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 Airspace 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.sfplanning.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