

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

Approving various routine traffic and parking modifications.

SUMMARY:

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- Taxis are not exempt from any of these regulations.

ENCLOSURE:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Tom Folks _____

ASSIGNED SFMTAB CALENDAR DATE: March 1, 2011

PAGE 2.

PURPOSE

To approve various routine traffic and parking modifications.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

Objective 1.1: Improve safety and security across all modes of transportation.

Goal 2: System Performance – To get customers where they want to go, when they want to be there.

Objective 2.4: Reduce congestion through major corridors.

Objective 2.5: Manage parking supply to align with SFMTA and community goals.

ITEMS

- A. REVOKE – BLUE ZONE – 3150 Sacramento Street, north side, from 5 feet west of, to 14 feet east of, west property line (19-foot zone). **PH 1/28/11 Requested by SFMTA.**
- B. REVOKE – GREEN ZONE, 9AM TO 6PM, MONDAY THROUGH SATURDAY – 3150 Sacramento Street, north side, from 29 feet to 95 feet west of east property line (66-foot zone). **PH 1/28/11 Requested by SFMTA.**
- C. ESTABLISH – PART-TIME PASSENGER LOADING ZONE (DURING LIBRARY HOURS) – 3150 Sacramento Street, north side, from 13 feet to 43 feet east of the west property line (30-foot zone) (with accessible signage). **PH 1/28/11 Requested by SFMTA.**
- D. ESTABLISH – GREEN ZONE, 9AM TO 6PM, MONDAY THROUGH SATURDAY – 3150 Sacramento Street, north side, from 43 feet to 79 feet east of the west property line (36-foot zone). **PH 1/28/11 Requested by SFMTA.**
- E. ESTABLISH – UNMETERED MOTORCYCLE PARKING – Ashbury Street, west side, from Waller Street, 13 feet to 39 feet northerly (26 foot zone for seven motorcycles). **PH 2/4/11 Requested by Resident.**
- F. RE-OPEN – CROSSWALK – West Crosswalk at the intersection of Geary Boulevard at Steiner Street. **PH 2/4/11 Requested by SFMTA.**
- G. ESTABLISH – SIDEWALK EXTENSION – Two Geary Boulevard at Steiner Street corners: North side from Steiner Street to 55 feet westerly (8 feet wide); and South side from Steiner Street to 55 feet westerly (9 feet wide). **PH 2/4/11 Requested by SFMTA.**
- H. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA G (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 2306 Geary Boulevard (no new signs to be installed). **PH 2/4/11 Requested by Resident.**
- I. ESTABLISH – PARKING METER AREA 3, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY – Geary Boulevard, north side, between Broderick and Baker Streets. **PH 2/4/11 Requested by SFMTA.**
- J. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA J (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 633 Irving Street (residents at this address would be eligible to purchase Area J permits, but no new signs would be installed). **PH 2/4/11 Requested by Residents.**

PAGE 3.

- K. ESTABLISH – TOW-AWAY, NO STOPPING, 10 PM TO 6 AM, DAILY – Newhall Street, both sides, between Fairfax and Galvez Avenues. **PH 2/4/11 Requested by Business.**
- L. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA J, 8 AM TO 5 PM, MONDAY THROUGH FRIDAY, 2-HOUR LIMIT – Rivoli Street, both sides, between Belvedere and Cole Streets. **PH 2/4/11 Requested by Residents.**
- M. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA R (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 964 Eddy Street. **PH 2/4/11 Requested by Resident.**
- N. ESTABLISH – BIKE LANES - Folsom Street, northbound, 14th Street to 24th Street and Folsom Street, southbound, 13th Street to 24th Street. **PH 2/4/11 Requested by SFMTA.**
- O. REVOKE – BUS ZONE – Folsom Street, west side, from 24th Street to 75 feet northerly and Folsom Street, northeast corner, at 22nd Street (flag stop). **PH 2/4/11 Requested by SFMTA.**
- P. ESTABLISH – BUS ZONE AND SIDEWALK EXTENSIONS – Folsom Street, west side, from 24th Street to 65 feet southerly; Folsom Street, east side, from 22nd Street to 65 feet northerly (replaces flag stop); and Folsom Street, east side, from 20th Street to 65 feet northerly. **PH 2/4/11 Requested by SFMTA.**
- Q. ESTABLISH – SIDEWALK EXTENSIONS – Folsom Street at the following corners: 20th Street, NE and SW corners (65-foot long); 22nd Street, SW corner (65-foot long); and 24th Street, NE corner (65-foot long). **PH 2/4/11 Requested by SFMTA.**
- R. REVOKE – BLUE ZONE – Folsom Street, west side, from 5 feet to 25 feet south of 24th Street (20 foot zone). **PH 2/4/11 Requested by SFMTA.**
- S. ESTABLISH – LEFT TURN MUST TURN LEFT – Folsom Street at 24th Street, northbound. **PH 2/4/11 Requested by SFMTA.**
- T. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA U, 2-HOUR LIMIT, 8 AM TO 10 PM, DAILY – Juniper Street, east side, from 215 feet south of Folsom Street to its southerly terminus. **PH 2/4/11 Requested by SFMTA.**
- U. ESTABLISH – RED ZONE – 16th Street, south side, from 18 feet to 45 feet west of Bryant Street (extends existing 18-foot red zone to 45-foot red zone). **PH 2/4/11 Requested by SFMTA.**
- V. ESTABLISH – BUS ZONE – 11th Street, west side, from Harrison Street to 150 feet southerly (extends existing 71-foot bus zone to 150 feet). **PH 2/4/11 Requested by SFMTA.**
- W. ESTABLISH – YIELD SIGN – Still Street, westbound right turn onto northbound Lyell Street (replaces existing STOP sign). **PH 2/4/11 Requested by SFMTA.**
- X. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA 5, 2-HOUR LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY – 21st Street, both sides, between Church and Sanchez Streets. **PH 1/21/2011 Requested by Residents.**
- Y. RESCIND – 90 DEGREE PARKING – Rhode Island Street, west side, from Alameda Street to 60 feet southerly (restores parallel parking). **PH 1/21/2011 Requested by SFMTA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. REVOKE – BLUE ZONE – 3150 Sacramento Street, north side, from 5 feet west of, to 14 feet east of, west property line (19-foot zone).
- B. REVOKE – GREEN ZONE, 9AM TO 6PM, MONDAY THROUGH SATURDAY – 3150 Sacramento Street, north side, from 29 feet to 95 feet west of east property line (66-foot zone).
- C. ESTABLISH – PART-TIME PASSENGER LOADING ZONE (DURING LIBRARY HOURS) – 3150 Sacramento Street, north side, from 13 feet to 43 feet east of the west property line (30-foot zone) (with accessible signage).
- D. ESTABLISH – GREEN ZONE, 9AM TO 6PM, MONDAY THROUGH SATURDAY – 3150 Sacramento Street, north side, from 43 feet to 79 feet east of the west property line (36-foot zone).
- E. ESTABLISH – UNMETERED MOTORCYCLE PARKING – Ashbury Street, west side, from Waller Street, 13 feet to 39 feet northerly (26 foot zone for seven motorcycles).
- F. RE-OPEN – CROSSWALK – West Crosswalk at the intersection of Geary Boulevard at Steiner Street.
- G. ESTABLISH – SIDEWALK EXTENSION – Two Geary Boulevard at Steiner Street corners: North side from Steiner Street to 55 feet westerly (8 feet wide); and South side from Steiner Street to 55 feet westerly (9 feet wide).
- H. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA G (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 2306 Geary Boulevard (no new signs to be installed).
- I. ESTABLISH – PARKING METER AREA 3, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY – Geary Boulevard, north side, between Broderick and Baker Streets.
- J. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA J (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 633 Irving Street (residents at this address would be eligible to purchase Area J permits, but no new signs would be installed).
- K. ESTABLISH – TOW-AWAY, NO STOPPING, 10 PM TO 6 AM, DAILY – Newhall Street, both sides, between Fairfax and Galvez Avenues.
- L. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA J, 8 AM TO 5 PM, MONDAY THROUGH FRIDAY, 2-HOUR LIMIT – Rivoli Street, both sides, between Belvedere and Cole Streets.
- M. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA R (ELIGIBILITY TO PURCHASE PERMIT ONLY) – 964 Eddy Street.
- N. ESTABLISH – BIKE LANES - Folsom Street, northbound, 14th Street to 24th Street and Folsom Street, southbound, 13th Street to 24th Street.
- O. REVOKE – BUS ZONE – Folsom Street, west side, from 24th Street to 75 feet northerly and Folsom Street, northeast corner, at 22nd Street (flag stop).
- P. ESTABLISH – BUS ZONE AND SIDEWALK EXTENSIONS – Folsom Street, west side, from 24th Street to 65 feet southerly; Folsom Street, east side, from 22nd Street to 65 feet northerly (replaces flag stop); and Folsom Street, east side, from 20th Street to 65 feet northerly.
- Q. ESTABLISH – SIDEWALK EXTENSIONS – Folsom Street at the following corners: 20th Street, NE and SW corners (65-foot long); 22nd Street, SW corner (65-foot long); and 24th Street, NE corner (65-foot long).

- R. REVOKE – BLUE ZONE – Folsom Street, west side, from 5 feet to 25 feet south of 24th Street (20 foot zone).
- S. ESTABLISH – LEFT TURN MUST TURN LEFT – Folsom Street at 24th Street, northbound.
- T. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA U, 2-HOUR LIMIT, 8 AM TO 10 PM, DAILY – Juniper Street, east side, from 215 feet south of Folsom Street to its southerly terminus.
- U. ESTABLISH – RED ZONE – 16th Street, south side, from 18 feet to 45 feet west of Bryant Street (extends existing 18-foot red zone to 45-foot red zone).
- V. ESTABLISH – BUS ZONE – 11th Street, west side, from Harrison Street to 150 feet southerly (extends existing 71-foot bus zone to 150 feet).
- W. ESTABLISH – YIELD SIGN – Still Street, westbound right turn onto northbound Lyell Street (replaces existing STOP sign).
- X. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA 5, 2-HOUR LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY – 21st Street, both sides, between Church and Sanchez Streets.
- Y. RESCIND – 90 DEGREE PARKING – Rhode Island Street, west side, from Alameda Street to 60 feet southerly (restores parallel parking).

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of the Sustainable Streets Division does hereby approve the changes.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of

_____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Sustainable Streets Division

BRIEF DESCRIPTION:

Requesting that the SFMTA Board of Directors approve parking and traffic changes associated with making Hayes Street a two-way street between Van Ness Avenue and Gough Street and making Fell Street a two-way street between Van Ness Avenue and Franklin Street.

SUMMARY:

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- The City's Market-Octavia Plan, the Board of Supervisors, and Hayes Valley neighborhood groups have requested making Hayes Street a two-way street between Van Ness Avenue and Gough Street.
- The proposed parking and traffic changes will make Hayes Street a two-way street between Van Ness Avenue and Gough Street. Currently this portion of the street is one-way westbound. Other parking and traffic changes are proposed to support this change.
- The proposed parking and traffic changes will make Fell Street a two-way street between Van Ness Avenue and Franklin Street. Currently this portion of the street is one-way eastbound. Other parking and traffic changes are proposed to support this change.
- The Planning Department reviewed this project and issued an Addendum to the Market-Octavia Plan on December 16, 2010.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Ricardo Olea

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Requesting approval by the SFMTA Board of Directors for parking and traffic changes associated with making Hayes Street a two-way street between Van Ness Avenue and Gough Street and making Fell Street a two-way street between Van Ness Avenue and Franklin Street.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

DESCRIPTION

The pattern of one-way streets in the Civic Center was developed in the 1950's as a means to facilitate through traffic distribution. In recent years there has been interest on the part of local merchants and residents to bring back a two-way street to Hayes Street, the main local commercial street in the neighborhood. The City's Market Octavia Plan (May 2008) recommended making Hayes Street "a two-way local street, which is best suited to its commercial nature and role as the heart of Hayes Valley." Board of Supervisors Resolution 619-07 also urged the SFMTA "to restore two-way traffic on the block Hayes between Gough and Franklin Streets." SFMTA Sustainable Streets Division, Planning Department, and San Francisco County Transportation Authority staff worked closely on evaluating these changes for Hayes Street.

This proposal would make Hayes Street a two-way street between Gough Street and Van Ness Avenue. The Hayes Street two-way change between Gough and Franklin Streets will be accomplished by removing one westbound lane (Figures 1 and 2). Between Franklin and Gough Streets this change will be accomplished by removing parking on the south side of the street (Figures 3 and 4). The parking removal is on a non-commercial frontage. Hayes Street between Polk Street and Van Ness Avenue will be restriped to provide a required left turn tow-away lane on the south side of the street, and a right turn lane must turn right except transit regulation on the north side of the street (Figures 5 and 6). Parking will be removed on the north side of the street. Hayes Street between Polk and Market Streets will be restriped to have lanes with widths more appropriate for buses rather than the narrow nine foot lanes currently present. The new eastbound direction of Hayes Street will be prohibited from making left turns at Franklin Street during the daytime and will be required to turn right at Van Ness Avenue at all times.

Hayes Street is used by a number of motorists as a way to connect from South of Market Street to Fell Street via one block of Gough Street. In order to provide an alternate route to reach Fell Street, Fell Street is also being proposed to be made a two-way street between Van Ness Avenue and Franklin Street. This block of Fell Street is currently one-way eastbound.

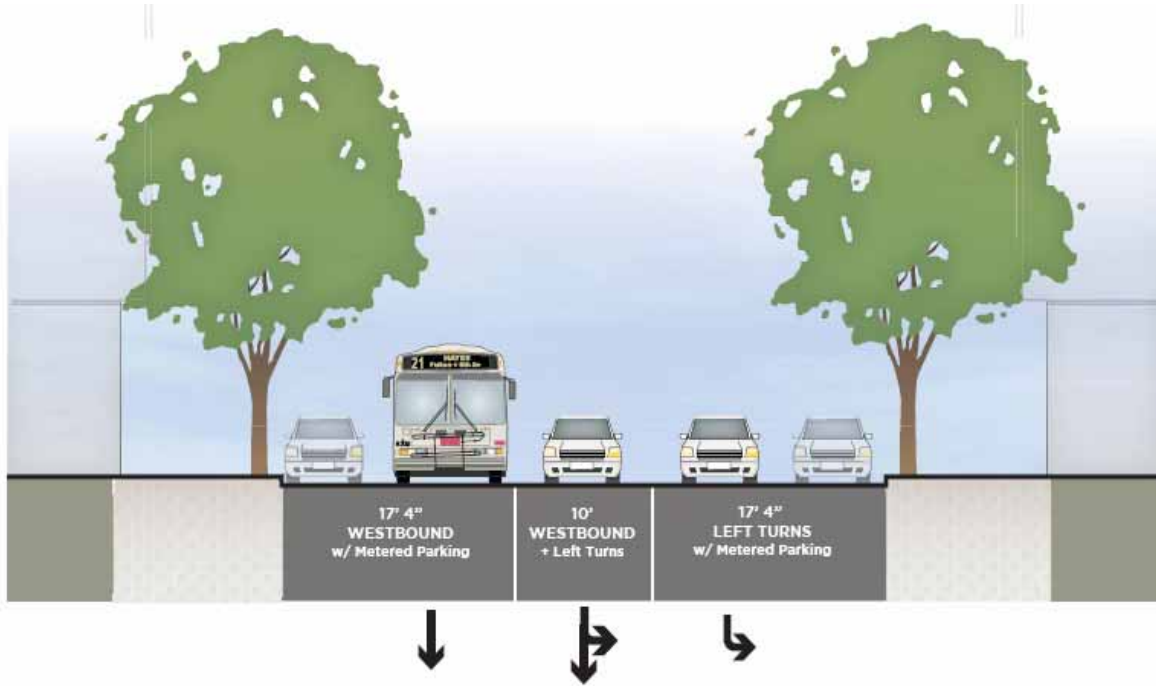


Figure 1: Existing Hayes Street, between Gough and Franklin Streets one-way westbound with three lanes

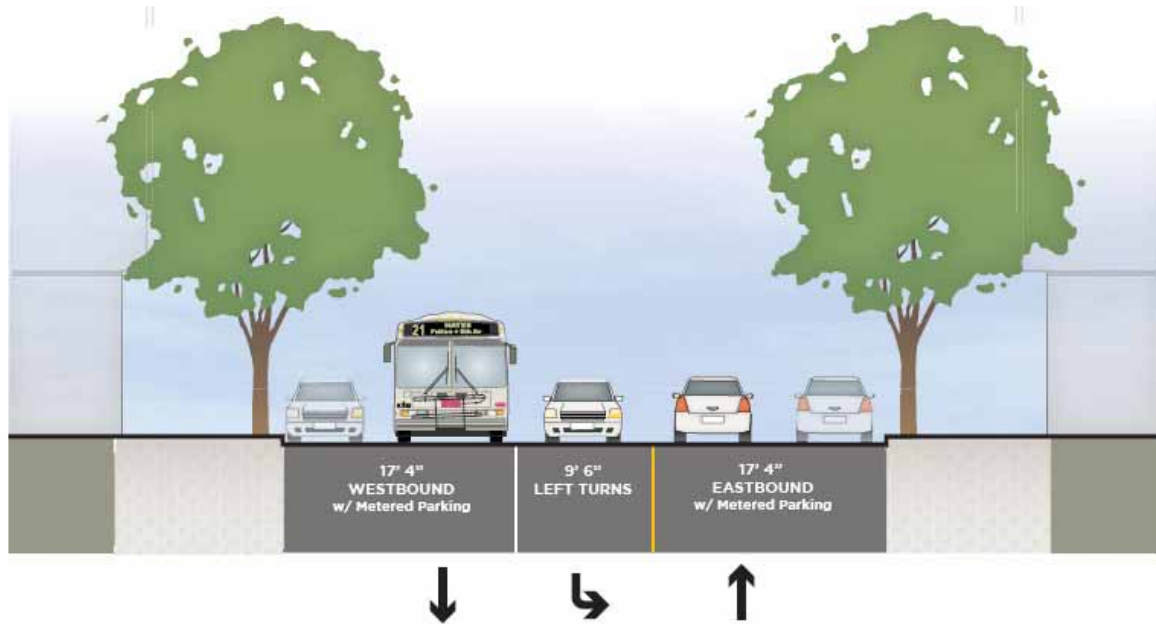


Figure 2: Proposed Hayes Street, between Gough and Franklin Streets, two-way with two westbound lanes and one eastbound lane

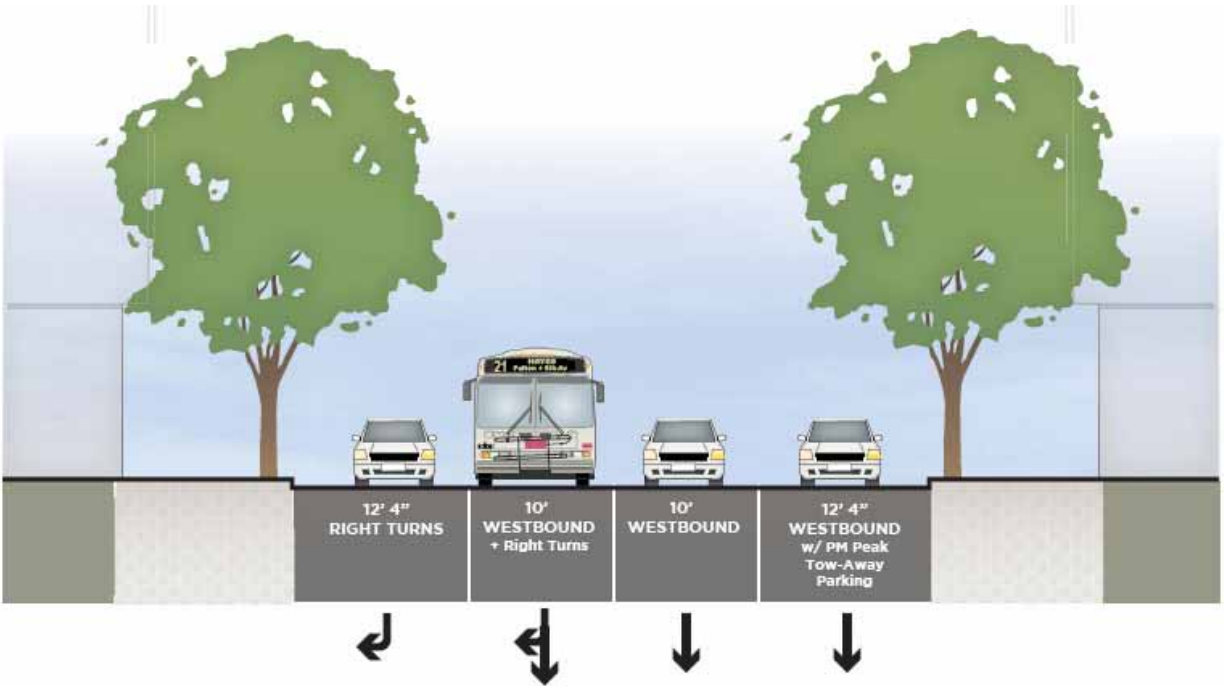


Figure 3: Existing Hayes Street, between Van Ness Avenue and Franklin Street, one-way westbound with four lanes in evening rush hour

