department.</p>	<p>Prior to issuance of demolition permit.</p>	<p>Planning Department to condition future approvals to require appropriate removal and disposal of any equipment containing PCBs or mercury.</p>	<p>Considered complete upon conditioning of future development approvals by Planning Department.</p>

Improvement Measures	Responsibility for Implementation	Implementation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p>IMPROVEMENT MEASURES</p> <p><u>Improvement Measure TK-1 (Pedestrians)</u></p> <p>The following sidewalk improvements could be considered around the SFMOMA Expansion site. This improvement measure would improve pedestrian circulation but would not be required to reduce significant environmental effects on the pedestrian environment because none was identified.</p> <p><i>Third Street Sidewalk Extension.</i> As an improvement measure to enhance the pedestrian environment, the project sponsor should work with MTA and DPW to design and construct a sidewalk extension on Third Street in front of the existing Third Street entrance into SFMOMA. The project sponsor should be required to fund the design and construction of this improvement.</p> <p>The sidewalk extension should be about 7 feet in width (the parking lane is about 7 feet wide) and about 85 feet in length, and would be centered on the museum entrance (which is aligned with the midblock crosswalk). As part of this improvement, a consolidated 39-foot-wide passenger zone and 20-foot-wide red zone would be provided between the sidewalk extension and Minna Street. A 59-foot-wide passenger zone would be provided south of the sidewalk extension. The 85-foot long sidewalk extension, red zone and two passenger zones would eliminate six of the seven on-street metered parking spaces on Third Street that are adjacent to the project site (i.e., three spaces north of the existing midblock crosswalk and three spaces south of the midblock crosswalk).</p> <p><i>Howard Street Sidewalk Extension.</i> As an improvement measure to enhance the pedestrian environment, the project sponsor should work with MTA and DPW to design and construct a sidewalk extension on Howard Street in front of the new entrance into SFMOMA. Since modifications to the Howard Street sidewalk and roadway network are currently being considered as part of the Transit Center District Plan and ENTRIPS (Eastern Neighborhoods Transportation Implementation Planning Study), this improvement measure would be revisited by the Planning Department, MTA, and the project sponsor following completion of these studies. If the Planning Department and MTA determine that the sidewalk extension on Howard Street adjacent to the project site is feasible within the future context of Howard Street, it should be implemented by SFMOMA.</p> <p>The Howard Street sidewalk extension would be in proximity to the proposed Howard Street entrance into the museum. The sidewalk extension should be 7 feet in width (the parking lane is about 7 feet wide) and about 40 feet in length, or as determined by MTA and DPW. Adjacent to the extension would be the proposed passenger loading zone about 50 feet in width. The 40-foot-long sidewalk extension and 50-foot-long passenger loading zone</p>	<p>Project sponsor, Planning Department, MTA, and DPW.</p> <p>Project sponsor, Planning Department, MTA, and DPW.</p>	<p>Prior to issuance of building permit.</p> <p>After completion of Howard Street study for Transit Center District Plan and ENTRIPS.</p>	<p>Planning Department, MTA, and DPW to approve the design plans for the Third Street sidewalk extensions.</p> <p>Planning Department, MTA, and DPW to approve the design plans for the Howard Street sidewalk extensions, if implemented.</p>	<p>Considered complete upon approval of the design plans for the Third Street sidewalk extensions by Planning Department, MTA, and DPW.</p> <p>Considered complete upon approval of the design plans for the Howard Street sidewalk extensions by Planning Department, MTA, and DPW, or a determination that the Howard Street extension is not feasible.</p>

