

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 Director of Real Estate
25



City and County of San Francisco

**Tails
Resolution**

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 121130

Date Passed: December 11, 2012

Resolution approving and authorizing the Director of Real Estate to execute Agreement for Transfer of Airspace Parcel within Assessor's 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.

December 03, 2012 Land Use and Economic Development Committee - RECOMMENDED

December 11, 2012 Board of Supervisors - ADOPTED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Olague and Wiener

File No. 121130

I hereby certify that the foregoing
Resolution was ADOPTED on 12/11/2012 by
the Board of Supervisors of the City and
County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor
Date Approved