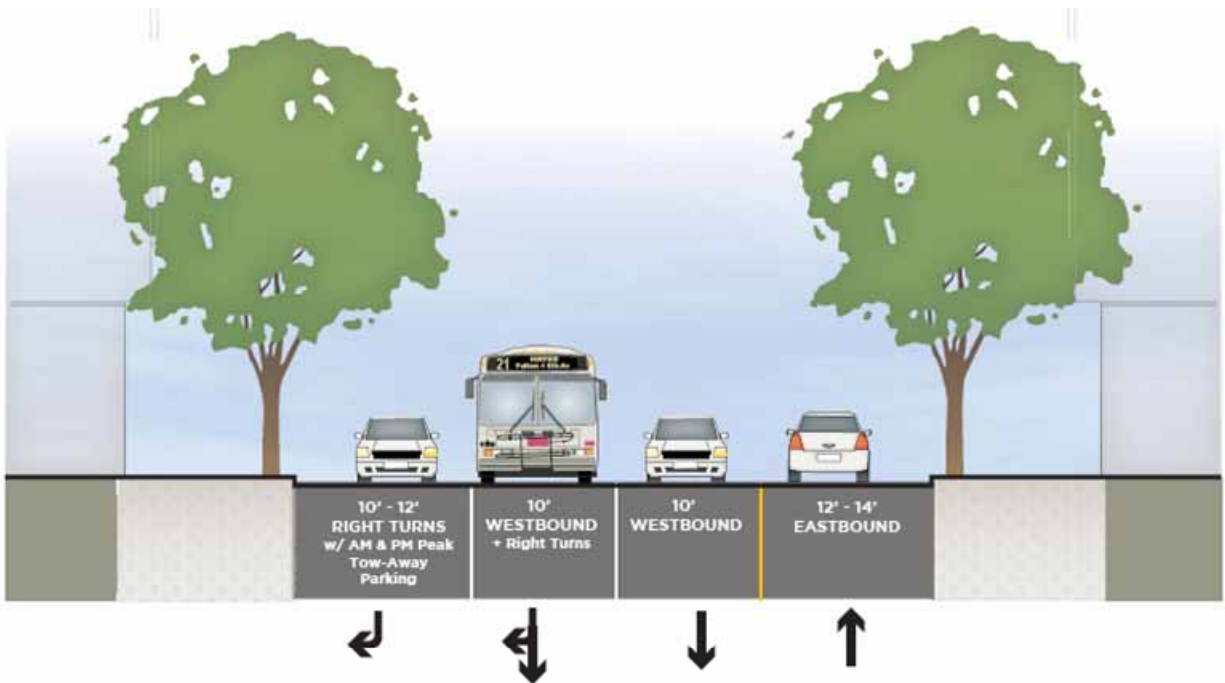


Figure 4: Proposed Hayes Street, between Van Ness Avenue and Franklin Street, with three westbound lanes during peak hours, one eastbound lane

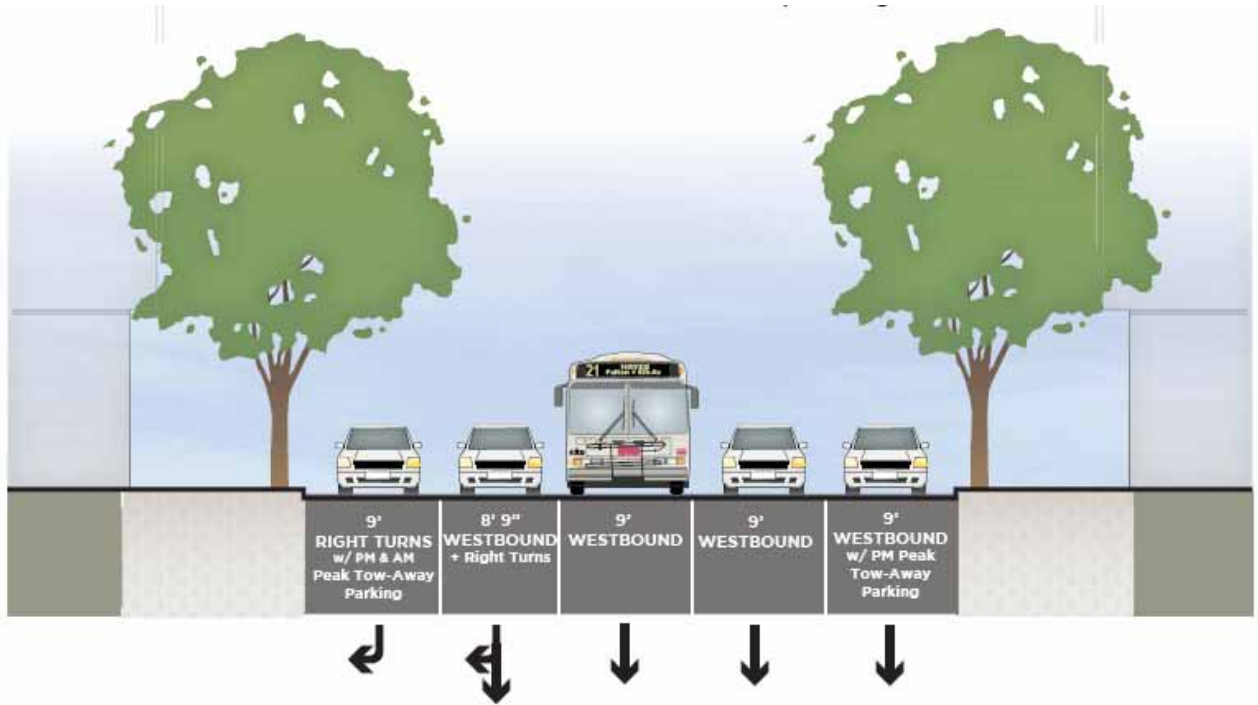


Figure 5: Existing Hayes Street, between Polk Street and Van Ness Avenue, one-way westbound with five lanes in evening rush hour and three at all times

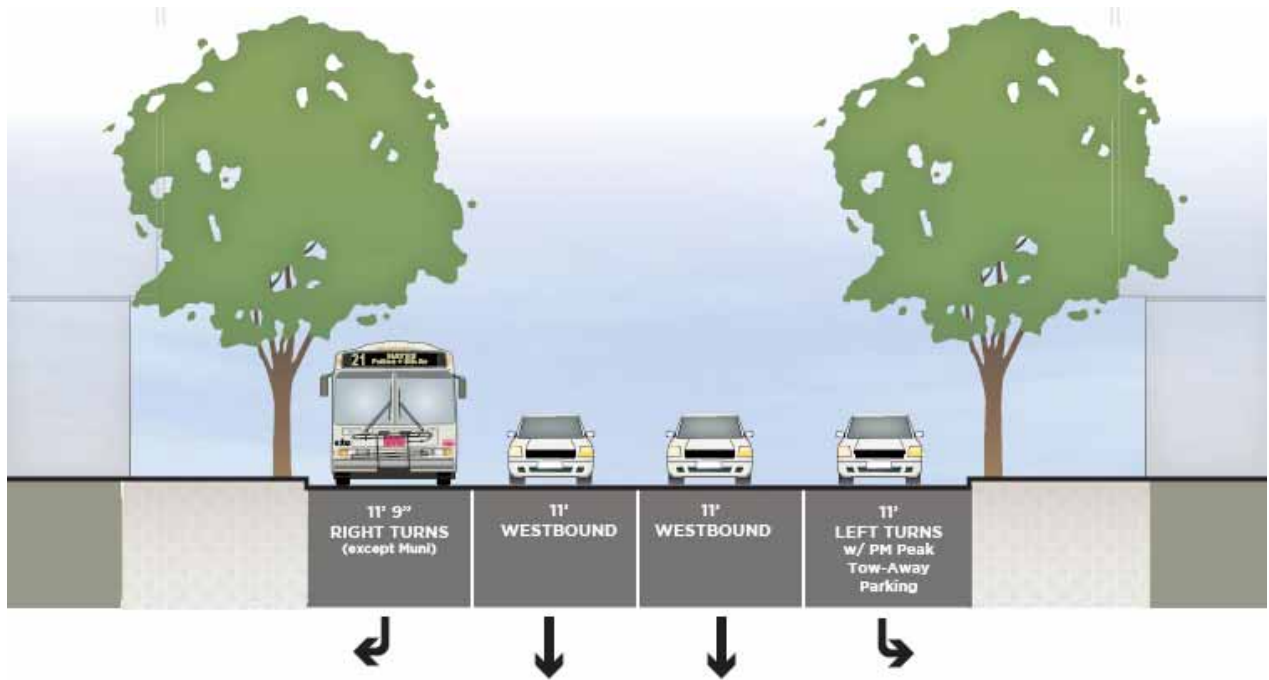


Figure 6: Existing Hayes Street, between Polk and Van Ness Avenue, one-way westbound with four lanes in evening rush hour and three at all times

PAGE 6.

The Fell Street two-way proposal will be accomplished by removing one eastbound lane (Figures 7 and 8). In order to provide three eastbound lanes during the morning rush hour, a 7 AM to 9 AM tow-away is proposed on the south side of the street. This morning peak tow-away lane was present on Fell Street following the demolition of the Central Freeway in 1996 but was rescinded following the opening of Octavia Boulevard. Two eastbound lanes on Fell Street were determined to be adequate to handle traffic volumes present outside the morning rush hour.

Evening tow-away lane on 9th Street is proposed to be rescinded in order to reduce by one the number of peak hour lanes leading to Hayes Street. Currently three lanes direct traffic to Hayes Street in the evening rush hour, two at other times. With this proposal the number of lanes from 9th Street northbound to Hayes Street westbound is two at all times. An evening tow-away lane will be retained on the east side of 9th Street, providing access to Larkin Street.

Traffic modeling indicates that the combination of parking and traffic changes, and the associated traffic diversions made possible by the street grid, can accommodate the area's traffic flows. Congestion on Hayes Street will increase, however, particularly at the junction of Gough Street during the evening rush hour, where one of two left turn lanes from Hayes Street to Gough Street is being removed. SFMTA will monitor traffic patterns if project is approved. A period of adjustment to the new two-way patterns will be necessary. Guide signs will be installed on Hayes Street to direct vehicles to the new two-way Fell Street and parking guidance for Civic Center and Performing Arts Garages will be installed on 9th Street to direct vehicles to use Larkin Street.

The 21-Hayes operates in the outbound direction on Hayes Street between Market Street and Laguna Street. The same trolley bus route operates in the inbound direction on Grove Street between Laguna and Polk Streets. In order to minimize delay impacts on the outbound 21 Hayes due to the two-way operation changes on Hayes, the following changes were recommended:

- Starting the two-way operation west of Van Ness Avenue (see discussion below).
- Modification of the traffic signal at Gough and Hayes Streets to give the through westbound Hayes Street movement a longer green light than it receives now. These changes are being funded with Prop K funds and are currently under design.
- Addition of a transit lane (a lane where all vehicles except transit are required to turn right) on Hayes Street westbound approaching Van Ness Avenue. This will give the 21 Hayes bus the option of using this lane to reach the far side bus zone.
- Elimination of the bus zone for the outbound 21 Hayes at Franklin Street. Currently there are bus zones a block to the east at Van Ness Avenue and a block to the west at Gough Street. This bus zone is more lightly used, though when the bus does stop here it can mean missing a green light at Gough Street. These changes are consistent with the 5 Fulton, which does not stop at Franklin, and the inbound 21 Hayes, which also does not stop at Franklin.

SFMTA staff will monitor the delay impacts of this project on the 21 Hayes if project is approved.

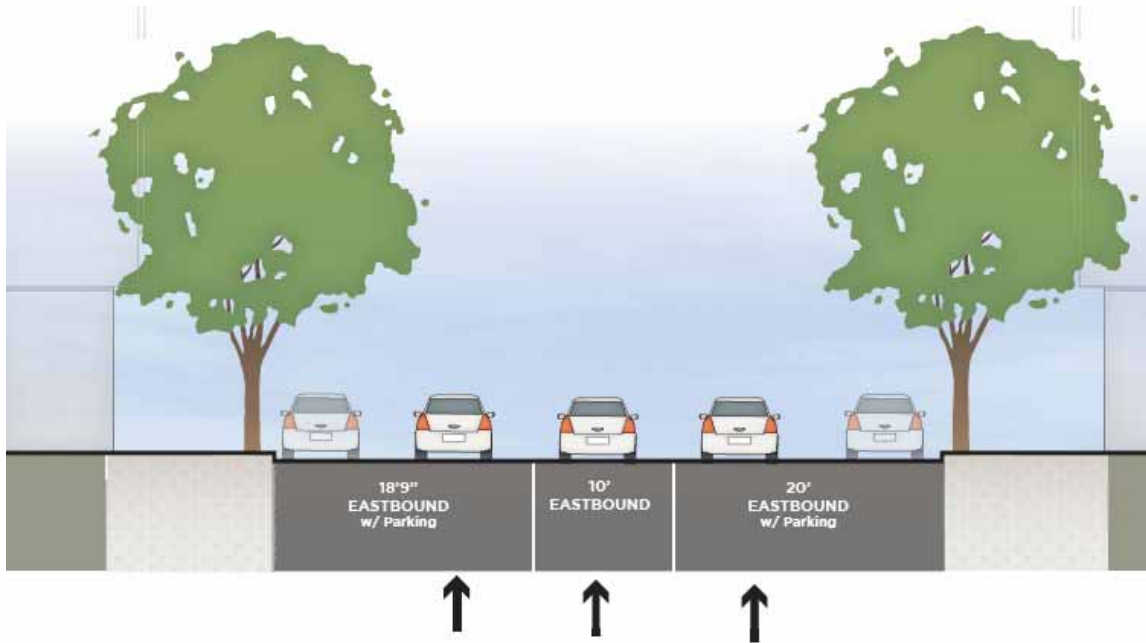


Figure 7: Existing Fell Street, between Van Ness Avenue and Franklin Street, one-way eastbound with three lanes

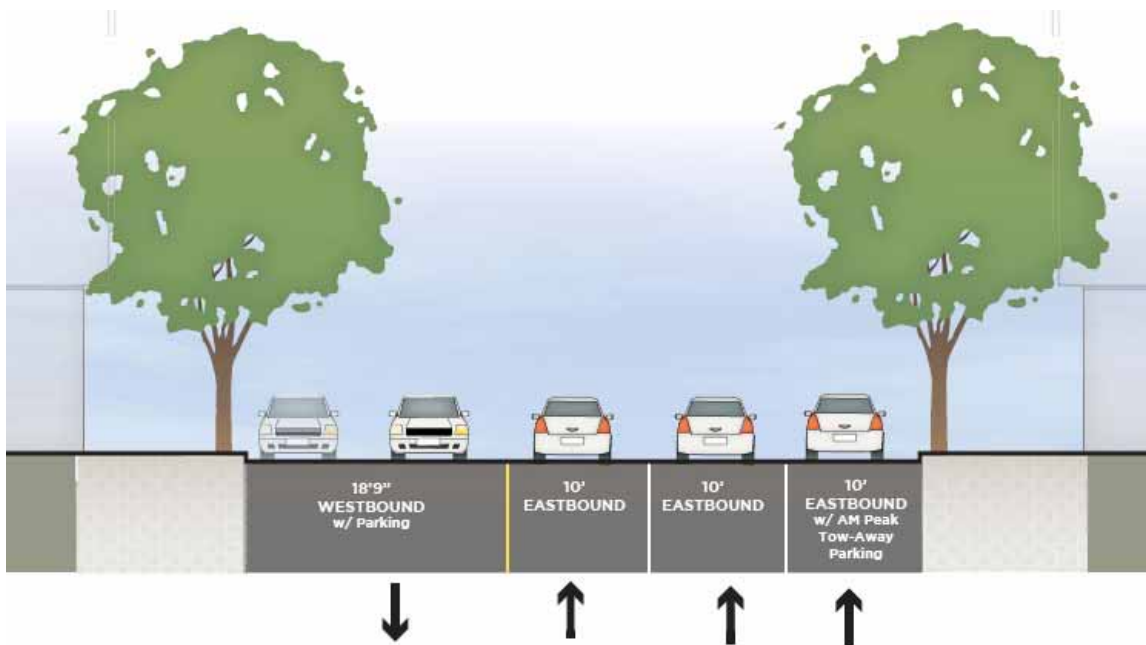


Figure 8: Proposed Fell Street, between Van Ness Avenue and Franklin Street, with three eastbound lanes in the morning rush hour, and one westbound lane

PAGE 8.

The table below summarizes the approximate number of parking spaces affected by these proposals. Staff tried to minimize parking losses, particularly in the denser commercial core of Hayes Street. Some spaces are only affected during peak hours, while others are affected at all times.

Block, Side	Parking Change	Spaces Affected
Hayes Street, Market to Polk, South	Rescind PM Tow	+ 10
Hayes Street, Polk to Van Ness, North	No Stopping Anytime	- 10
Hayes Street, Van Ness to Franklin, South	No Stopping Anytime	- 16
Hayes Street, Van Ness to Franklin, North	Restore non peak parking	+ 8
Fell Street, Van Ness to Franklin, South	Establish AM Tow	- 11
Fell Street, Van Ness to Franklin, Both	Various No Parking Zones	- 9
9th Street, Market to Howard, West	Rescind PM Tow	+ 46

COMMUNITY OUTREACH

This proposal arose from the community process around the Market-Octavia Plan. Board of Supervisors passed Resolution 619-07, which urged the SFMTA “to restore two-way traffic on the block of Hayes between Gough and Franklin Streets.” The project was discussed at the February 9, 2009 meeting of the Board of Supervisors Land Use Committee. San Francisco Chronicle wrote article on February 10, 2009, “City mulls making Hayes, other streets 2-way.” The city held a special community workshop to discuss the project in April of 2009. A project update was given to the Market-Octavia CAC and the Hayes Valley Neighborhood Association in 2010. The project was also presented at the October 12, 2010 Policy and Governance Committee of the SFMTA Board of Directors. The San Francisco Examiner wrote an article on October 11, 2010, “Planners want two-way traffic on one-way part of Hayes.”

A SFMTA public hearing on these changes was held on January 21, 2011. SFMTA mailed 59 public hearing notices and posted notices on the affected blocks. The Planning Department also sent notices to their Market-Octavia mailing list. At this meeting Hayes Valley Neighborhood Association, Hayes Valley Merchants Association, and other local institutions and residents spoke in support. Eleven people spoke in support of the changes at the public hearing. No one spoke against the proposal at the public hearing. Prior to the meeting we had received one email

PAGE 9.

in support and two emails against this proposal. The Public Hearing Officer approved the changes. Staff will work with representatives from the National Center for International Schools and the San Francisco Symphony to address specific loading and traffic monitoring concerns raised at the meeting.

ALTERNATIVES CONSIDERED

The SFMTA Board can choose not to approve these changes, leaving existing traffic circulation patterns in place.

At a February 2009 meeting of the Board of Supervisors' Land Use Committee, staff presented alternative proposals that would have required removing parking during peak hours on the commercial block of Hayes Street between Gough and Franklin Streets. These parking changes were not received favorably and were removed from subsequent plans. Earlier plans also considered removing parking at all times on the north and south sides of Hayes Street between Van Ness Avenue and Franklin Street. The present plan allows parking during off-peak hours on the north side of this block of Hayes Street, which will allow the Symphony to restore on-street loading that was present there prior to 1996.

Northbound Van Ness Avenue left turn to the new Fell Street two-way could have been allowed, but the final recommendation was not to allow this turn since the queues could back up into Market Street and block pedestrian, bicycle and transit cross traffic.