Improvement Measures	Responsibility for Implementation	Implementation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>Improvement Measure TR-1</u> <i>Continued</i></p> <p>would occupy the 90-foot frontage of the SFMOMA Expansion site on Howard Street. This space is currently the driveway for the existing fire station, as well as three general metered parking spaces, which would be removed. The sidewalk extension would not affect traffic operations on Howard Street, and would reduce conflicts between parking vehicles and the adjacent travel lane.</p>				
<p><u>Improvement Measure TR-4</u> (<i>Transportation Demand Management (TDM) Plan</i>)</p> <p>As an improvement measure to reduce the use of single-occupant vehicles and to increase the use of rideshare, transit, bicycle, and walk modes for employees, volunteers, and visitors, SFMOMA should formalize a TDM Plan that addresses travel to SFMOMA by employees and visitors. The project sponsor should retain the services of a transportation consultant to review existing TDM elements, prepare a TDM Plan, and recommend additional measures for consideration by SFMOMA. As part of the TDM Plan, the consultant could prepare a stand alone summary that could be incorporated into the employee manual, and also enhance the TDM information on the public website to better publicize alternative transportation options to visitors.</p>	Project sponsor.	Prior to issuance of occupancy permit.	Planning Department and MTA to review TDM Plan for adequacy.	Considered complete upon approval of TDM Plan by Planning Department and MTA.
<p><u>Improvement Measure TR-5</u> (<i>Construction</i>)</p> <p>The following construction period measures could be considered:</p> <p><i>Traffic Control Plan for Construction.</i> As an improvement measure to reduce potential conflicts between construction activities and pedestrians, transit, and autos at the SFMOMA Expansion site, the contractor should prepare a traffic control plan for project construction. The project sponsor and construction contractor(s) would meet with DPW, MTA, the Fire Department, Muni Operations and other City agencies to coordinate feasible measures to reduce traffic congestion, including temporary transit stop relocations (not anticipated, but if determined necessary) and other measures to reduce potential traffic and transit disruption and pedestrian circulation effects during construction of the SFMOMA Expansion. The contractor would be required to comply with the City of San Francisco's Regulations for Working in San Francisco Streets, which establish rules and permit requirements so that construction activities can be conducted safely and with the least possible interference to pedestrians, bicyclists, transit and vehicular traffic. The traffic control plan would address how passenger loading/unloading, and deliveries and service vehicles would be accommodated at the W Hotel during project construction.</p>	Project sponsor.	Prior to issuance of demolition, grading, or building permit.	DPW, MTA, and Fire Department to review Traffic Control Plan for Construction for adequacy.	Considered complete upon approval of Traffic Control Plan for Construction.

Improvement Measures	Responsibility for Implementation	Implementation Schedule	Monitoring/Report Responsibility	Status/Date Completed
<p><u>Improvement Measure TR-5 Continued</u></p> <p><i>Carpool and Transit Access for Construction Workers.</i> As an improvement measure to minimize parking demand associated with construction workers, the construction contractor could be required by the project sponsor to encourage carpooling and transit access to the project sites by construction workers.</p> <p><i>Project Construction Updates for Adjacent Businesses and Residents.</i> As an improvement measure to minimize construction impacts on access for nearby institutions and businesses, DPW could require the project sponsor to provide nearby residences and adjacent businesses with regularly-updated information regarding project construction, including construction activities, peak construction vehicle activities (e.g., concrete pours), travel lane closures, and lane closures. A web site could be created by project sponsor that would provide current construction information of interest to neighbors, as well as contact information for specific construction inquiries or concerns.</p>				
<p><u>Improvement Measure TR-7 (Loading)</u></p> <p>As an improvement measure to minimize the potential for conflicts within the Natoma loading area and to ensure that deliveries for SFMOMA and W Hotel are adequately accommodated:</p> <ul style="list-style-type: none"> • SFMOMA shall provide an on-site loading dock manager to coordinate loading, manage the delivery demand, provide assistance for truck maneuvers into and out of the loading area, and coordinate trash collection activity. • SFMOMA shall ensure that the W Hotel has 24-hour access across the Natoma loading area. • The SFMOMA on-site loading dock manager shall coordinate and integrate scheduling of truck deliveries for SFMOMA and the W Hotel. • The SFMOMA on-site loading dock manager and overnight security staff shall actively manage the loading area 24 hours a day to ensure that trucks park efficiently and do not dwell in loading spaces, or block valet and loading access for the W Hotel. • The SFMOMA on-site loading dock manager shall, to the extent possible, schedule deliveries destined to the Natoma loading area (e.g., restaurant deliveries) to before 7:00 a.m. to minimize conflicts with other daytime couriers such as Federal Express and United Parcel Service. • Delivery vehicles longer than 35 feet shall be prohibited from entering the Natoma loading area. 	Project sponsor.	Prior to issuance of occupancy permit.	Planning Department and MTA to review loading plans to ensure that conflicts would be minimized and that deliveries for SFMOMA and W Hotel would be adequately accommodated.	Considered complete upon approval of loading plans by Planning Department and MTA.

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: San Francisco Museum of Modern Art, a California non-profit corporation	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
Board of Trustees, as attached.	
Contractor address: 151 Third Street, San Francisco, CA 94103	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contract: Sale of Air Rights valued at \$1.00
Describe the nature of the contract that was approved: Agreement of Transfer	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

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Richard Diebenkorn, *Berkeley #23*, 1955; oil on canvas; Collection SFMOMA, gift of the Women's Board; © Estate of Richard Diebenkorn

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee:
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee:
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