Extending two-way Hayes Street between Van Ness Avenue and Polk Street was considered but resulted in more severe peak hour delays for westbound Hayes Street traffic. This extension could theoretically allow the inbound 21 Hayes to shift to Hayes Street from its current one-way operation on Grove Street between Laguna and Polk Streets. However, in addition to the additional outbound delay the extra block of two-way street would result in, there were concerns that traffic lanes for inbound buses would be narrow between Gough and Franklin Streets, that new inbound traffic on eastbound Hayes Street could add delay to inbound buses relative to Grove Street, and that there was no funding to shift the 21 Hayes overhead lines to inbound Hayes Street. All these factors led to the current proposal to extend the two-way portion of Hayes Street easterly to Van Ness Avenue, as originally contained in the Market-Octavia Plan.

FUNDING IMPACT

The Market and Octavia Community Advisory Committee recommended on September 22, 2010 that the Planning Department set aside \$52,500 for this project, half of the \$105,000 available for expenditure on community benefits in the Market and Octavia Plan area. This will cover the estimated striping and signage costs of project. Signal upgrade work at the intersection of Gough and Hayes Streets is being funded with Prop. K signal upgrade funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Planning Department has reviewed the project and issued an Addendum to

the Environmental Impact Report dated December 16, 2010, for Project Title 2003.0347E – Market and Octavia Neighborhood Plan; Hayes & Fell Two-Way. A copy of this Addendum is on file with the SFMTA's Board Secretary.

The City Attorney's Office has reviewed this calendar item

PAGE 10.

RECOMMENDATION

SFMTA staff recommends that the San Francisco Municipal Transportation Agency Board of Directors approve the parking and traffic changes associated with making Hayes Street a two-way street between Van Ness Avenue and Gough Street and making Fell Street a two-way street between Van Ness Avenue and Franklin Street.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH – TWO-WAY OPERATION
Hayes Street, between Van Ness Avenue and Gough Street
- B. ESTABLISH – RIGHT TURN ONLY
Hayes Street, eastbound at Van Ness Avenue
- C. ESTABLISH – LEFT LANE MUST TURN LEFT
Hayes Street, westbound at Gough Street
- D. ESTABLISH - RIGHT LANE MUST TURN RIGHT EXCEPT TRANSIT
ESTABLISH - TOW-AWAY LANE MUST TURN LEFT
Hayes Street, westbound at Van Ness Avenue
- E. ESTABLISH - NO LEFT TURN, 7 AM TO 7 PM, EVERYDAY
Hayes Street, eastbound at Franklin Street
- F. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME
 - 1) Hayes Street, south side, between Van Ness Avenue and Franklin Street
 - 2) Hayes Street, north side, between Polk Street and Van Ness Avenue
- G. RESCIND - TOW-AWAY NO STOPPING ANYTIME
ESTABLISH - PARKING METER AREA 2
ESTABLISH - TOW-AWAY NO STOPPING, 7 AM TO 9 AM AND 3 PM TO 7 PM,
MONDAY THROUGH FRIDAY
Hayes Street, north side, between Van Ness Avenue and Franklin Street
- H. RESCIND - TOW-AWAY NO STOPPING 4 PM TO 7 PM, MONDAY THROUGH
FRIDAY
Hayes Street, south side, between Market Street and Polk Street
- I. RESCIND – BUS ZONE
Hayes Street, north side, from Franklin Street to 64 feet westerly
- J. RESCIND - TOW-AWAY NO STOPPING 4 PM TO 7 PM, MONDAY THROUGH
FRIDAY
9th Street, west side, between Market and Howard Streets
- K. ESTABLISH – TWO-WAY OPERATION
Fell Street, between Van Ness Avenue and Franklin Street

L. ESTABLISH – TOW-AWAY NO STOPPING, 7 AM TO 9 AM, MONDAY THROUGH FRIDAY

Fell Street, south side, between Franklin Street and Van Ness Avenue

M. ESTABLISH - NO LEFT TURN

Van Ness Avenue, northbound, at Fell Street

N. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME

1) Fell Street, north side, from Franklin Street to 90 feet easterly

2) Fell Street, south side, from Franklin Street to 50 feet easterly

O. ESTABLISH - NO PARKING ANYTIME

Fell Street, both sides, from Van Ness Avenue to 20 feet westerly

WHEREAS, SFMTA staff has worked with the Planning Department on the design and review of these parking and traffic changes; and,

WHEREAS, The San Francisco Planning Department has reviewed the project and issued an Addendum to the Environmental Impact Report dated December 16, 2010, for Project Title 2003.0347E – Market and Octavia Neighborhood Plan; Hayes & Fell Two-Way; and,

WHEREAS, A copy of this Addendum is on file with the SFMTA's Board Secretary; and,

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the parking and traffic changes associated with making Hayes Street a two-way street between Van Ness Avenue and Gough Street and making Fell Street a two-way street between Van Ness Avenue and Franklin Street by authorizing the Executive Director/CEO or his or her designee to make the traffic modifications set forth in items A-O above.

I hereby certify that the foregoing resolution was adopted by the San Francisco Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology Division

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his designee to sign the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) Certifications and Assurances, and PTMISEA and Transit System Safety, Security, and Disaster Response Account (TSSSDR) Authorized Agent forms to enable the San Francisco Municipal Transportation Agency (SFMTA) to apply for grant funds from these two components of the State Infrastructure Bond (I-Bond) program.

SUMMARY:

- This is a new requirement to receive PTMISEA and TSSSDR funds.
- The approval of the PTMISEA Certifications and Assurances is a one time action to be implemented now effective for the duration of the bond program.
- The approval of the PTMISEA Authorized Agent form will be done on an annual basis as required by the State.
- The approval of the TSSSDR Authorized Agent form will be done on an annual basis as required by the State.

ENCLOSURES:

1. SFMTAB Resolution
2. PTMISEA Certifications and Assurances
3. PTMISEA and TSSSDR Authorized Agent Forms

APPROVALS:

DATE

DIRECTOR OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____

ADOPTED RESOLUTION BE RETURNED TO: Suzanne Wang

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

This calendar item seeks authorization for the Executive Director/CEO or his designee to sign the PTMISEA Certifications and Assurances, and PTMISEA and TSSSDR Authorized Agent forms to enable the SFMTA to apply for grant funds from these two components of the State I-Bond program.

GOAL

This request supports the following SFMTA Strategic Plan Goal:

Goal 4—Financial Capacity: To ensure financial stability and effective resource utilization.

4.2 Ensure efficient and effective use of resources

DESCRIPTION

The SFMTA is a regular recipient of State Infrastructure Bonds (“I-bonds”) from both the Public Modernization, Improvement, and Service Enhancement Account (PTMISEA) and the Transit System Safety, Security, and Disaster Response Account (TSSSDR). The PTMISEA program funds eligible transit capital projects such as the Central Subway and the TSSSDR program funds eligible transit security projects. To apply for Fiscal Year 2010-11 I-bond funds, the State Department of Transportation is requiring a governing board resolution authorizing the SFMTA to sign the PTMISEA Certifications and Assurances and authorizing the SFMTA to annually submit forms designating individuals to act as authorized agents for the Agency under the PTMISEA and TSSSDR programs.

ALTERNATIVES CONSIDERED

None. PTMISEA funds are vital to our transit capital projects and programs and TSSSDR funds are vital to our transit security program.

FUNDING IMPACT

SFMTA has received PTMISEA funds from the State since Fiscal Year 2007-08 with approximately \$89,376,000 awarded to various capital projects including the Central Subway to date. The SFMTAB approval of the PTMISEA Certifications and Assurances and Authorized Agent forms would enable SFMTA to apply for Fiscal 2010-11 and future PTMISEA funds of an additional \$214,624,000 for the Central Subway over the duration of the PTMISEA program.

SFMTA has received TSSSDR funds from the State since Fiscal Year 2007-08 with approximately \$21,374,000 awarded or pending to various security projects.

PAGE 3.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required.

The City Attorney has reviewed this report.

RECOMMENDATION

Staff requests SFMTAB authorization for the SFMTA Executive Director/CEO or his designee to execute the PTMISEA Certifications and Assurances form and for the Executive Director/CEO to designate individuals to act as authorized agents for the Agency under the PTMISEA and TSSSDR programs.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) has been the regular recipient of State Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) bond funds from the State since Fiscal Year 2007-08 to support various capital projects including the Central Subway; and,

WHEREAS, The SFMTA has been the regular recipient of State Transit System Safety, Security, and Disaster Response (TSSSDR) Account bond funds from the State since Fiscal Year 2007-08 to support various transit security projects; and

WHEREAS, The State requires that the SFMTA sign a PTMISEA Certifications and Assurances and Authorized Agent forms with a San Francisco Municipal Transportation Agency Board resolution of approval to be considered for Fiscal 2010-11 and beyond bond funds for transit capital projects;

WHEREAS, The State requires that the SFMTA sign a TSSSDR Authorized Agent form with a San Francisco Municipal Transportation Agency Board resolution of approval to be considered for Fiscal 2010-11 grant funds now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee to sign the Public Transportation Modernization, Improvement, and Service Enhancement Account Certifications and Assurances and Authorized Agent forms so that SFMTA may be eligible to apply for Fiscal 2010-11 and future Public Transportation Modernization, Improvement, and Service Enhancement Account bond funds to fund transit capital projects including the Central Subway; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee to sign the Transit System Safety, Security, and Disaster Response Account Authorized Agent form so that the SFMTA may be eligible to apply for Fiscal 2010-11 grant funds for transit security projects.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Public Transportation Modernization, Improvement, and Service
Enhancement Account (PTMISEA) Bond Program**

Certifications and Assurances

Project Sponsor: *San Francisco Municipal Transportation Agency*

Effective Date of this Document: *March 1, 2011*

The California Department of Transportation (Department) has adopted the following certifications and assurances for the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) bond program. As a condition of the receipt of PTMISEA bond funds, project sponsors must comply with these terms and conditions.

A. General

- (1) The project sponsor agrees to abide by the current PTMISEA Guidelines.
- (2) The project sponsor must submit to the Department a PTMISEA Program Expenditure Plan, listing all projects to be funded for the life of the bond, including the amount for each project and the year in which the funds will be requested.
- (3) The project sponsor must submit to the Department a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

- (1) The project sponsor certifies that required environmental documentation is complete before requesting an allocation of PTMISEA funds. The project sponsor assures that projects approved for PTMISEA funding comply with Public Resources Code §21100 and §21150.
- (2) The project sponsor certifies that PTMISEA funds will be used only for the transit capital project and that the project will be completed and remains in operation for its useful life.
- (3) The project sponsor certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.

- (4) The project sponsor certifies that they will notify the Department of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
- (5) The project sponsor must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
- (6) Any interest the project sponsor earns on PTMISEA funds must be used only on approved PTMISEA projects.
- (7) The project sponsor must notify the Department of any changes to the approved project with a Corrective Action Plan (CAP).
- (8) Under extraordinary circumstances, a project sponsor may terminate a project prior to completion. In the event the Project Sponsor terminates a project prior to completion, the Project Sponsor must (1) contact the Department in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.
- (9) Funds must be encumbered and liquidated within the time allowed in the applicable budget act.

C. Reporting

- (1) Per Government Code § 8879.55, the project sponsor must submit the following PTMISEA reports:
 - a. Semi-Annual Progress Reports by February 15th and August 15th each year.
 - b. A Final Report within six months of project completion.
 - c. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of PTMISEA bond funds. A copy of the audit report must be submitted to the Department within six months of the close of the year (December 31) each year in which PTMISEA funds have been received or expended.

D. Cost Principles

- (1) The project sponsor agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) The project sponsor agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items and (b) those parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PTMISEA funds as a contractor or sub-contractor shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (3) Any project cost for which the project sponsor has received payment that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by the project sponsor to the State of California (State). Should the project sponsor fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the project sponsor from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

- (1) The project sponsor agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the project sponsor, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of the project sponsor, its contractors and subcontractors connected with PTMISEA funding shall be maintained for a minimum of three (3) years from the date of final payment and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the project sponsor, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Project Sponsor pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work

performed by the project sponsor's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.

- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the project sponsor's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the project sponsor shall furnish copies thereof if requested.
- (3) The project sponsor, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

- (1) A project sponsor may lend its unused funds from one year to another project sponsor for an eligible project, for maximum fund use each fiscal year (July 1 – June 30). The project sponsor shall collect no interest on this loan.
- (2) Once funds have been appropriated in the budget act, a project sponsor may begin a project with its own funds before receiving an allocation of bond funds, but does so at its own risk.
- (3) The Department may perform an audit and/or request detailed project information of the project sponsor's PTMISEA funded projects at the Department's discretion at any time prior to the completion of the PTMISEA program.

I certify all of these conditions will be met.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

BY:

Sonali Bose, Chief Financial Officer
Finance and Information Technology Division

ATTACHMENT I

San Francisco Municipal Transportation Agency Board Resolution

Division of Mass Transportation
Public Transportation Modernization, Improvement, and
Service Enhancement Account (PTMISEA)
Authorized Agent Form



Authorized Agent

AS THE EXECUTIVE DIRECTOR/CHIEF EXECUTIVE OFFICER OF
THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funds provided by the California Department of Transportation, Division of Mass Transportation. This form shall remain valid for one year from date signed.

Sonali Bose, Chief Financial Officer *OR*

Monique Webster, Senior Manager of the Fund Programming and Grants Section *OR*

Joel C. Goldberg, Manager of Grants Procurement *OR*

Suzanne S. Wang, Principal Grants Analyst

Nathaniel P. Ford Sr.
Executive Director/Chief Executive Officer

(Signature)

Approved this 1st day of March, 2011

**Authorized Agent Signature Authority
FY 2010-11 Transit System Safety, Security and
Disaster Response Account Program**

AS THE Executive Director/Chief Executive Officer

OF THE San Francisco Municipal Transportation Agency

I hereby authorize the following individual(s) to execute for and on behalf of the named state organization, any actions necessary for the purpose of obtaining state financial assistance provided by the California Emergency Management Agency.

Sonali Bose, Chief Financial Officer, OR

Monique Webster, Senior Manager of Fund Programming and Grants Section, OR
(Name or Title of Authorized Agent)

Joel C. Goldberg, Manager of Grants Procurement
(Name or Title of Authorized Agent)

Nathaniel P. Ford Sr.
Executive Director/Chief Executive Officer

Signed and approved this 1st day of March, 2011.

(Signature)

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs & Construction

BRIEF DESCRIPTION:

This is a request to authorize the Executive Director/CEO to execute Purchase Order No. 3, System Management Center (SMC) Upgrade Implementation (Phase 2) under San Francisco Municipal Transportation Agency (SFMTA) Contract No.1226, Master Purchase Order Agreement with Thales Transport & Security, Inc. (Thales), located at 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237, in the amount not to exceed \$9,658,361.00 and for a term not to exceed 130 weeks from notice to proceed.

SUMMARY:

- The SMC is a subsystem of the Advanced Train Control System (ATCS) which provides the user interface of the ATCS. The ATCS controls light rail vehicles operating in the subway. The ATCS is proprietary to Thales (formerly Alcatel Transport Automation), which is the sole source ATCS vendor.
- The current SMC operating system base software (IBM® OS/2) is obsolete, and Thales' support of that system is increasingly difficult and costly to procure. Upgrading to a modern, Windows® based platform will provide significant user benefits and flexibility, and also will facilitate system maintenance and future upgrades to the ATCS.
- Contract No. 1226 is a master purchase order agreement with Thales, approved under SFMTA Board Resolution No. 393-09, in an amount not to exceed \$30 million. The master agreement authorizes acquisition of ATCS parts and services from Thales under approved purchase orders. Purchase orders under \$3,000,000 may be executed by the Executive Director/CEO; larger purchase orders require SFMTA Board of Directors' approval (SFMTA Board Resolution No. 10-008).
- The deliverables of Purchase Order No. 3 include software development, hardware, equipment and software cutover, testing and certification of the revenue-service system, system user training and training simulators, warranty, documentation and spare parts.
- Associated construction services for installation of equipment, communications infrastructure, and electrical service, will be procured separately.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this calendar item is to authorize the SFMTA Executive Director/CEO to execute Purchase Order No. 3, System Management Center (SMC) Upgrade Implementation (Phase 2), under Contract No. 1226, Master Purchase Order Agreement with Thales Transport & Security Inc. in an amount not to exceed \$9,658,361.00 and for a term not to exceed 130 weeks from notice to proceed.

GOAL

Purchase Order No. 3, under Contract No. 1226 will assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

Goal 1: Customer Focus - To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy

Objective 1.1 – Improve safety and security across all modes of transportation

Goal 2: System Performance - To get customers where they want to go, when they want to be there

Objective 2.1 – Improve transit reliability to meet 85% on-time performance standard

Objective 2.4 – Reduce congestion through major corridors

Goal 4: Financial Capacity - To ensure financial stability and effective resource utilization

Objective 4.2 – Ensure efficient and effective use of resources

Goal 5: SFMTA Workforce – To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future

Objective 5.1 – Increase resources available to employees in performing their jobs (tools)

Goal 6: Information Technology – To improve service and efficiency, the SFMTA must leverage technology

Objective 6.1 – Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals

DESCRIPTION

Advanced Train Control System

The ATCS controls light rail vehicles operating within the Metro subway. The ATCS enhances light rail system performance and safety by controlling train speed, braking, routing and headways (the time between trains), more efficiently and accurately than can be accomplished by manual operator control.

The ATCS controls trains at a rate of up to 60 trains-per-hour in each direction through the subway, an increase of 130 percent over the 26 trains-per-hour pre-ATCS limitation. The ATCS transmits train arrival information to platform level information systems, both visual and audio, through the SFMTA's legacy Platform Display Signs (PDS) and Public Address (PA) Systems. The ATCS also provides real-

PAGE 3.

time train location data to the NextMuni arrival prediction system (supplied by NextBus) for those trains which are in the subway and outside the range of Global Positioning Satellite (“GPS”) vehicle tracking devices.

System Management Center

The SMC is a centralized, non-vital subsystem of the Advanced Train Control System (ATCS) which provides the presentation layer, or top-level application, of the ATCS. The SMC provides the user interface to the Central Control Operator (CCO), and processes the CCO’s commands to other safety-critical, or “vital”, subsystems of the ATCS; the SMC itself performs no safety-critical functions. The SMC also manages communications with non-ATCS systems such as passenger information systems and the NextBus System. The SMC went into service as a subsystem of the ATCS in 1998, and is based on the now-obsolete OS/2 operating system. In order to maintain the ATCS in an up-to-date technological configuration, periodic modernizations of its subsystems are required. The upgrade of the SMC to a Windows®-based system, and retooling of the SMC’s applications, will improve the ATCS utility in the Central Control environment, take advantage of technological advances, improve maintainability, and provide the platform for a unified presentation of ATCS-controlled territory at Central Control when the Central Subway’s train-control system is implemented. This upgrade will also extend ATCS capability from the existing transit control center to the new control center, SFMTA’s Transportation Management Center, to be built out at 1455 Market Street.

Scope of Work

Purchase Order No. 3 will implement the approved design to upgrade the now-obsolete OS/2 SMC operating system to a Windows-based system, and provide re-tooled SMC Applications.

Implementation will provide for operation from the new Transportation Management Center (TMC) to be located at 1455 Market St. A component called the Local SMC (LSMC) will also be part of the work implemented under this project. The LSMC is a network of satellite SMC workstations, one at each of the subway equipment rooms. Each LSMC is active only in the event of either a complete Vehicle Control Center (VCC) failure, or during subway maintenance activities.

At SFMTA’s option Purchase Order No. 3 will provide:

- a) Software changes to the Vehicle Control Center (VCC), a companion ATCS subsystem. Changes will enhance certain SMC functionality delivered as part of the SMC platform upgrade and fix known VCC anomalies
- b) A redundant, standby backup SMC hardware to be located at the 1455 Market Street TMC, including related software integration with the ATCS

Deliverables of Purchase Order No. 3 include software development, hardware procurement, equipment and software cutover, testing and certification of the revenue-service system, provision of training simulators, staff training, warranty, documentation and spare parts.

Associated construction services for installation of equipment, communications infrastructure, and electrical service, will be separately procured, using a combination of a non-sole-source construction contract, City work-orders, and in-house forces.

SOLE-SOURCE PROCUREMENT

The SMC is a key component of the ATCS, a proprietary product. The ATCS represents a significant investment of the SFMTA. To maintain the ATCS in an up-to-date technological configuration, periodic modernizations of its subsystems are required. The ATCS went into service in 1998, and has a 30-year life-cycle and will be in service at least through 2028, and potentially longer. Migration to a new train control system is not under consideration at this time.

Because the ATCS and its components, including software, are a proprietary technology of Thales. ATCS equipment, software and specialized technical services can be procured only from Thales; there is no other supplier. Therefore, the SFMTA Executive Director approved a sole-source justification for work to be performed.

The SMC Upgrade Project was split into two separate phases: Design (Phase 1) and Implementation (Phase 2). Thales' proprietary work in each phase is being executed under a separate purchase order with Thales. The purpose of the phasing was to ensure that the design requirements and project scope were well defined by both parties before entering into negotiations for the scope, cost and schedule of the implementation phase. Phase 1 was completed under Contract 1221, Purchase Order No. 7.

FUNDING IMPACT

This contract is funded by Federal grants, a State Infrastructure Bond grant and local matching funds from the San Francisco County Transportation Authority and bridge tolls.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this report.

The Contract Compliance Office reviewed Purchase Order No. 3 and determined that there were no subcontracting opportunities to set a Small Business Enterprise (SBE) participation goal.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors to authorize the Executive Director/CEO to execute Purchase Order No. 3 System Management Center (SMC) Upgrade Implementation (Phase 2) under Contract No. 1226, Master Purchase Order Agreement with Thales Transport & Security Inc. (Thales), located at 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237, in the amount of \$9,658,361.00 and for a term not to exceed 130 weeks from notice to proceed.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) wishes to obtain software, hardware, and related services that are necessary for the operation, support and improvement of the SFMTA's existing Advanced Train Control System ("ATCS"); and,

WHEREAS, The ATCS is a proprietary system supplied to the SFMTA by Thales Transport & Security, Inc. (formerly Alcatel Transport Automation), which is the only source for parts and services necessary to maintain the ATCS; and,

WHEREAS, Contract No. 1226, Advanced Train Control Systems Improvement Services and Equipment Purchases Agreement, is a framework master agreement for the provision of incremental works in respect of the operation and maintenance of the ATCS; and

WHEREAS, Contract No. 1226 was approved by the SFMTA Board on April 21, 2009 by Resolution 09-062; and

WHEREAS, Purchase Order No. 3 has documented sole-source approval from the SMFTA Executive Director before negotiation with the Contractor in accordance with Board Resolution No 09-062 for the SFMTA's procurement of services and goods that are proprietary to and only available from Thales; and

WHEREAS, Installation and construction work necessary to implement ATCS upgrades designed by Thales are and will be separately procured; and

WHEREAS, The Design (Phase 1) of the ATCS System Management Center (SMC) Upgrade Project has been completed under Contract 1221, Purchase Order No. 7; and

WHEREAS, The SFMTA Contract Compliance Office reviewed Purchase Order No. 3 and determined that there were no subcontracting opportunities to set a Small Business Enterprise (SBE) participation goal; and

WHEREAS, The project is funded by Federal grants (59 percent) and by local funding sources (41 percent); now, therefore, be it

RESOLVED, That SFMTA Board of Directors approves and authorizes the Executive Director/CEO to execute Contract No. 1226, Purchase Order No. 3 with Thales Transport & Security, Inc., for the ATCS System Management Center (SMC) Upgrade Implementation (Phase 2) in an amount not to exceed \$9,658,361.00 and for a term not to exceed 130 weeks from notice to proceed.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Purchase Order No. 3, Contract No. 1226

ATCS System Management Center (SMC) Upgrade Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget
Conceptual Engineering Phase	\$171,829
Design Phase (Phase 1) Consultant and Staff Support (SFMTA and Other Dept. Services)	\$806,639
Construction Phase (Phase 2) Procurement Contract, Installation Contract, City work orders, Close Out, Contingency, and Staff Support	\$15,089,920
Total Cost	\$16,068,388

FINANCIAL PLAN

Project Funding Sources	Amount
Federal 5309 Grant	\$8,931,965
Local Grants	
State I-Bond	\$6,000,000
Proposition K	\$560,000
Bridge Toll	\$88,452
Central Subway	\$487,971
Total	\$16,068,388

Gavin Newsom | Mayor
Tom Nolan | Chairman
Jerry Lee | Vice-Chairman
Cameron Beach | Director
Leona Bridges | Director
Cheryl Brinkman | Director
Malcolm Heinicke | Director
Bruce Olin | Director
Mathematic P. Ford Sr. | Executive Director/CEO

PURCHASE ORDER FOR ACQUISITION OF EQUIPMENT, SOFTWARE AND SERVICES FOR THE MTA AUTOMATIC TRAIN CONTROL SYSTEM

CONTRACT No. 1226 – PURCHASE ORDER No. 3

This Purchase Order is issued by the San Francisco Municipal Transportation Agency (“SFMTA” or “City”) under the Advanced Train Control System Improvement Professional Services and Equipment Purchases Agreement between the SFMTA and Thales Transport and Security, Inc. (“Contractor”) Contract No. 1226, dated January 12, 2010, (the “Master Agreement”) for the SFMTA's acquisition of the equipment, software, and/or services described herein. The Master Agreement is incorporated by reference as if fully set out herein. All Appendices listed below are incorporated by reference as if fully set out herein.

1. Effective Date: This Purchase Order will become effective when executed by the SFMTA and Contractor in accordance with Section 47 of the Master Agreement.
2. Scope, Delivery and Payment Schedule: See Appendix A for a description of the Equipment, Software, and/or Services (the “Work”) to be acquired under this Purchase Order and the delivery address(es), where such Equipment and/or Software will be delivered in accordance with Appendix A. Appendix A further describes certain optional work (the “Optional Work”) which may be exercised by the City pursuant to this Purchase Order and in particular Section 6 of this Purchase Order. Collectively Base Work and Optional Work is referred to as the “Work”. Appendix B, Work Performance and Payment Schedule, describes a schedule of dates by which Contractor is required to complete Work under this Purchase Order, and the respective amounts to be paid for that Work. In the event that some element of the Work is not listed in Appendix B, the provisions of Section D.5 of the Master Agreement shall apply.
3. Price: All prices listed in this Purchase Order are in United States Dollars.
 - a) The total price for the Base Work described in this Purchase Order shall not exceed Eight Million Four Hundred Ninety-Seven Thousand Five Hundred Thirty-Six Dollars and No Cents (USD\$8,497,536.00); and
 - b) Pursuant to Section 6 below, the SFMTA at its sole discretion may exercise the Optional Work for an amount not to exceed One Million One Hundred Sixty Thousand Eight Hundred Twenty-Five Dollars and No Cents (USD\$1,160,825.00).

The total price payable by the City in respect of this Purchase Order is subject to adjustment as otherwise set forth herein or in accordance with the provisions of the Master Agreement.

4. Liquidated Damages: With respect to the Work under this Purchase Order, the Parties shall agree on sixteen (16) weeks (112 Test Days) of cumulative on-site testing and commissioning to be detailed in the System Integration and Test Plan (reference Appendix A Section 2.2.h).

SFMTA will provide on-site support to Contractor for Equipment and Software testing and commissioning, in accordance with the assumptions contained in Appendix A

Notwithstanding the forgoing, to the extent that the Contractor requires the deployment of additional days of testing and commissioning for which the SFMTA will provide resources to support Contractor's testing and commissioning of the Work in excess of a ten percent (10%) increase of the agreed sixteen (16) weeks, the Contractor shall pay to the City daily charge as follows:

- a) One Thousand Dollars (USD\$1,000.00) per additional testing day in which the Contractor does not require subway access;
- b) Two Thousand Dollars (USD\$2,000.00) per additional testing day in which the Contractor requires subway access but does not require use of a Light Rail Vehicle (LRV);
- c) Two Thousand Dollars (USD\$2,000.00) per additional testing day which requires subway access plus one thousand dollars (USD \$1,000.00) for each LRV required for that testing day.

To the extent that any additional testing and commissioning dates are solely due to actions of the City or other circumstances not attributable to the Contractor pursuant to the Purchase Order, the Contractor shall not be subject to any additional charge or liability. The liquidated damages described herein shall not be considered penalties, but are to compensate the City for its additional costs, including but not limited to staff costs and delay to and loss of public use of the software and equipment arising from the additional testing days, which damages would be extremely difficult to calculate as of the date of this Purchase Order. These liquidated damages shall be limited to five percent (5%) of the total value of this Purchase Order.

5. Warranty: See Appendix C to this Purchase Order for the terms and conditions of the warranty to be provided by Contractor for the Work, Equipment and/or Software Contractor shall perform and provide under this Purchase Order. The warranty in Appendix C explicitly supersedes the "Warranty and Responsibility for Design" supplied under Contract 1221, Purchase Order No. 7.
6. Optional Work: The Optional Work may be exercised by the City by written notification to be received by the Contractor on or prior to fifty-two (52) Days after the Effective Date of this Purchase Order; thereafter the price for the Optional Work shall automatically expire and Contractor shall not be obligated to perform the Optional Work. The scope of Optional Work is defined in Appendix A to this Purchase Order. Upon receipt from the City of written notification of its intent to exercise Optional Work, the performance and payment of the Optional Work shall be deemed to be a firm and binding obligation between the Parties and an integral part of this Purchase Order.
7. Subcontractors: Contractor shall use the following subcontractor(s) to accomplish the Work described in this Purchase Order, which subcontractor(s) is/are hereby acknowledged and approved by the SFMTA:

Thales Rail Signalling Solutions, Inc., 105 Moatfield Drive, Toronto, Ontario, Canada, M3B 0A4

8. Authorization: By their signatures below, this Purchase Order is authorized by the SFMTA's Executive Director/CEO and the President or Corporate Counsel of Contractor.

<p>Authorized:</p> <hr/> <p>NATHANIEL P. FORD, SR. Executive Director/CEO Municipal Transportation Agency City and County of San Francisco</p> <p>Date: _____</p>	<p>Authorized:</p> <hr/> <p>JOHN BROHM President Thales Transport & Security, Inc. 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237</p> <p>Date: _____</p>
--	--

Approved as to Form:

Dennis J. Herrera
City Attorney

Robert K. Stone
Deputy City Attorney
Doc No.
Date: _____

Approved:

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS
Resolution No. _____

Adopted: _____

Attest:

Secretary, MTA Board

APPENDIX A TO CONTRACT 1226, PURCHASE ORDER No. 3

DESCRIPTION OF WORK

ATCS SMC UPGRADE, Implementation

1.0 OVERVIEW

Contractor shall provide the SFMTA an upgrade to the Advanced Train Control System (ATCS) System Management Center (SMC) Equipment and Software from the obsolete OS/2 operating system to a current Microsoft Windows platform. The upgrade of the SMC will include replacement of computer hardware for the SMC and related ATCS subsystems.

The design of the SMC upgrade (“Phase 1”) was performed separately under Contract 1221, Purchase Order No. 7, which design forms the basis of the Work to be performed under Phase 2, which is set out in this Purchase Order No. 3 to Contract No 1226. Also under Phase 2 of the Work, Contractor shall provide authorized Optional Work, as described in Appendix A to this Purchase Order.

2.0 DESIGN DOCUMENTS AND WORK TO BE PERFORMED BY CONTRACTOR

Contractor shall develop Equipment, Software upgrades and associated services as required to transfer the existing SMC and its applications from OS/2 to a Microsoft Windows-based operating system platform as described in the Design Documents referenced below, which were developed and approved under Contract No. 1221, Purchase Order No. 7 and are incorporated by reference to this Purchase Order as if fully set out herein:

1. 8BJ 00008 0144 DSZZA Rev 2, System Design Overview – Main;
2. 8BJ 00008 0146 DSZZA Rev 5, System Design Overview – Portal Exit;
3. 8BJ 00008 0147 DSZZA Rev 5, System Design Overview – Wayside Signals;
4. 8BJ 00008 0148 DSZZA Rev 5, System Design Overview – VCC Control Mode;
5. 8BJ 00008 0149 DSZZA Rev 5, System Design Overview – Vehicle Information;
6. 8BJ 00008 0150 DSZZA Rev 5, System Design Overview – Portal Entry;
7. 8BJ 00008 0152 DSZZA Rev 4, System Design Overview – Train Uncouple;
8. 8BJ 00008 0153 DSZZA Rev 4, System Design Overview – Emergency Stop Devices;
9. 8BJ 00008 0155 DSZZA Rev 3, System Design Overview – Platform Sign Display System Interface Description;
10. 8BJ 00008 0157 DSZZA Rev 5, System Design Overview – Coupling;
11. 8BJ 00008 0159 DSZZA Rev 4, System Design Overview – MMT Operations;
12. 8BJ 00008 0160 DSZZA Rev 5, System Design Overview – Station Stop Handling;
13. 8BJ 00008 0161 DSZZA Rev 4, System Design Overview – Platform Sign Control;
14. 8BJ 00008 0004 UCZZA Rev 3, Glossary of Terms;
15. 8BJ 00008 0045 UEZZA Rev 5, MUNI CDRL 210 – Platform Display Expansion Capability;
16. 8BJ 00008 0080 DSZZA Rev 6, MUNI Common Tables Definition
17. 3CU 00001 0007 DBZZA Rev 10, Integrated Operations Plan;
18. 3CU 00837 0001 QMZZA Rev 02, Quality Assurance Plan
19. 3CU 00837 0002 DSZZA Rev 1, MUNI SMC Upgrade System Design Overview – LSMC;
20. 3CU 00837 0003 DSZZA Rev 1, MUNI SMC Upgrade Tools Design Document;
21. 3CU 00837 0004 BCZZA Rev 1, MUNI SMC Upgrade Overview of the SMC Upgrade
22. 3CU 00837 0005 DSZZA Rev 1, MUNI SMC Upgrade HMI Design Document;
23. 3CU 00837 0006 DSZZA Rev 1, MUNI SMC Upgrade Hardware and DCS Design Document;
24. 3CU 00837 0010 EDZZA Rev 1, MUNI SMC Upgrade Functional Description Document;

25. 3CU 00837 0011 DTZZA Rev 1, MUNI SMC Upgrade Functional System; Requirements Specifications (SyRs);
26. 3CU 00837 0012 PBZZA Rev 1, MUNI SMC Upgrade Thales Application on MUNI Subway Location Servers Interface Specification;
27. 3CU 00837 0013 PBZZA Rev 1, MUNI SMC Upgrade CAD/AVL Interface Specification;
28. 3CU 00837 0015 QTZZA Rev 1, MUNI SMC Upgrade System Integration and Acceptance Plan (SIAP);
29. 3CU 00837 0016 DSZZA Rev 1, MUNI SMC SQL Database/Datalog Table Specification
30. 3CU 00837 0017 DSZZA Rev 1, System Design Overview – Platform Sign Control (New PAV)

2.1 QUALITY ASSURANCE/QUALITY CONTROL

Contractor will comply with the Federal Transit Administration’s Quality Assurance / Quality Control guidelines, and develop and submit for SFMTA review and approval a Phase 2 Quality Assurance/Quality Control Program that will extend the Quality Assurance Plan approved in Phase 1 to cover procurement and implementation activities for Phase 2.

As part of the Phase 2 Quality Assurance/Quality Control Program, within thirty (30) Days of the Effective Date of this Purchase Order, Contractor shall submit an update of the Phase 1 MUNI SMC Upgrade Quality Assurance Plan (3CU 00837 0001 QMZZA Rev 02), including an organization chart updated for Phase 2, and Quality Procedures for control of the following quality elements:

1. Management Responsibility;
2. Documented Quality System;
3. Design Control;
4. Document Control;
5. Purchasing;
6. Product Identification and Traceability;
7. Process Control;
8. Inspection and Testing;
9. Measuring and Test Equipment;
10. Inspection and Test Status;
11. Non-Conformance;
12. Corrective Action;
13. Quality Records;
14. Quality Audits; and
15. Training.

The following sections specify general requirements for quality control, control and operational testing, providing test reports, and providing Certificates of Compliance (as defined below). These requirements are in addition to requirements specified elsewhere in the Contract.

2.1.1 REQUIRED SUBMITTALS

The Contractor shall provide the following submittals:

- a) Inspection reports and test results from Contractor testing;
- b) Any available Manufacturer’s operation manuals and maintenance drawings, manuals, and instructions for Equipment not manufactured by Contractor;
- c) Copies of approved test results and signed test certificates for tests specified in this Purchase Order

- d) Qualifications and resumes of personnel to be used in the Work; and
- e) Certificates of Compliance in the specifications.

2.1.2 CONTRACTOR'S QUALITY CONTROL RESPONSIBILITIES

The Contractor's shall:

- a) Conduct quality control inspections, testing, and examination of all Contractor-furnished materials, equipment and operations, for quality control of its suppliers and subcontractors, and for furnishing tests reports, Certificates of Compliance, and punch lists;
- b) Submit, within thirty (30) Days of the Effective Date, for the SFMTA's approval the names, location and qualifications and related experience, resume of each inspector the Contractor intends to use for performing the Work.
- c) Provide and maintain a quality control system for all inspections, tests, and retests of Work;
- e) Perform all material, mechanical and electrical assembly, dimensional and operational tests to confirm the equipment meets the requirements of this Purchase Order and all applicable codes, standards, and regulations. As well, the Contractor shall be responsible for rectifying all defects revealed as a result of testing;

The SFMTA's exercise of, or failure to exercise City's rights to examine, inspect, or test any of Contractor-furnished or subcontractor-furnished materials, equipment and Work, shall in no way relieve the Contractor of its obligations under this Purchase Order, and shall not be construed as constituting or implying City's acceptance of the Work or any part of the Work .

2.1.3 CITY INSPECTION AND REVIEW

- a) All Work, which shall include but is not restricted to Equipment, Software, materials, manufacture, and fabrications and workmanship of components, shall be subject to inspection and/or tests by the City and by others authorized by the City. Any inspectors that are not City employees shall sign a confidentiality agreement to protect Contractor's proprietary information. The City's tests, inspection or review of the Work is only for the information and benefit of the City and shall not relieve the Contractor of its responsibility to provide quality control measures and ensure that the Work strictly complies with this Purchase Order requirements. The City's review, inspection or test of the Work or any part of the Work shall not constitute or imply acceptance of the Work or any part of the Work. Inspections or tests shall not relieve Contractor of responsibility for damage to or loss of the Work prior to acceptance or in any way affect the continuing rights of the City after acceptance of the completed Work;
- b) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the City may replace such material or correct such workmanship and deduct the cost thereof from subsequent progress payments otherwise due and owing to Contractor;
- c) Contractor shall be responsible for SFMTA costs arising from delays to inspection or testing caused by Contractor's failure to have material or Work completed and available for testing or inspection as required by the Work Schedule; and
- d) Neither inspections nor approvals by the SFMTA or by others, shall relieve Contractor from the obligations to perform the Work in accordance with this Purchase Order.

2.1.4 CONTRACTOR'S INSPECTION OF WORK PERFORMED BY SFMTA

- a) The SFMTA shall separately contract for or shall self-perform installation of cabling and wayside equipment, electrical work, and other work necessary for the Work to be performed by Contractor under this Purchase Order but not included within Contractor's scope of work. Contractor shall inspect and test such work performed by the SFMTA and its contractors to confirm that said work conforms to the design, specifications and other requirements for the ATCS as set out in the Design Documents and as may otherwise be determined by Contractor as necessary for the successful implementation of Contractor's Work.
- b) Contractor shall promptly report in writing to the SFMTA any such work for the ATCS performed by the SFMTA or its contractors that does not conform to the design, specifications and other requirements for the ATCS as set out in the Design Documents. Contractor shall provide a written report to the SFMTA specifically describing in what manner the work does not conform to the Design Documents, and if not obvious from the specifications, recommend how said work could be made to conform to the requirements set out in the Design Documents. The SFMTA shall repair or redo or cause to be repaired or redone said nonconforming work, which Contractor shall then retest and/or re-inspect.

2.1.5 EQUIPMENT MANUFACTURER'S INSTRUCTIONS

Contractor shall do the following with regards to Equipment and Software manufactured or assembled by Contractor or by other vendors under subcontract to Contractor:

- a) Maintain a complete set of manufacturer's operations manuals and maintenance instructions at the jobsite during installation, and provide same to the SFMTA prior to performing the Work described in the instructions and again at the completion of the Work as Purchase Order record documents;
- b) Unless otherwise indicated or specified, perform Work including, handling, installing, connecting, cleaning, conditioning and adjusting products in strict accordance with such instructions;
- c) If the manufacturer of any materials or equipment, which are to be incorporated into the Work, has printed instructions on installation methods and procedures, Contractor shall provide these instructions to the SFMTA, thirty (30) Days prior to the scheduled installation;
- d) Review information for conformance with this Purchase Order, adjoining work and the work of other trades;
- e) Note conflicts between the manufacturer's instructions and this Purchase Order in a transmittal to the SFMTA.
- f) Acknowledge that the SFMTA may or may not comment on and/or return to the Contractor manufacturer's recommendations at its discretion.

2.1.6 WORK QUALITY

- a) All materials and Work provided by Contractor under this Purchase Order shall be performed diligently and shall meet the specifications, requirements and standards in accordance with the drawings, specifications, reviewed submittals, and other requirements set out in this Purchase Order ;
- b) Contractor shall not deviate from Equipment and Software manufacture's printed instructions unless such deviation is contained in approved specifications and designs and the manufacturer has in writing confirmed that the deviation is correct and appropriate for the circumstances. The Contractor shall be responsible for deviations from a manufacturer's printed instructions and may be required to redo or replace that Work at the discretion of the SFMTA.
- c) The SFMTA reserves the right to reject any Work which does not conform to the drawings, reviewed submittals, and other requirements of the Work set out or referenced in this Purchase Order. If the Work is not in accordance with the drawings, reviewed submittals, and other requirements of this Purchase Order, Contractor shall repair or replace the nonconforming Work at no additional cost to the City.

2.1.7 OPERATIONAL TESTING AT COMPLETION OF SMC AND LSMC INSTALLATION

- a) Contractor shall perform the operational tests specified in the testing plans approved under Phase 1 of the Work (as described in the documents referenced in Section 2.0, above) including, but not limited to, verifying that all Equipment and electrical installations are adjusted and operating correctly.
- b) Contractor shall provide the SFMTA on-site assistance by technically qualified representatives for the duration of operational field testing, and operating of electrical equipment and systems. Each of the said representatives shall remain on the job site while testing is being completed.
- c) If the Work or any part of it fails operational testing, Contractor shall correct or re-perform the Work and repeat the tests until test results are satisfactory to the SFMTA within the constraints of the approved test procedures as submitted.
- d) Contractor shall notify the SFMTA at least forty-eight (48) hours in advance of when the Work will be ready for operational testing.

2.1.8 TEST REPORTS

The Contractor shall:

- a) provide, within seven (7) Days after the completion of testing performed by or for Contractor, approved test reports and the Certificate of Compliance (as defined below) to the City's Engineer for approval;
- b) provide copies of the approved test reports of all tests required as outlined in the various testing plans mentioned in this Purchase Order and

The SFMTA shall have fourteen (14) Days after receipt of the certified test reports in which the SFMTA may or may not comment on and/or return to the Contractor the submitted test reports and Certificates of Compliance, failing which the test reports and Certificates of Compliance shall be

deemed to be accepted by the City.

2.1.9 CERTIFICATES OF COMPLIANCE

Contractor shall provide SFMTA a Certificate of Compliance for each item of Equipment and Software implemented and incorporated to the ATCS or otherwise used in performance of the Work under this Purchase Order. Each Certificate of Compliance shall state that the subject Equipment or Software has successfully passed acceptance testing and meets or exceeds design specifications and requirements. Each Certificate of Compliance shall be accompanied by a certified copy of test results of tests required by the various testing plans mentioned in this Purchase Order. The Certificate of Compliance shall state the tests which were performed and the quantity of materials shipped. Each Certificate of Compliance shall be signed by an authorized Quality Control Inspector or Laboratory of the Contractor and shall state that the item complies in all respects with this Purchase Order's requirements. Contractor shall provide a Certificate of Compliance no less than thirty (30) Days before scheduled delivery or use of the said item

2.2 BASE WORK

Contractor shall perform the following Work as Base Work of this Purchase Order:

- a) SMC Subsystem Requirements Specification;
- b) SMC Software Detailed Design;
- c) Equipment Delivery including:
 - 1) Schedule Regulation Subsystem (SRS);
 - 2) SMC Workstations;
 - 3) Clustered Database Server;
 - 4) Mimic Server;
 - 5) SMC Preprocessor;
 - 6) Backup Server;
 - 7) Network Switch;
 - 8) Firewall;
 - 9) Data Communications Subsystem (DCS) for:
 - i) Fiber Optic Communications for Center to Center communications
 - 10) Local SMC (LSMC) subsystems and associated rack-mounted equipment, including Station Controller Subsystem (SCS) hardware and software modifications;
 - 11) Vehicle Control Center (VCC) Central Control Operator Terminal (CCOT);
 - 12) "Snooper" Diagnostic Device;
 - 13) "Target" Simulator (as an upgrade to the existing "Training" Simulator)
 - 14) Opsim (Operations Simulator);
 - 15) Cutover Switches; and
 - 16) Spare Parts;
- d) Software Development
 - 1) SMC Upgrade;
 - 2) Local System Management Center (LSMC);

- 3) “Snooper” Diagnostic Software; and
- 4) SFMTA Subway Location Server (Contractor’s Application);
- e) System Installation (Civil construction and rack installation by SFMTA provided contractors);
- f) System Integration and Testing;
- g) Support of Equipment installations by SFMTA Installer
- h) Post Installation and Check-Out (PICO) testing, and all in-house and field testing;
- i) Documentation:
 - 1) Project Management Plan;
 - 2) Phase 2 Quality Assurance/Quality Control Program;
 - 3) SMC Architecture Document;
 - 4) SMC / SCS Interface Control Document (ICD);
 - 5) SuRS (Subsystem Requirements Specification);
 - 6) SMC and LSMC Hardware Specification;
 - 7) Equipment Layout and Interconnect Drawings;
 - 8) Maintenance Workshop Manual Addenda
 - 9) Network Administration Guide;
 - 10) System Integration and Test Plan;
 - 11) SMC Factory Acceptance Test Procedures (for all software release builds)
 - 12) Procedures for System Integration and Testing
 - 13) Deployment, PICO, Commissioning and Cutover Plan;
 - 14) PICO and Commissioning Procedures;
 - 15) Site Acceptance Plan;
 - 16) Integrated Operations Plan Update;
 - 17) SMC User Guide Update including appendix for LSMC;
 - 18) Central Control Operations Vol II update, SMC Commands and Messages;
 - 19) Simulator User Guide;
 - 20) “Snooper” User Guide;
 - 21) “Snooper” Maintenance Manual
 - 22) Central Equipment Maintenance Manual
 - 23) Wayside Equipment Maintenance Manual
 - 24) Test Reports for all FAT, Integration and Commissioning Testing;
 - 25) Final Test Report and “Revenue Ready” Certificate;
 - 26) Updated Revisions to the following documents if modified from Section 2.0 revision:
 - Common Tables (8BJ 00008 0080 DSZZA)
 - Glossary of Terms (8BJ 00008 0004 UCZZA)
 - MUNI SMC Upgrade System Integration and Acceptance Plan (SIAP) (3CU 00837 0015 QTZZA)
 - Muni SMC Upgrade Hardware and DCS Design Document (3CU 00837 0006 DSZZA)
 - Any other design documents from Section 2.0 if modified in the course of work conducted under this Purchase Order;
 - 27) Recommended Spare Parts List;

- 28) Manuals for third party equipment (UPS, computers, network equipment, etc.);
- 29) Training Plan
- 30) Operations Top-Up Training Guides (Instructor and Student);
- 31) Maintenance Top-Up Training Guides (Instructor and Student);
- j) All required Software and Equipment;
- k) Personnel on-site for commissioning testing and cutover;
- l) Training: The set of training courses and sessions to be provided by Contractor are:

	Course Duration (days)	Repetition	Max No. of Attendees	Experience Level	Total staff trained
Central Control Operator Comprehensive	10	3	2	New	6
Central Control Operator Top-Up	4	3	3	Experienced	9
System Simulator Operation	5	2	3	Experienced	6
Signal Maintainer (Wayside 1 st line) LSMC only	1	1	6	Experienced	6
Electronic Shop Technician (Wayside 2 nd line) no vehicle	5	2	7	New to Mid	14
Digital Systems Technician (Central 1 st and 2 nd line)	10	2	6	New to Mid	12
UPS Maintenance (New SER LSMC)	1	2	6	New to Mid	12

2.3 OPTIONAL WORK

Subject to the City’s exercise of the Optional Work pursuant to Section 6 of this Purchase Order, the Contractor undertakes to perform the following additional scope of work as the Optional Work under this Purchase Order:

2.3.1 Vehicle Control Center (VCC) Software Change, “Advance Destination On the Fly”

This option implements a software upgrade to the Vehicle Control Center (VCC) subsystem of the ATCS to enhance the functionality of Station Stop Handling as defined in design document 8BJ 00008 0160 DSZZA, Rev 5 (reference Section 2.0, item 12).

The VCC “Advance Destination On the Fly” enhances the SMC’s platform Double Stopping functionality such that a train which has been routed to the rear berth of a Double Stopping platform can be re-routed from the rear berth to the front berth of the train’s destination platform, if the front berth has become available, without having the train having to stop first at the rear berth. With the VCC software upgrade, this re-routing can be performed while the train is on its approach to the platform, or “on the fly”.

2.3.2 Redundant SMC “warm standby” equipment and SMC integration at the Market Street Control Center

This option implements the redundant SMC defined in Appendix I of final design document “MUNI SMC Upgrade Hardware and DCS Design Specification”, document 3CU 00837 0006 DSZZA (reference Section 2.0, item 23).

The “Warm Standby SMC Rack would enable 2 key functionalities:

- a) The Redundant SMC in “warm standby” mode would allow ATCS operations to speedily resume in “fallback mode” in the event the ATCS equipment at the Lenox Operations Control Center had a major outage; and
- b) The Redundant SMC would provide SMC equipment which could be configured so as to provide stand-alone SMC control of an independent ATCS installation in a separate subway environment. The SFMTA’s Central Subway project will be performing testing of a new ATCS installation in approximately 2015. The future Central Subway ATCS ultimately will require full integration with the existing Metro ATCS at the SMC layer. A stand-alone SMC will be required for testing of the Central Subway ATCS independent of the existing Metro Subway, during revenue service hours. The configuration of the Redundant SMC for Central Subway testing purposes would not affect the capability of the Redundant SMC to revert to operation of the existing ATCS in “fallback mode” in the event of a major outage at the Lenox Operations Control Center.

Implementation of the Redundant SMC in “warm standby” for the existing Metro Subway is included in the scope of this option. As the design details of the future Central Subway ATCS are not yet known, configuration of the Redundant SMC for integration with the future Central Subway ATCS installation is not included in the scope of this option.

2.4 PRECEDENCE OF PURCHASE ORDER

Any inconsistency in requirements of this Purchase Order shall be resolved by giving precedence in the following order:

- a) This Purchase Order No. 3 to Contract 1226;
- b) Contract 1226 Master Agreement;
- c) Phase 2 Quality Assurance Plan;
- d) Contractor specifications, in accordance with Section 2.2 and 2.3 - Work above, approved as work product of Contract 1226, Purchase Order No. 3; and
- e) Contractor design documents in accordance with Section 2.0 above.

2.5 ASSUMPTIONS

The Parties have agreed to the following assumptions to the scope of work for the Work under this Purchase Order:

- a) SFMTA will provide engineering support as outlined in the Deployment, PICO, Commissioning and Cutover Plan.
- b) The aggregate duration of field testing of the SMC Work will not exceed sixteen (16) weeks. This includes regression testing based on SFMTA supplied testing windows.
- c) For the duration of field testing, SFMTA will provide a minimum of two (2) hour testing

window during non-revenue hours for Contractor to test for three (3) nights a week, with one (1) night of extended testing (four (4) hour window) on a weekend night, for the duration of the field testing.

- d) Thales will not under this purchase order test the incorporation of the installed Passenger Announcement Systems (Public Address and Platform Display System replacements) or the new GPS/AVL system being procured as part of the SFMTA Radio Replacement Project.

3.0 EQUIPMENT DELIVERY

Contractor shall ship the Equipment properly crated with a carrier experienced in handling sensitive electronic equipment to the SFMTA Free on Board and fully insured to the address and location determined by the SFMTA where such Equipment shall be installed or stored. Contractor shall reconfirm said delivery location and address with the SFMTA Project Manager in writing (email is acceptable) prior to shipping. Contractor shall be responsible for costs to relocate the Equipment if Contractor ships Equipment to a location and address other than that specified by the SFMTA for that particular Equipment. The SFMTA shall be responsible for costs of moving the Equipment from a storage facility at SFMTA to a site where the Equipment will be installed.

4.0 PROJECT MANAGERS

The parties appoint the following personnel be the Project Managers and primary contacts between the SFMTA and Contractor.

SFMTA: Frank Lau 1 South Van Ness Avenue, 3rd floor San Francisco, CA 94103 415-701-4267 frank.lau@sfmta.com	Contractor: Scott Van Horn 5700 Corporate Dr Suite 750 Pittsburgh, PA 15237 412-366-8814 scott.vanhorn@thalesgroup.com
---	---

APPENDIX B TO CONTRACT 1226, PURCHASE ORDER No. 3

WORK PERFORMANCE AND PAYMENT SCHEDULE

1.0 DELIVERY

1.1 Delivery of the Base Work will be One Hundred Thirty (130) weeks (equal to Nine Hundred Ten (910) days) after the Effective Date of this Purchase Order.

1.2 Delivery of the Optional Work scope will be One Hundred Thirty (130) weeks (equal to Nine Hundred Ten (910) days) after the SFMTA authorization to Contractor to perform the Optional Work.

2.0 PAYMENT SCHEDULE

2.1 The SFMTA will retain ten percent (10%) of invoices as noted in Section 2.2 until all Purchase Order requirements are completed and Final Acceptance has been issued by the SFMTA.

An escrow agreement may be established at a bank approved by Contractor and SFMTA for deposit of the retention payments. The retention amount for each invoice shall be deposited into the escrow account at the time of payment. Retained funds, including accrued interest, may be withdrawn by Contractor only upon the approval of the SFMTA.

2.2

Payment and Performance Schedule for Base Work	Payment	Contractor	Retention
a) Project Management Plan and Phase 2 Quality Assurance/Quality Control Program, Approved by SFMTA by seventy (70) days of the Effective Date	\$600,000	\$600,000	None
b) SMC/SCS Interface Control Document, and SuRS (Subsystem Requirements Specification), and SMC and LSMC Hardware Specification, and Deployment, PICO, Commission and Cutover Plan, and System Integration and Test Plan, completion of Phase 2 Development Review, approved by SFMTA by one hundred fifty-four (154) days of the Effective Date	\$1,015,000	\$913,500	\$101,500
c) Hardware installation at 131 Lenox Central Control, successful completion of H/W PICO Testing by two hundred seventeen (217) days of the Effective Date	\$850,000	\$765,000	\$85,000
d) Hardware installation of seven (7) Local SMC (LSMC), successful completion of all seven (7) H/W PICO Testing by two hundred seventeen (217) days of the Effective Date	\$525,000	\$472,500	\$52,500
e) Hardware installation of "Snooper" Test Equipment, successful completion of	\$425,000	\$382,500	\$42,500

Payment and Performance Schedule for Base Work	Payment	Contractor	Retention
acceptance testing by three hundred thirty-six (336) days of the Effective Date			
f) Hardware installation at 1455 Market Street OCC, successful completion of H/W PICO Testing successful completion of acceptance testing by five hundred four (504) days of the Effective Date	\$350,000	\$315,000	\$35,000
g) Successful completion of new Station Controller software in support of the LSMC, and successful completion of Site Acceptance testing, and release of Field Change Bulletin (FCB) by five hundred eighty-one (581) days of the Effective Date	\$765,937	\$689,343	\$76,594
h) Successful completion of SMC software build suitable for 1 st Revenue Service Release with FCB, and fully operational OPSIM for 1 st Revenue release, as accepted by SFMTA by six hundred thirty-seven (637) days of the Effective Date	\$1,800,000	\$1,620,000	\$180,000
i) Successful completion of SMC training for Revenue Release 1, as accepted by SFMTA by seven hundred sixty-three (763) days of the Effective Date	\$425,000	\$382,500	\$42,500
j) Successful completion of SMC software with full functionality, with FCB, and “top-up” incremental training for the final software release as accepted by SFMTA by seven hundred ninety-one (791) days of the Effective Date	\$1,741,599	\$1,567,439	\$174,160
k) Completion of punchlist work, final release of all Documents, all options exercised by SFMTA, Final Acceptance by SFMTA by nine hundred ten (910) days of the Effective Date	Release of Retention Escrow funds		
TOTAL BASE WORK	\$8,497,536	\$7,707,782	\$789,754

2.3 Payment terms and Performance Schedule for the Optional Work, if exercised by the SFMTA are:

	Payment	Contractor	Retention
l) Installation and successful commissioning of 1455 Market St Backup System as defined in Appendix A, Section 2.3.2 by seven hundred ninety-one (791) days of SFMTA authorization to perform the Optional Work	\$487,971	\$439,174	\$48,797
m) Completion of commissioning of revenue software with FCB for VCC Modifications as defined in Appendix A, Section 2.3.1 by six	\$672,854	\$605,569	\$67,285

	Payment	Contractor	Retention
hundred nine (609) days of SFMTA authorization to perform the Optional Work			
TOTAL OPTIONS	\$1,160,825	\$1,044,743	\$116,082
TOTAL PURCHASE ORDER BASE+OPTIONS	\$9,658,361	\$8,752,525	\$905,836

3.0 DEFINITIONS

“SMC” shall mean System Management Center

“VCC” shall mean Vehicle Control Center

“SCS” shall mean Station Controller Subsystem

“H/W” shall mean Hardware

“PICO” shall mean Post Installation and Check Out

“FCB” shall mean Field Change Bulletin

“OPSIM” shall mean Operations Simulator

“Site Acceptance” shall mean the completion of the site acceptance testing and approval of test reports by Contractor and SFMTA representatives.

“Final Acceptance” shall mean the written confirmation from the SFMTA Executive Director/CEO that the Contractor has:

- a) Successfully implemented a fully functional system which meets all design requirements specified in Appendix A;
- b) Successfully completed the test and commissioning process, including resolution of all punchlist items,
- c) Delivered all Equipment, Software, Documentation and training deliverables; and
- d) Delivered a system accepted for revenue service by the SFMTA.

“Software and Equipment Implementation Review and Acceptance” shall mean

A Contractor’s submittal will be deemed to have received “SFMTA’s acceptance” upon receipt by Contractor of written notice from the Project Manager that the submittal meets SFMTA requirements and is accepted. If the submittal is not acceptable to the SFMTA, the SFMTA shall within thirty (30) Days provide Contractor with written notice stating the reasons the submittal has not been accepted, including but not limited to a specific list of the submittals deficiencies or other statement describing how the submittal does not meet SFMTA requirements.

“Test Day” shall mean a calendar day on which SFMTA is required to mobilize staff resources to support Contractor testing and commissioning.

APPENDIX C TO CONTRACT 1226, PURCHASE ORDER No. 3

WARRANTY

1.0 Warranty on Equipment

- 1.1 The Contractor hereby warrants Equipment supplied under this Purchase Order to be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months after the date of Final Acceptance, provided always that:
- a) such period shall not exceed eighteen (18) months from successful conclusion of PICO testing and
 - b) the City shall notify Contractor of the defects in writing within twenty-one (21) Days after the defects are discovered.
- 1.2 The defects will be remedied promptly within a mutually agreed timeframe, at the Contractor's expense by repair or replacement as determined by Contractor. The Contractor shall warrant repaired or replaced items as provided in the preceding Section 1.1, for a period expiring either simultaneously with the initial warranty of the Equipment, or six (6) months after installation of such repaired or replacement items, whichever is later. Ownership of defective parts shall pass to the Contractor upon delivery of the replacement parts. Transportation and insurance costs for defective parts returned to the Contractor shall be at the City's expense, and transportation and insurance costs for parts replaced or repaired by the Contractor shall be at the Contractor's expense.
- 1.3 Unless otherwise stipulated, the Contractor's warranty is strictly limited to the repair or replacement of defective parts. Labor costs relating to the reinstallation of Equipment repaired or replaced under the above warranty shall be borne and paid by the City.
- 1.4 The Contractor reserves the right to supply replacement parts that provide the equivalent functional performance and meet design specifications but may not be being identical to the parts replaced. In case of obsolescence of Equipment the Contractor agrees to inform the City of the obsolescence of components and/or spare parts promptly once such information becomes available to the Contractor to enable the City to purchase a buffer stock and/or to purchase such maintenance spare parts on the world market.
- 1.5 In case the City wishes the Contractor to provide maintenance and support services after the expiration of the above-mentioned warranties, the Parties will enter into a separate annual maintenance and support contract of terms and conditions to be agreed upon.

2.0 Warranty on Software

- 2.1 The Contractor warrants that the software supplied hereunder ("Software") shall conform to the functions described in the technical specification for a period of twelve (12) months after the date of Final Acceptance.
- 2.2 The Contractor does not warrant that the Software shall be error free. During the warranty period, the Contractor shall, at its own expense, promptly correct or bypass any reproducible

malfunction, lack of conformity with functions described in the design documents and Technical Specifications, and/or anomaly within a period of time to be agreed by both Parties depending on the nature and severity of malfunctions.

- 2.3 The Contractor shall warrant software changed pursuant to a warranty correction under the same conditions as above, for a period expiring either simultaneously with the initial warranty of the Software, or six (6) months after acceptance of such corrected software, whichever is later.

3.0 No Obligation

Notwithstanding any provision to the contrary, Contractor shall have no obligation to repair or replace any Equipment or correct any Software if:

- (a) The Equipment or Software has been modified, repaired or reworked by any party other than Contractor, without Contractor's prior written consent; or
- (b) The defect is the result of:
 - (i) any improper storage, handling or use of the Equipment or Software by City; or
 - (ii) any use of the Equipment or Software by City in conjunction with another equipment or software that is electronically or mechanically incompatible or of an inferior quality; or
 - (iii) modifications by SFMTA to the interface specifications that Contractor does not agree to; or
 - (iv) any damage to the Equipment or Software by power failure, fire, explosion or any act of God or other cause beyond Contractor's control; or
 - (v) installation not performed in accordance with the Contractor's procedures and/or instructions.

The warranties set forth herein shall be non-transferable.

4.0 Limitation

The fulfillment of the above obligations shall be in full satisfaction of the Contractor's responsibility for correction of defects in the Equipment and Software and such repair or replacement constitutes the City's sole remedy with respect the repair or replacement of defective Equipment, Software or related Documentation supplied hereunder. Except as otherwise expressly provided in this Purchase Order or the Master Agreement, Contractor makes no representation, warranty, or condition of any kind by statute, usage, custom of the trade or otherwise with respect to any Equipment, Software or related Documentation and Contractor disclaims any and all implied warranties.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Sustainable Streets Division - Transportation Engineering

BRIEF DESCRIPTION:

Request that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the Software Support and Maintenance Agreement with Fourth Dimension Traffic for a total contract amount not to exceed one million nine hundred thousand dollars (\$1.9 million), and a term not to exceed ten years.

SUMMARY:

- This agreement is for software support and maintenance for Type 2070 D4 Signal Traffic Controller Software. D4 is the only existing Type 2070 software that meets the City's needs, including providing pedestrian features and Transit Signal Priority as in accordance with the Transit First Policy. Fourth Dimension Traffic is the Sole Source provider of D4 software.
- This contract expands the scope of work, adjusts the hourly rate of the contractor, increases the cost not to exceed \$1.9 million over the course of up to ten years, and requires that work be completed on a task order basis.
- This agreement is in compliance with federal contracting requirements since funding for this contract comes from the Federal Transit Administration, Federal Highway Administration, California Department of Transportation, and County Sales Tax Program (Proposition K).
- SFMTA and the Contractor will negotiate an escrow agreement regarding the source codes and other proprietary software information.

ENCLOSURES:

1. MTAB Resolution
2. Contract with Fourth Dimension Traffic

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

DIRECTOR

SECRETARY

ADOPTED RESOLUTION Cheryl Liu

BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE

Authorize the Executive Director/CEO to execute the Software Support and Maintenance Agreement with Fourth Dimension Traffic for a total contract amount not to exceed \$1,900,000 and a term not to exceed ten years.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1:Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

Objective 1.1: Improve safety and security across all modes of transportation.

Objective 1.4: Improve accessibility across transit service.

Goal 2:Customer Focus – To get customers where they want to go, when they want to be there.

Objective 2.1: Improve transit reliability to meet 85% on-time performance standard.

Objective 2.2: Ensure efficient transit connectivity and span of service.

DESCRIPTION

The Sustainable Streets Division of the SFMTA continues to incrementally replace all the City's antiquated traffic controllers with Type 2070 controllers as a Citywide standard. The D4 software, produced by Fourth Dimension Traffic, is the Type 2070 software that best meets the City's needs and the goals of the City's Transit First Policy. It includes the following features:

1. Powerful transit priority features that modify the signal timing to reduce the likelihood of transit being stopped at red lights, such as extending green lights, or bringing up conflicting phases early so that the transit street will be green when the train arrives, while maintaining coordination with nearby signals to ensure good traffic progression.
2. Pedestrian features such as scramble phases and pedestrian head-start phases.
3. Ability to interface with both the current antiquated master system and the new fiber optic system Sustainable Streets is implementing as part of the SFgo Program.
4. Ability to communicate with the central signal management system installed in the Transportation Management Center, allowing real time monitoring, control and access to the traffic signals to reduce congestion.

D4 software was developed by the Fourth Dimension Traffic Company and has been the standard signal controller software for the City since 2004. On January 6, 2004, SFMTA Board approved Resolution 04-006 approving the contract with Fourth Dimension Traffic as the sole source provider of D4 Traffic Signal Controller Software and Training and Consulting services. Subsequent amendments to this contract were signed in 2004, 2005, and 2006 to provide for support services and software upgrades as needed. In 2008, a Software Maintenance Attachment was added to the original contract to extend this service arrangement to March, 2011.

Pursuant to this Software Support and Maintenance Agreement, the Contractor agrees to provide the following services related to the installation, modification and on-going maintenance for D4 software:

1. Provide training sessions for groups of designated Signal Shop electricians. Contractor will work with Signal Shop staff to develop curriculum.
2. Assist SFMTA engineers/electricians to fine tune and adjust signal timing as part of the implementation of the Transit Effectiveness Project Rapid Corridors.
3. Support modeling and/or implementation of transit signal priority and/or emergency priority along various corridors, including but not limited to:
 - a. Polk and Post Streets
 - b. San Bruno Avenue
 - c. Geary BRT
 - d. Van Ness BRT
 - e. Van Ness Corridor – Franklin and Gough
 - f. The Embarcadero.
 - g. Central Subway
4. Support adjustment and revision of the traffic signals at related to the St. Francis Circle rail upgrade.
5. Support, training and programming for future projects on an as-needed basis.
6. Adapt the D4 software to coordinate with any emerging, state-of-the-art traffic control hardware.
7. Submit periodical progress reports via email to Signal Shop Manager as requested by SFMTA. Format for the content of such reports shall be determined by SFMTA.

The SFMTA and Fourth Dimension Traffic agree to negotiate an escrow agreement in order to escrow the source codes and other proprietary software information in the event of the unavailability of the Contractor.

The existing contract with Fourth Dimension Traffic was not drafted to include federal contracting requirements since federal funding was not used. This new contract is in compliance with federal contracting requirements as it will be partially funded through federal sources. The Contractor shall provide these services on a task order basis as described in Section 5 of the Agreement. The Contract Compliance Office (CCO) has reviewed this calendar item. There is no subcontracting requirement for this sole source contract.

ALTERNATIVES CONSIDERED

The City has selected the D4 as its standard software for traffic signal controllers, and Fourth Dimension Traffic is the sole provider of D4 software support, as D4 is their proprietary software. Staff considered not entering into this contract with Fourth Dimension Traffic, which would result in no support, training or maintenance related to the City's traffic signal software and would prevent the City from incorporating any technological advancements. Therefore, this alternative was rejected by staff.

FUNDING IMPACT

This new contract will be funded by the Federal Transit Administration, Federal Highway Administration, California Department of Transportation, and County Sales Tax Program (Proposition K). As a result, federal and state contracting requirements are contained in the agreement.

Funding for this agreement is through various federal, state, regional and local sources. The SFMTA currently has \$590,000 in project funds for D4 work related to projects such as Central Subway, Van Ness BRT, and Saint Francis Circle. In addition, there are future projects that are anticipated to fund an additional \$442,000 of work, including Geary BRT and work related to the TEP Rapid Corridors. These projects bring the total of expected funding to over \$1 million, and over the next ten years we anticipate addition federal- or state-funded projects to arise as well. However, work for this contract will be performed on a task order basis, and task orders will not be issued unless adequate funding above the currently identified \$590,000 has been secured. The SFMTA is under no obligation to spend the entire \$1.9 million dollars.

RECOMMENDATION

That the San Francisco Municipal Transportation Agency Board authorize the Executive Director/CEO to execute the Software Support and Maintenance Agreement with Fourth Dimension Traffic for a total contract amount not to exceed \$1,900,000 and for a term not to exceed ten years.

MUNICIPAL TRANSPORTATION AGENCY BOARD
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. _____

WHEREAS, The San Francisco Transportation Agency currently operates and maintains approximately 1,200 signalized intersections, each run by a signal controller, and the City has adopted Type 2070 traffic signal controllers as the City's standard; and

WHEREAS, Fourth Dimension Traffic's D4 software is the only existing Type 2070 software that meets the needs of the City, including providing pedestrian features and Transit Signal Priority as in accordance with the Transit First Policy; and

WHEREAS, The City has obtained a Citywide license for the Type 2070 D4 signal controller software from Fourth Dimension Traffic through a sole source contract; and

WHEREAS, The existing contract with Fourth Dimension Traffic, which expires in March 2011, was not drafted to include federal contracting requirements since federal funding was not used for this contract; and

WHEREAS, SFMTA has a number of current and upcoming projects that are funded by the Federal Transit Agency, the Federal Highway Administration, and the California Department of Transportation that require continued signal software support and maintenance services, including the Central Subway, Embarcadero, St. Francis Circle, Van Ness and Geary Bus Rapid Transit, Transit Effectiveness Project Rapid Corridors, SFgo and signal improvement projects, and this new contract complies with all federal and state contracting requirements; and

WHEREAS, Fourth Dimension Traffic will provide transit signal priority and other advanced programming, training, and support services over the course of ten years; and

WHEREAS, this work will be completed on a task order basis, and task orders will not be issued until project funding is secured; and

WHEREAS, the SFMTA is under no obligation to expend the entire contract amount; and

WHEREAS, the SFMTA and Fourth Dimension Traffic agree to negotiate an escrow agreement in order to escrow the source codes and other proprietary software information in the event of the unavailability of the Contractor; and

WHEREAS, The Software Support and Maintenance Agreement may be terminated with 30 days notice by the City; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to enter Contract No. SFMTA-2010/11-12, Software Support and Maintenance Agreement with Fourth Dimension Traffic for transit signal priority and other advanced programming training and support services for a total contract amount not to exceed \$1,900,000 and for a term of up to ten years.

I hereby certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary, Municipal Transportation Agency Board

**City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, California 94103**

**Software Support and Maintenance Agreement
between the City and County of San Francisco and**

Fourth Dimension Traffic

This Software Support and Maintenance Agreement (“Agreement”) is made this 11th day of February, 2011, in the City and County of San Francisco, State of California, by and between: Fourth Dimension Traffic, 55 Windcrest Lane, South San Francisco, CA 94080, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

WHEREAS, the San Francisco Municipal Transportation Agency (“SFMTA”) entered into a Software License Agreement with Fourth Dimension Traffic on January 6, 2004 and through incremental purchases acquired a Citywide license for D4 software for the City’s standard Type 2070 traffic signal controllers from Contractor; and

WHEREAS, SFMTA amended the original license agreement with Contractor in 2004, 2005, and 2006 to provide for software support services; and

WHEREAS, SFMTA entered into a Software Maintenance Attachment to the original license agreement in 2008 to provide support services and upgrades for the Software through March 30, 2011; and

WHEREAS, SFMTA needs the Contractor’s continued software support and maintenance services for up to ten additional years in order to support a number of current and upcoming projects that are funded by the Federal Transit Agency, the Federal Highway Administration, California Department of Transportation, and County Sales Tax Program that require continued signal software support and maintenance services including the Central Subway, North Embarcadero, St. Francis Circle, Van Ness and Geary Bus Rapid Transit, Transit Effectiveness Project, SFgo and other signal improvement projects; and

WHEREAS, the agreement contains all applicable federal and state contracting requirements; and

WHEREAS, the Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement. (See detailed description in Appendix A);

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Effective Date Date upon which the Controller has certified to the availability of funds and the Contractor has been notified in writing or the Software is received and installed at the customer site, whichever is later.

Errors, Defects and Malfunctions Either a deviation between the function of the Software and the documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.

Fix Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.

Maintenance Agreement This Software Support and Maintenance Agreement, which together specify the terms and conditions for the correction of software Errors, Defects and Malfunctions in the Software, for the provision of Upgrades to the Software, and for the provision of Support Services to end users of the Software.

Patch Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

Priority Category A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

Priority Protocol Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

Software Licensed programs and associated documentation licensed to City by Fourth Dimension Traffic, as listed in Appendix A and any modification or Upgrades or modifications to the program(s) provided under this Software Support and Maintenance Agreement.

Subsequent Release A release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent

Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Support and Maintenance Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.

Support Services The Software support service required under this Software Support and Maintenance Agreement. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.

Upgrade Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

Warranty Period A period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

Workaround A change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of the SFMTA. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of the SFMTA, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Software Support and Maintenance Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Software Support and Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Software Support and Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT.

3. Term of the Software Support and Maintenance Agreement. Subject to Section 2, the term of this Software Support and Maintenance Agreement shall be from April 1, 2011 to March 31, 2020.

4. City's Payment Obligation. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30 day period. Contractor and the City understand and intend that the obligations of the City to pay charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Software Support and Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

5. Compensation

a. Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task, or actual direct costs plus a negotiated fixed profit per task. In no event shall the amount of this Software Support and Maintenance Agreement exceed One Million, Nine Hundred Thousand Dollars (\$1,900,000). The breakdown of costs associated with this Software Support and Maintenance Agreement is attached in Appendix B

b. Task Requirements. Task requirements will be defined by SFMTA. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

1. SFMTA will prepare the scope of work and expected time of completion, using the Task Order form (Exhibit C), and transmit the Task Order form to the Contractor with a request for a proposal for the performance of the task.

2. The Contractor shall prepare and submit a proposal for the task to the Project Manager showing:

- (a) A detailed description of the work to be performed and the means and methods that will be used to perform it;
- (b) Milestones for completion and deliverables at each milestone;
- (c) Personnel assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

- (d) A detailed cost estimate for each task showing:
 - (i) Estimated hours and direct salaries by position;
 - (ii) Overhead, including salary burden costs for Contractor; to arrive at this cost, the overhead rate is multiplied by the cost in (i) above;
 - (iii) Estimated reasonable out-of-pocket expenses;
 - (iv) Proposed as fixed fee amount not to exceed ten percent (10%) of Contractor's estimated direct salaries and overhead costs.

3. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each task and either a total price or a total cost not to exceed for the task.

4. If agreement is reached, the Project Manager will document the negotiations and agreement in a Record of Negotiations and obtain the approval of the City Traffic Engineer or his/her designee of the agreement as defined in the Record of Negotiations.

5. Upon approval of the City Traffic Engineer or his/her designee, the Project Manager will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

6. After certification, the Contracting Section will send to the Contractor a written Notice to Proceed and task number. The Contractor is required to use the task number when submitting invoices to the Project Manager for payment. The Contractor shall not commence work on any task until it receives a written Notice to Proceed for the task.

7. Agreed lump sum prices and fixed profits for tasks above cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the City Traffic Engineer or his/her designee shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

8. In the event that City and Contractor cannot reach agreement on the terms of the task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor

performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the Software Support and Maintenance Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the Software Support and Maintenance Agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Contractor under this Software Support and Maintenance Agreement must be in a form acceptable to the SFMTA. Each invoice must contain a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties." City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Software Support and Maintenance Agreement.

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Software Support and Maintenance Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. If this Software

Support and Maintenance Agreement entitles Contractor to the possession, occupancy or use of City real property for private gain, then the following provisions apply:

a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Software Support and Maintenance Agreement may create a possessory interest subject to property taxation and Contractor, and any permitted successor or assign, may be subject to the payment of such taxes.

b. Contractor, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Software Support and Maintenance Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Contractor shall report any assignment or other transfer of any interest in this Software Support and Maintenance Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

c. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

10. Scope of Service Coverage.

a. Contractor shall provide Support Services and provide Upgrades during the term of this Software Support and Maintenance Agreement for the Software.

b. During the term of this Software Support and Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially

reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

11. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

12. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Software Support and Maintenance Agreement.

13. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Software Support and Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

14. Qualified Personnel. Work under this Software Support and Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by

Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Software Support and Maintenance Agreement.

15. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

16. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Software Support and Maintenance Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Software Support and Maintenance Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Software Support and Maintenance Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Software Support and Maintenance Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Software Support and Maintenance Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Software Support and Maintenance Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Software Support and Maintenance Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Software Support

and Maintenance Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

17. Insurance.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide ten days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

18. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Software Support and Maintenance Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Software Support and Maintenance Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its sublicensees or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Software Support and Maintenance Agreement.

19. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OBLIGATION PROVIDED FOR IN SECTION 4 OF THIS SOFTWARE

SUPPORT AND MAINTENANCE AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT.

20. Default. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Software Support and Maintenance Agreement may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

21. Support Service Term and Termination for Convenience.

a. **Commencement.** Support Services for the Software begin on the Effective Date for the Software.

b. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Software Support and Maintenance Agreement, this Software Support and Maintenance Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Software Support and Maintenance Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

c. **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Software Support and Maintenance Agreement, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Software Support and Maintenance Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Software Support and Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

22. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Software Support and Maintenance Agreement shall survive termination or expiration of this Software Support and Maintenance Agreement:

- | | |
|--|--|
| 7. Submitting False Claims; Monetary Penalties | 12. Payment Does Not Imply Acceptance of Work. |
| 8. Taxes. | 14. Responsibility for Equipment. |

- | | |
|---|--|
| 15. Independent Contractor; Payment of Taxes and Other Expenses | 34. Provisions Controlling. |
| 16. Insurance | 35. Entire Agreement; Modifications |
| 17. Indemnification. | 37. Non-Waiver of Rights. |
| 25. Audit and Inspection of Records. | 38. Governing Law. |
| 26. Subcontracting. | 41. Protection of Private Information. |
| 27. Assignment. | |

Subject to the immediately preceding sentence, upon termination of this Software Support and Maintenance Agreement prior to expiration of the term specified in Section 3, this Software Support and Maintenance Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Software Support and Maintenance Agreement, and any completed or partially completed work which, if the Software Support and Maintenance Agreement had been completed, would have been required to be furnished to the City. This subsection shall survive termination of this Software Support and Maintenance Agreement.

23. Conflict of Interest. Through its execution of this Software Support and Maintenance Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Software Support and Maintenance Agreement.

24. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Software Support and Maintenance Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of this Software Support and Maintenance Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

25. Notices to Parties. Unless otherwise indicated elsewhere in this Software Support and Maintenance Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or fax, and shall be addressed as follows:

To City: Lauren Green
Manager, Signal Maintenance Shop
San Francisco Municipal Transportation Agency
901 Rankin Street
San Francisco, CA 94124
(415) 550-2769

Lauren.Green@sfmta.com

To Contractor: Tod Eidson
 Fourth Dimension Traffic
 55 Windcrest Lane
 South San Francisco, CA 94080
 (415) 516-4051
 Tod@d4traffic.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

26. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Software Support and Maintenance Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Software Support and Maintenance Agreement, whether funded in whole or in part under this Software Support and Maintenance Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Software Support and Maintenance Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Software Support and Maintenance Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting. Contractor is prohibited from subcontracting this Software Support and Maintenance Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Software Support and Maintenance Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment. The services to be performed by Contractor are personal in character and neither this Software Support and Maintenance Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Software Support and Maintenance Agreement.

29. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the

commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

30. Drug-Free Workplace. Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

31. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Software Support and Maintenance Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Software Support and Maintenance Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Software Support and Maintenance Agreement.

32. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

33. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Software Support and Maintenance Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event

Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Software Support and Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

34. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulation of the City and of all state, and federal laws in any manner affecting the performance of this Software Support and Maintenance Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

35. Provisions Controlling. Contractor agrees that in the event of conflicting language between this "Software Support and Maintenance Agreement" and Contractor's printed form, the provisions of this "Software Support and Maintenance Agreement" shall take precedence.

36. Entire Agreement; Modifications. The Software Support and Maintenance Agreement, together with the Appendices and/or Exhibits hereto, constitutes the entire Software Support and Maintenance Agreement between the parties and this Software Support and Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed and approved in the same manner as this Software Support and Maintenance Agreement. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Software Support and Maintenance Agreement. Should the application of any provision of this Software Support and Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Software Support and Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable. Subject to the specific provisions of this Software Support and Maintenance Agreement, this Software Support and Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

37. Force Majeure. Contractor shall not be liable for failure to maintain Software when such failures are due to causes beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event Contractor shall perform as soon as such cause is removed.

38. Non-Waiver of Rights. The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

39. Governing Law. This formation, interpretation and performance of this Software Support and Maintenance Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Software Support and Maintenance Agreement shall be in San Francisco.

40. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Software Support and Maintenance Agreement.

41. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Software Support and Maintenance Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to SFMTA who shall decide the true meaning and intent of this Software Support and Maintenance Agreement.

42. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

43. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that

is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Contractor to comply with this section of this Software Support and Maintenance Agreement shall constitute a material breach of this Software Support and Maintenance Agreement.

44. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Software Support and Maintenance Agreement as though fully set forth. This provision is a material term of this Software Support and Maintenance Agreement. By entering into this Software Support and Maintenance Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Software Support and Maintenance Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

45. 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.

46. Cost Principles.

- A. The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to the City.

47. Contingent Fees. The Contractor warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies

48. Dispute Resolution. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 14 days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Project Manager. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Director of Sustainable Streets, or his/her designee. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Sustainable Streets, shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Project Manager's decision as to a particular dispute is final.

Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of the Project Manager.

If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

49. Safety.

- A. The Contractor shall comply with OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. The Contractor shall comply with safety instructions issued by the City's Safety Officer and other City representatives. Contractor personnel shall wear hard hats and safety vests at all times while working on any construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the City has determined that such areas are within the limits of the project and are open to public traffic. The Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Contractor shall take all reasonably necessary precautions for safe operation of its vehicles, if any, and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

50. Debarment and Suspension Certification.

- A. The Contractor's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Contractor has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the City.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

51. Prohibition of Expending Local Agency State or Federal Funds for Lobbying.

- A. The Contractor certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. The Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

52. Escrow Agreement. The parties agree to negotiate an escrow agreement in order to escrow the source codes and other proprietary software information in the event of the unavailability of the Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

Fourth Dimension Traffic

Nathaniel P. Ford Sr.
Executive Director/CEO
San Francisco Municipal Transportation
Agency

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By:

John I. Kennedy
Deputy City Attorney

ATTEST:
Authorized by Municipal Transportation
Agency Resolution No.

Tod Eidson
President
55 Windcrest Lane
South San Francisco, CA 94080

City vendor number: 603-20-7407

Roberta Boomer
Secretary, Municipal Transportation Agency

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Task Order Form

Appendix A SCOPE OF SERVICES

D4 Software Support Services

Contractor will provide the following services related to the installation, modification and on-going maintenance for D4 software:

8. Provide training sessions for groups of designated Signal Shop electricians. Contractor will work with Signal Shop staff to develop curriculum.
9. Assist SFMTA engineers/electricians to fine tune and adjust signal timing as part of the implementation of the Transit Effectiveness Project Rapid Corridors.
10. Support modeling and/or implementation of transit signal priority and/or emergency priority along various corridors, including but not limited to:
 - a. Polk and Post Streets
 - b. San Bruno Avenue
 - c. Geary BRT
 - d. Van Ness BRT
 - e. Van Ness Corridor – Franklin and Gough
 - f. The Embarcadero.
 - g. Central Subway
11. Support adjustment and revision of the traffic signals at related to the St. Francis Circle rail upgrade.
12. Support, training and programming for future projects on an as-needed basis
13. Adapt the D4 software to coordinate with any emerging, state-of-the-art traffic control hardware.
14. Submit periodical progress reports via email to Signal Shop Manager as requested by SFMTA. Format for the content of such reports shall be determined by SFMTA.

The Contractor shall provide these services on a task order basis as described in Section 5 of this Agreement.

**Appendix B
CALCULATION OF CHARGES**

The City shall pay for services as described below in Appendix A at a rate shown in the table below, not to exceed a total of \$1.9 million. All rates include overhead.

Effective Date of Coverage	Services	Hourly Fee
2011	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$109.56
2012	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$111.75
2013	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$113.98
2014	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$116.26
2015	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$118.59
2016	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$120.96
2017	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$123.38
2018	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$125.85
2019	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$128.36
2020	D4 Traffic Signal Controller Software Consulting and Maintenance Services	\$130.93

The rate for consulting services shall not exceed \$130.93/hour. Contractor may request reimbursement for training supplies. Contractor will not be reimbursed for travel, long distance charges, or any other expenses not agreed upon by the City in advance. The aggregate amount of payments for consultation under this Agreement shall not exceed \$1.9 million.

**Appendix C
TASK ORDER FROM**

Contract Title: Software Support and Maintenance Services

Contract No.: SFMTA-2010/11-12

Project Title: _____ Project No.: _____

TASK ORDER DESCRIPTION

Task Title		
<input type="checkbox"/> New Task Order <input type="checkbox"/> Revised Task Order		
Work to be Performed:		
Schedule		
Start Date: _____		
Estimated Completion Date: _____		
Budget Amount: \$ _____		Index Code: _____
Deliverables:		
Description	Date Required	Quantity
APPROVALS		
Approved	_____	
	Project Manager/Engineer	
Approved	_____	
	Traffic Signal Maintenance Shop Manager	
Approved	_____	
	Software Support and Maintenance Contract Manager	
Approved	_____	
	City Traffic Engineer	
Approved	_____	
	Director, Sustainable Street Division	

THIS PRINT COVERS CALENDAR ITEM NO.: 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to enter into an agreement with Chrisp Company and Flint Trading Incorporated to accept the gift of supplying pavement marking materials and re-striping a crosswalk between the northwest and northeast corners of the intersection of Judah and LaPlaya Streets. The equivalent cost of the work is approximately \$5,000.

SUMMARY:

- The Chrisp Company, a pavement marking contractor, and Flint Trading Incorporated, a pavement marking supplier, have offered, through Supervisor Carmen Chu's office, to re-mark one crosswalk for SFMTA free of charge.
- The crosswalk connects the northwest and northeast corners of the intersection of Judah and La Playa Streets.
- They are making this offer in an attempt to develop future business.
- The equivalent cost is approximately \$5,000 which the SFMTA can accept as a gift without Board of Supervisors approval.
- The City Attorney has drafted an agreement regarding the gift with Chrisp and Flint Trading to cover indemnity, work quality assurance, and other legal issues.
- We expect the work to be done during the spring.

ENCLOSURES:

1. Agreement
2. Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION TO BE RETURNED TO Bond Yee

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept the gift of pavement markings valued at about \$5,000.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

Objective 1.1: Improve safety and security across all modes of transportation.

Goal 4: Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2: Ensure efficient and effective use of resources.

DESCRIPTION

This agreement will allow the City to accept pavement markings for no charge from the Chrisp Company, a pavement marking contractor, and Flint Trading Incorporated, a pavement marking supplier. The crosswalk to be re-marked connects the northwest and northeast corners of the intersection of Judah and La Playa Streets. The equivalent cost is approximately \$5,000, which the SFMTA can accept as a gift without approval by the Board of Supervisors.

The painter's union did not have any objections to the SFMTA accepting this one-time offer. The agreement covers indemnity, work quality assurance, and other legal issues. We expect the work to be done during the spring. Chrisp is very experienced and did the pavement markings on Sunset Boulevard when the street was resurfaced some time ago as part of a contract with the City. Flint Trading has supplied pavement markings for the installation of green bike lanes throughout the City.

The City Attorney's Office has reviewed this calendar item.

ALTERNATIVES CONSIDERED

The alternative of turning down their offer was considered, but the City would lose the benefit of the gift, so this alternative was rejected.

PAGE 3.

FUNDING IMPACT

The value of the gift is approximately \$5,000. This gift will allow our resources to be deployed in other areas.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None required.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the SFMTA, through its Executive Director/CEO or his designee, to execute an agreement with the Chrisp Company and Flint Trading Incorporated to accept the gift as described above.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Chrisp Company, a licensed contractor experienced in applying pavement markings, and Flint Trading Incorporated, a supplier of pavement markings, have offered to install crosswalk lines between the northwest and northeast corners of the intersection of Judah and La Playa Streets as a gift to the City; and,

WHEREAS, This work will improve public safety, save the City approximately \$5,000; and,

WHEREAS, The painter's union has no objection to the gift; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his designee to execute an agreement with Chrisp Company and Flint Trading Incorporated to accept the gift of supplying pavement marking materials and re-striping a crosswalk between the northwest and northeast corners of the intersection of Judah and La Playa Streets, which gift is valued at approximately \$5,000.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**AGREEMENT REGARDING
GIFT OF RE-STRIPING ONE CROSSWALK AT
THE INTERSECTION OF JUDAH AND LA PLAYA STREETS.**

This Agreement is made this _____ day of _____, 2011, in San Francisco, California, between the City and County of San Francisco, a municipal corporation ("City"), by and through its Municipal Transportation Agency ("SFMTA"), Chrisp Company, a California corporation ("Chrisp"), and Flint Trading Incorporated, a North Carolina corporation ("Flint Trading") (Chrisp and Flint Trading may be referred to collectively as the "Donors").

RECITALS

A. Chrisp is a licensed California contractor in the business, among other things, of performing highway improvements, including striping traffic lanes. Flint Trading is in the business, among other things, of supplying pavement marking materials.

B. On December 13, 2010, in a written communication to the Board of Supervisors, Chrisp and Flint Trading offered, as a gift to the City and County of San Francisco, to re-stripe the existing crosswalk connecting the northwest and northeast corners of the intersection of Judah and La Playa Streets in San Francisco (the "Project"). The value of the gift is approximately \$5,000.

C. The SFMTA is agreeable to accepting the gift of the Project, subject to the terms and conditions set forth below.

AGREEMENT

1. Term. The Agreement shall commence as of March 7, 2011, and terminate upon completion and acceptance by SFMTA of the Project.

2. Project

2.1. Description of Project. Re-striping of the existing crosswalk connecting the northwest and northeast corners of the intersection of Judah and La Playa Streets by Chrisp, with pavement markings selected by the City and supplied by Flint Trading.

2.2. Costs for Project. Chrisp and Flint Trading agree to bear all costs related to the Project, including, but not limited to, costs of all labor, materials and insurance required for the Project (the "Costs").

2.3. Performance of Work. Chrisp and Flint Trading agree to cause the Project to be performed in accordance with the all material requirements of the SFMTA, and subject to final inspection and acceptance by the SFMTA.

3. City Responsibilities. City agrees to the following tasks:

3.1. To issue any required permits for the Project without charge.

3.2. To perform construction inspection during Crisp's and Flint Trading's performance of the Project.

4. Insurance.

4.1. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

4.1.1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

4.1.2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

4.1.3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4.2. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

4.2.1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

4.2.2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

4.2.3. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address in Section 9 below:

4.2.4. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

4.2.5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

4.2.6. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

4.2.7. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in

form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

4.2.8. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

4.2.9. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

5. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

6. Default; Remedies.

6.1. Default. A default shall occur if either party fails or refuses to perform or observe any material term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice to cure such default.

6.2. Default of Chrisp or Flint Trading. On and after any default on the part of the Donors that is not cured within the time period specified in Section 6.1, the City will have the right to exercise all legal and equitable remedies, including, without limitation, the right to terminate this Agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

6.3. Default of City. On and after any default on the part of City with respect to City's obligations under Section 3 that are not cured within the time period specified in Section 6.1, Crisp's or Flint Trading's sole remedy is to exercise its rights to terminate this Agreement as set forth in Section 8 below.

6.4. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

7. Modification of Agreement. The City and the Donors reserve the right to amend or supplement this Agreement by mutual consent. It is agreed and understood that no alteration or variation to the terms of this Agreement shall be valid unless made in writing and signed by the authorized representatives of the parties, and that separate oral agreements or understandings shall not be binding on any of the parties.

8. Termination. Either party has the right to terminate this Agreement upon thirty (30) days written notice to the other party.

9. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by facsimile, and shall be addressed as follows:

To SFMTA: Municipal Transportation Agency
Sustainable Streets
901 Rankin Street
San Francisco, CA 94124-1626
Attn: Toni Coe, Manager of Field Operations
Fax: (415) 431-7140

To Crisp: Crisp Company
43650 Osgood Road
Fremont, CA 94538-0136
Attn: Paul Anderson
Fax: (510) 490-2703

To Flint Trading: Flint Trading Incorporated
115 Todd Court
Thomasville, NC 27360
Attn: Ed Vodegel
Fax: (336) 475-7900

10. Agreement Binding on Successors. This Agreement shall be binding on the heirs, successors and assigns of the Donors.

11. Assignment. The services to be performed by the parties are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by either party unless first approved by written instrument executed and approved as required by applicable City law.

12. Liability of City. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY

SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

13. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

14. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

15. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 7.

16. Compliance with Laws. The Donors shall keep themselves fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

17. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

18. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

19. Food Service Waste Reduction Requirements. The Donors agree to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, the Donors agree that if they breach this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Donors agree that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of the Donors' failure to comply with this provision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized, on the date written above.

CITY AND COUNTY OF SAN FRANCISCO
San Francisco Municipal Transportation Agency

CHRISP COMPANY

By _____
Nathaniel P. Ford Sr.
Executive Director/CEO

By _____
Paul Anderson
Marketing & Development Manager

Approved as to Form:

Dennis J. Herrera
City Attorney

FLINT TRADING INCORPORATED

By _____
Ed Vodegel
Regional Sales & Support Manager

By _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors
Resolution No. _____
Dated: _____

Attest:

Secretary, SFMTA Board of Directors

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an Easement Purchase and Sales Agreement (Purchase Agreement) for a fifty-five year easement (Easement) over an approximately 3,360 square foot portion of City's property (Easement Area) next to an existing bus loop to Avalon Ocean Avenue, L.P. (Avalon), and to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors to approve the Purchase Agreement.

SUMMARY:

- Avalon is constructing a mixed use rental development project (Avalon Project) with a ground floor grocery store on its property (Avalon Property).
- Planning Commission Motion No. 17885 (Motion) requires Avalon to construct an extension to Lee Avenue and obtain SFMTA's permission to use the Easement Area to facilitate grocery store deliveries to the Avalon Project.
- Avalon will pay the City \$171,360 (Purchase Price) for the Easement, and if SFMTA relocates its bus loop and sells a portion of the former bus loop property (Housing Parcel) to the Redevelopment Agency (Agency) for a housing project (Housing Project), Avalon will give the Agency \$706,832 (Agency Price) to offset the anticipated increased Housing Project construction and maintenance costs that will result from Avalon's use of the Easement Area.
- The Easement Agreement will be recorded in the Official Records of San Francisco County at closing, but the Easement will not become effective unless Avalon receives a temporary certificate of occupancy for the Grocery Store and the City Engineer makes a Determination of Completeness for the Lee Avenue Extension under a Public Improvement Agreement between City and Avalon.
- If the Easement becomes effective, it will have a term of 55 years and be subject to mitigation measures to minimize impacts to SFMTA's existing bus loop operations in the area.

ENCLOSURES:

1. Resolution
2. Delivery Truck Easement Agreement
3. Easement Purchase and Sales Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION _____

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Jason Gallegos
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

This report requests that the San Francisco Municipal Transportation Agency Board of Directors adopt the attached resolution authorizing the Executive Director/CEO to execute a Delivery Truck Easement Agreement (Easement Agreement) and an Easement Purchase and Sales Agreement (Purchase Agreement) between the San Francisco Municipal Transportation Agency (SFMTA) and Avalon Ocean Avenue, L.P. (Avalon), thereby granting a 55-year exclusive truck turnaround easement (Easement) over City property under SFMTA jurisdiction at the Phelan Bus Loop and to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors to approve the execution of the Purchase Agreement, the Easement Agreement, and the transactions contemplated in those agreements.

GOAL

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

Goal 3 - External Affairs - Community Relations: To improve the customer experience, community value, and enhance the image of SFMTA as well as ensure SFMTA is a leader in the industry.

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation.

Goal 4 - Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

The Easement will affect an approximately 3,360 square foot portion (Easement Area) of City's Phelan Loop property under the jurisdiction of the SFMTA. The grant of the Easement is the next step in the on-going efforts to redevelop the existing Phelan bus turnaround into a multi-modal transit oriented development hub consisting of a newly reconfigured bus loop and open space public plaza, both under SFMTA jurisdiction, as well as Avalon's development of a new mixed use project comprised of approximately 177 units of affordable and market rate housing above retail space, including a grocery store on the Avalon Property (Avalon Project), and the development of the Agency's Housing Project, which will be comprised of approximately 74 units. The Avalon Project will be separated from the Easement Area by a new Lee Avenue extension which Avalon will construct, maintain, and repair until it is accepted as part of the public streets by the City's Board of Supervisors.

If SFMTA relocates its existing bus loop at the City's Phelan Loop property, SFMTA intends to sell a portion of the former bus loop (Housing Parcel) to the Agency for the Housing Project subject to the Easement. The sale of the Housing Parcel to the Agency was approved by the SFMTA Board of Directors on November 17, 2009 under Resolution No. 09-196 and on April 20, 2010 under Resolution No. 10-051, and legislation for the proposed sale was introduced to the San Francisco Board of Supervisors on February 1, 2011. A depiction of the Avalon Property, the Housing Parcel and the Easement Area is attached as Exhibit E of the Easement Agreement, which shows how the proposed Easement Area will affect the Housing Parcel, abut the new Lee Avenue extension and serve as the designated grocery store delivery truck turnaround area appurtenant to and for the benefit of the Avalon Property.

PAGE 3

In order to comply with the policies of the Balboa Park Station Area Plan and pursuant to San Francisco Planning Commission Motion No. 17885, Avalon needs the SFMTA's permission to use the Easement Area for a delivery truck turnaround area. Avalon will need such a turnaround area to effectively operate the grocery store, with grocery store delivery trucks pulling onto the Easement Area from the Lee Avenue extension and then backing out across the Lee Avenue extension and to loading docks on the Avalon Property. SFMTA staff, Avalon, and Redevelopment Agency has negotiated the proposed Easement Agreement and Purchase Agreement during the past 1.5 years.

The SFMTA is not actively using the Easement Area, which is subject to the installation, operation, maintenance and replacement of underground pipelines by San Francisco Public Utilities Commission (SFPUC), as further described in that certain Memorandum of Understanding between SFMTA and SFPUC dated for references purposes as of February 13, 2007, which is attached as Exhibit G of the Easement Agreement.

The Easement Agreement will be recorded in the Official Records of San Francisco County on the closing date specified in the Purchase Agreement, but the Easement will not become effective unless Avalon receives a temporary certificate of occupancy for the Grocery Store and the City Engineer makes a Determination of Completeness for the Lee Avenue Extension and other public improvements under a Public Improvement Agreement between City and Avalon. If the Easement becomes effective, it will run with the land for 55 years, binding all respective successors and assigns.

The Easement will not only the benefit Avalon but also the collective development projects at the Phelan loop. It will not significantly impact Muni operations. Construction of the Avalon Project and the grocery store is one of the keys to catalyzing major revitalization along the Ocean Avenue commercial corridor. It is a major contribution from the SFMTA in facilitating the implementation of smart growth strategies such as "Transit Oriented Development" where there are an effective mix of land uses, using land and infrastructure efficiently, creating walkable neighborhoods that are attractive and distinctive, providing transportation and housing choices, and encouraging community and stakeholder collaboration in development decisions designed to attract and retain development, residents, and jobs.

Key Business Points of the Easement and Purchase Agreements

This is an "as is" purchase and the City and Agency will sell the Easement to Avalon for \$171,360 (Easement Purchase Price). Avalon has also agreed to deliver \$706,832 (Agency Price) to the Agency to pay for increased Housing Project construction and maintenance costs (capitalized over the 55-year term of the Easement) pursuant to a Capitalized Operating and Construction Costs Agreement between Avalon and the Agency (Agency-Avalon Agreement). The Agency Price will be returned to Avalon if construction of the Housing Project does not begin before the construction start date specified in the Agency-Avalon Agreement.

Avalon will deposit \$43,909.60 into escrow with Chicago Title Company within five business days after the date the Purchase Agreement is fully executed as an earnest money deposit. The deposit will be held in an interest-bearing account, and all interest accumulated will deemed a part of the deposit. If closing occurs under the Purchase Agreement, the deposit will be paid to the City and credited towards the Easement Purchase Price. Should Avalon defaults under the Easement Agreement and the Easement Agreement is accordingly terminated, the City will retain the deposit and all interest accrued thereon. The City's Director of Property has confirmed that the Easement Purchase Price reflects the Easement's fair market value.

ALTERNATIVES CONSIDERED

There are alternatives other than the granting of the Easement such as the issuance of a permit or a lease. However Avalon's negotiated lease with Whole Foods requires Avalon to secure an easement by June 30, 2011, which makes those to be less attractive alternatives. It is unknown what the political ramifications would be from not granting such an Easement. The Easement sale facilitates Avalon's compliance with Motion No. 17885 so delivery trucks can access the Avalon Project's grocery store loading docks, and the Avalon Project should contribute to the City's economic development activities in the area.

According to the City's Office of Economic and Workforce Development, the Avalon Project represents a key addition to catalyze future economic development along the Ocean Avenue commercial corridor. The Avalon Project in combination with the other redevelopment projects at the Phelan Loop should substantially contribute to the revitalization of this area by introducing new housing and commercial development while adding the creation of a cohesive streetwall along Ocean Avenue all supported by transit. Without the easement, successful completion of the Avalon project may be adversely impacted and consequently the necessary revitalization and economic development in the area for the benefit of the community could also be jeopardized.

The SFMTA Board directive to authorize execution of the Purchase Agreement and the Easement Agreement satisfies Avalon's compliance with City requirements and represents cooperative intergovernmental relations critical to the on-going efforts necessary to efficiently redevelop the Phelan Loop into a multi-modal transit oriented development hub.

FUNDING IMPACT

The proposed Easement Agreement and Purchase Agreement would not commit SFMTA funds. Once approved by the Board of Supervisors/Mayor and upon closing, the SFMTA will receive the Easement Purchase Price.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Easement Agreement and Purchase Agreement will require approval by the Board of Supervisors and Mayor.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute an Easement Agreement and Purchase Agreement between the City, acting through SFMTA, and Avalon, for a fifty-five year exclusive truck turnaround easement over City property at the Phelan Bus Loop and to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors to approve the sale of the Easement pursuant to the Purchase Agreement.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, the San Francisco Municipal Transportation Agency (SFMTA) has jurisdiction over a portion of City Property known as the Phelan Loop near the intersection of Phelan Avenue and Ocean Avenue, San Francisco, California (City Property), and SFMTA operates a bus loop on the City Property; and

WHEREAS, Avalon Ocean Avenue, L.P. (Avalon) is constructing a mixed use rental development project (Avalon Project) with a ground floor grocery store (Grocery Store) on its property, which abuts the City Property; and

WHEREAS, The Planning Commission approval of the Avalon Project under Planning Commission Motion No. 17885 (Motion) requires Avalon to construct an extension to Lee Avenue on both a portion of the Avalon Property and the adjacent City Property (Lee Avenue Extension); and

WHEREAS, The Motion further requires Avalon to obtain SFMTA permission to use a portion of the City Property comprised of approximately 3,360 square feet (Easement Area) so grocery store delivery trucks can pull into the Easement Area and back across the Lee Avenue Extension and onto the Avalon Property to make grocery store deliveries; and

WHEREAS, Avalon wishes to acquire the Easement for such purposes pursuant to the terms of an Easement Purchase and Sale Agreement (Purchase Agreement) and a Delivery Truck Easement Agreement (Easement Agreement); and

WHEREAS, SFMTA may relocate its bus loop and sell a portion of the City Property comprised of approximately 25,772 square feet (Housing Parcel) to the San Francisco Redevelopment Agency (Agency) for a housing project (Housing Project) pursuant to the SFMTA Board of Directors Resolution No. 09-196, adopted on November 17, 2009, and SFMTA Board of Directors Resolution No. 10-051, adopted on April 20, 2010; and

WHEREAS, The Housing Parcel would be affected by the Easement, and the Agency has consented to the Easement if Avalon pays the Agency \$706,832 (Agency Price) for the anticipated increased Housing Project construction and maintenance costs that will result from Avalon's use of the Easement Area if Agency buys the Housing Parcel and develops the Housing Project; and

WHEREAS, Under the Purchase Agreement, Avalon will pay \$171,360 (Purchase Price) to the City and County of San Francisco (City) for the Easement and deliver the Agency Price to the Agency pursuant to a Capitalized Operating and Construction Costs Agreement between the Agency and Avalon; and

WHEREAS, The Easement Agreement will be recorded in the Official Records of San Francisco County on the closing date specified in the Purchase Agreement, but the Easement will not become effective unless Avalon receives a temporary certificate of occupancy for the Grocery Store and the City Engineer makes a Determination of Completeness for the Lee Avenue Extension and other public improvements under a Public Improvement Agreement between City and Avalon; and

WHEREAS, Should the Easement becomes effective, it will have a term of fifty-55 years, be subject to requirements related to San Francisco Public Utilities Commission underground pipelines in the Easement Area, and be subject to additional mitigation measures to minimize impacts to existing SFMTA bus loop operations in the area; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO to execute the Purchase Agreement and the Easement Agreement to grant to Avalon a 55 year delivery truck turnaround easement over a portion of property comprised of approximately 3,360 square feet at the Phelan Loop, near the intersection of Phelan Avenue and Ocean Avenue, San Francisco, California, for the payment of \$171,360 to City pursuant to the Purchase Agreement and the delivery of \$706,832 to the San Francisco Redevelopment Agency (Agency) pursuant to a Capitalized Operating and Construction Costs Agreement between Avalon and Agency; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO of the SFMTA to request the City's Director of Property to prepare and submit legislation to the City's Mayor and Board of Supervisors to approve the execution the Purchase Agreement, the Easement Agreement and the transactions contemplated in such agreements.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

EASEMENT PURCHASE AND SALE AGREEMENT

by and between

CITY AND COUNTY OF SAN FRANCISCO,
as Seller

and

AVALON OCEAN AVENUE, L.P.,
as Buyer

_____, 2011

TABLE OF CONTENTS
[To be updated]

	<u>Page</u>
1. SALE AND PURCHASE OF EASEMENT	
2. EASEMENT PURCHASE PRICE	
3. TITLE	
3.1 Conditions of Title	
3.2 Buyer's Responsibility for Title Insurance	
4. CONVEYANCE OF EASEMENT	
5. "AS-IS" PURCHASE; RELEASE OF CITY	
5.1 Buyer's Independent Investigation	
5.2 Hazardous Substance Disclosure	
5.3 Entry and Indemnity	
5.4 "As-Is" Purchase	
5.5 Release of City	
6. CONDITIONS PRECEDENT	
6.1 Buyer's Conditions Precedent	
6.2 City's Condition Precedent	
6.4 Failure of City's Conditions Precedent	
7. ESCROW AND CLOSING	
7.1 Escrow	
7.2 Closing Date	
7.3 Deposit of Documents	
7.4 Prorations	
8. RISK OF LOSS	
8.1 Loss	
8.2 Self-Insurance	
9. EXPENSES	
9.1 Expenses	
9.2 Brokers	
10. LIQUIDATED DAMAGES	
11. GENERAL PROVISIONS	
11.1 Notices	
11.2 Successors and Assigns	
11.3 Amendments	
11.4 Authority of Buyer	
11.5 Buyer's Representations and Warranties	
11.6 Governing Law	
11.7 Merger of Prior Agreements	
11.8 Parties and Their Agents	
11.9 Interpretation of Agreement	
11.10 Attorneys' Fees	
11.11 Time of Essence	
11.12 No Merger	
11.13 Non-Liability of City Officials, Employees and Agents	
11.14 Conflicts of Interest	
11.15 Notification of Limitations on Contributions	
11.16 Sunshine Ordinance	
11.17 Tropical Hardwood and Virgin Redwood Ban	
11.18 MacBride Principles - Northern Ireland	
11.19 No Recording	
11.20 Effective Date	
11.21 Acceptance by Buyer	
11.22 Counterparts	

11.23 Cooperative Drafting.

LIST OF EXHIBITS

EXHIBIT A LEGAL DESCRIPTION OF CITY PROPERTY
EXHIBIT B LEGAL DESCRIPTION OF BUYER PROPERTY
EXHIBIT C LEGAL DESCRIPTION OF EASEMENT AREA
EXHIBIT D FORM OF EASEMENT AGREEMENT

EASEMENT PURCHASE AND SALE AGREEMENT

Phelan Loop Housing Parcel
(Portion of APN Block No. 3180, Lot 1)

THIS EASEMENT PURCHASE AND SALE AGREEMENT (this "**Agreement**") dated for reference purposes only as of _____, 2011, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Seller**"), and AVALON OCEAN AVENUE, L.P., a Delaware limited partnership ("**Buyer**").

RECITALS

A. Buyer owns the real property described on the attached Exhibit A (the "**Avalon Property**") and City owns the adjacent real property described on the attached Exhibit B (the "**City Property**").

B. The Redevelopment Agency of the City and County of San Francisco ("**Agency**") is interested in developing a mixed-use development with affordable housing (the "**Housing Project**") on the portion of the City Property described on the attached Exhibit C (the "**Housing Parcel**"). City and Agency are in discussions regarding City's sale of the Housing Parcel to the Agency for such purpose, and Agency and Bernal Heights Neighborhood Center, a California corporation ("**Bernal**") are parties to an Exclusive Negotiating Agreement for the development of the Housing Parcel if Agency purchases the Housing Parcel from City.

C. Buyer plans to construct a development on the Avalon Property that will include a ground floor retail grocery store comprised of approximately 27,500 gross square feet (the "**Grocery Store**"), as further described in Planning Commission Motion No. 17885 (the "**Motion**"), adopted by City's Planning Commission on May 21, 2009.

D. Buyer's affiliate, AvalonBay Communities, Inc. ("**AvalonBay**"), intends to construct an extension to Lee Avenue on a portion of the Avalon Property and a portion of the City Property, as described in the Motion (the "**Lee Avenue Extension**"), which is to be constructed pursuant to the requirements specified in the Motion, an In-Kind Agreement by and among AvalonBay, City, and Pacific Resources Associates, LLC, dated August 18, 2009 (the "**In-Kind Agreement**"), a Public Improvement Agreement between Buyer and City, dated _____ (the "**PIA**"), a street improvement permit issued by the City's Department of Public Works to Buyer for the Lee Avenue Extension (the "**DPW Permit**"), and a Revocable Permit to Enter and Use Property between Buyer and City, acting by and through the San Francisco Municipal Transportation Agency, dated as of _____ (the "**SFMTA Permit**").

E. If the Lee Avenue Extension is constructed, Buyer wishes to have an easement that allows Grocery Store delivery trucks to pull onto the portion of the City Property described on the attached Exhibit C (the "**Easement Area**") from the Lee Avenue Extension and then back out across the Lee Avenue Extension and onto the Avalon Property to facilitate the delivery of goods from such delivery trucks to the Grocery Store. The Easement Area includes a portion of the Housing Parcel.

F. City is willing to grant such easement on the terms and conditions specified in this Agreement.

AGREEMENT

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

1. Purchase and Sale of Easement; Outside Date. Subject to the terms, covenants and conditions set forth herein, City agrees to sell to Buyer, and Buyer agrees to purchase from City, a temporary, exclusive, appurtenant easement (the "**Easement**") on, across and through the Easement Area. The nature, scope and conditions of the Easement are set forth in the Delivery Truck Easement Agreement attached hereto as Exhibit D (the "**Easement Agreement**").

2. Easement Purchase Price. The total consideration for the Easement shall be a cash payment of \$171,360 (the "**Purchase Price**") to City and Buyer's payment of \$706,832 (the "**Agency Price**") to _____ pursuant to a Capitalized Operating and Construction Costs Agreement by and among Buyer, Agency and City, acting by and through the Mayor's Office of Housing, dated _____, 2011 (the "**Capital Costs and Construction Amount Agreement**"), for the increased Housing Project construction and maintenance costs that would be caused by the Permitted Uses (as defined in the Easement Agreement). Within five (5) business days after the date this Agreement is executed by the parties hereto, Buyer shall deposit \$43,909.60 (the "**Deposit**") in escrow with Chicago Title Company (the "**Title Company**"), as an earnest money deposit. The Deposit shall be held in an interest-bearing account, and all interest thereon shall be deemed a part of the Deposit. If the purchase and sale of the Easement is consummated pursuant to this Agreement (the "**Closing**"), the Deposit shall be paid to City and credited against the Purchase Price at Closing.

Buyer shall pay the Deposit and the remaining amount of the Purchase Price to City at Closing. All sums payable hereunder including, without limitation, the Deposit, shall be paid in immediately-available funds of lawful money of the United States of America. Buyer shall pay the Agency Price in accordance with the requirements of the Capital Costs and Construction Amount Agreement.

3. Title.

(a) Conditions of Title. At the Closing, the Easement Agreement, duly executed by City and Buyer, shall be recorded in the Official Records of San Francisco County. Title to the Easement shall be subject to (a) liens of local real estate taxes and assessments, (b) all existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by Buyer, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the City Property, and (c) the all items of which Buyer has actual or constructive notice or knowledge.

(b) Buyer's Responsibility for Title Insurance. Buyer understands and agrees City is under no obligation to furnish any policy of title insurance in connection with this transaction, and City shall not be responsible for any discrepancies in the area or location of the property lines of the Easement Area or City Property or any other matters which an accurate survey or inspection might reveal. It is Buyer's sole responsibility to obtain a survey from an independent surveyor and a policy of title insurance from a title company, if desired.

4. "As Is" Purchase; Release of City.

(a) Property Conditions. Buyer represents and warrants to City that Buyer has performed a diligent and thorough inspection and investigation of each and every aspect of the Easement Area, either independently or through agents of Buyer's choosing, including, without limitation, the following matters (collectively, the "**Property Conditions**"):

(i) All matters relating to title including, without limitation, the existence, quality, nature and adequacy of City's interest in the Easement Area and the existence of physically open and legally sufficient access to the Easement Area.

(ii) The zoning and other legal status of the Easement Area, including, without limitation, the compliance of the Easement Area or its operation with any applicable codes, laws,

regulations, statutes, ordinances 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.

(iii) The quality, nature, adequacy and physical condition of the Easement Area.

(iv) The quality, nature, adequacy, and physical, geological and environmental condition of the Easement Area (including soils and any groundwater), and the presence or absence of any Hazardous Materials in, on, under or about the Easement Area, the City Property or any other real property in the vicinity of the City Property. As used in this Agreement, "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

(v) All other matters of material significance affecting the Easement Area.

(b) Hazardous Substance Disclosure. California law requires sellers to disclose to buyers the presence or potential presence of certain Hazardous Materials. Accordingly, Buyer is hereby advised that occupation of the Easement Area may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Agreement, Buyer acknowledges that the notices and warnings regarding the Easement Area set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

(c) "As-Is" Purchase. BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND BUYER IS PURCHASING THE EASEMENT ON AN "AS IS WITH ALL FAULTS" BASIS. BUYER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE EASEMENT AREA. CITY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE EASEMENT AREA, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE EASEMENT AREA OR ITS USE WITH ANY STATUTE, ORDINANCE OR REGULATION. IT IS BUYER'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING AND OTHER REGULATIONS RELATING TO THE EASEMENT AREA AND THE USES TO WHICH IT MAY BE PUT.

(d) Release of City. As part of its agreement to purchase the Easement and accept the Easement Area in an "As Is With All Faults" condition, Buyer, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, City, its officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, 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 may arise on account of or in any way be connected with (i) Buyer's and its Agents and invitees past, present and future use of the Easement Area, (ii) the physical, geological or environmental condition of the Easement Area, including, without limitation, any Hazardous Material in, on, under, above or about the Easement Area, and (iii) any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. Sections 9601-9657), the Resource Conservation and Recovery Act of

1976, as amended by the Solid Waste and Disposal Act of 1984 (collectively, "RCRA") (42 U.S.C. Sections 6901-6987), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (collectively the "Clean Water Act") (33 U.S.C. Section 1251 *et seq.*), the Toxic Substances Control Act ("TSCA") (15 U.S.C. Sections 2601-2629), Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*), the Carpenter-Presley-Tanner Hazardous Substance Account Law (commonly known as the "California Superfund" law) (California Health and Safety Code Sections 25300-25395), Hazardous Waste Control Act (California Health and Safety Code Section 25100 *et seq.*), Hazardous Materials Release Response Plans and Inventory Law (commonly known as the "Business Plan Law") (California Health and Safety Code Section 25500 *et seq.*), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65") (California Health and Safety Code Section 25249.5 *et seq.*).

In connection with the foregoing release, Buyer 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 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

INITIALS: BUYER: _____

5. Conditions Precedent.

(a) Buyer's Conditions Precedent. Buyer's obligation to purchase the Easement is conditioned upon the following (collectively, "**Buyer's Conditions Precedent**"):

(i) There shall be no uncured event of default by SFMTA under the SFMTA Permit.

(ii) The physical condition of the Easement Area shall be substantially the same on the Closing Date (as defined in Section 6(b)) as on the date of this Agreement, reasonable wear and tear and any changes made or approved in writing by Buyer excepted, including any changes made by or for Avalon under the SFMTA Permit, unless the alteration of said physical condition is the result of a casualty loss or proceeding in eminent domain, in which case the provisions of Section 7 shall govern.

(iii) As of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened which, after the Closing, could materially adversely affect the value or validity of the Easement or the ability of Buyer to use the Easement Area for the permitted uses described in the Easement Area.

(iv) This Agreement and the transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the SFMTA Board of Directors.

(v) Upon the sole condition of payment of the premium, at Closing, the Title Company shall irrevocably commit to issue to Buyer an ALTA Owner's Policy of title insurance,

with extended coverage (i.e., with ALTA General Exceptions deleted), dated as of the date and time of the recording of the Easement Agreement, in the amount of the Purchase Price, insuring Buyer's easement interest in the Easement Area, subject only to the exceptions, and containing such endorsements, as approved by Buyer.

(vi) Legislation approving and authorizing the transactions contemplated in this Agreement and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Easement, shall have been adopted by City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted.

(vii) City shall have delivered an original copy of the Easement Agreement, duly executed by City and acknowledged, to Escrow Agent at least one (1) business day prior to the Closing Date.

Each of Buyer's Conditions Precedent are intended solely for the benefit of Buyer. If any of Buyer's Conditions Precedent are not satisfied as provided above, Buyer may, at its option, terminate this Agreement. Upon any such termination, the Deposit shall be promptly refunded to Buyer by Escrow Holder, and neither party shall have any further rights or obligations hereunder except as provided in Section 8 [Brokers] or as otherwise expressly provided herein.

(b) City's Condition Precedent. The following are conditions precedent to City's obligation to sell the Easement to Buyer (collectively, "**City's Conditions Precedent**"):

(i) Buyer shall have performed all of its obligations hereunder and all of Buyer's representations and warranties shall be true and correct.

(ii) There shall be no uncured event of default by Buyer under the PIA, the DPW Permit or the SFMTA Permit or by AvalonBay under the In-Kind Agreement.

(iii) Buyer shall have performed all of its obligations to be performed under the Capital Costs and Construction Agreement as of the Closing Date.

(iv) As of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened with respect to the Easement Area as of Closing or could materially adversely affect the Easement Area after the Closing.

(v) This Agreement and the transactions contemplated herein shall have been approved by all applicable City departments and agencies, including, without limitation, the SFMTA Board of Directors.

(vi) Legislation approving and authorizing the transactions contemplated in this Agreement and finding that the public interest or necessity demands, or will not be inconvenienced by the sale of the Easement, shall have been adopted by City's Board of Supervisors and Mayor, in their respective sole and absolute discretion, and duly enacted on or before _____, 20__.

(vii) Buyer shall have delivered to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required under the Easement Agreement, together with complete copies of the policies at City's request.

Each of City's Conditions Precedent are intended solely for the benefit of City. If any of City's Conditions Precedent are not satisfied as provided above, City may, at its option, terminate this Agreement. Upon any such termination, the Deposit shall be promptly refunded to Buyer by Escrow Holder on request, unless such City Condition Precedent was not satisfied as a result of Buyer's acts or failure to act, and neither party shall have any further rights or obligations

hereunder except as provided in Section 8 [Brokers] and Section 11 [Authority of Buyer] or as otherwise expressly provided herein.

6. Escrow; Closing.

(a) Deposit of Agreement. Within five (5) business days after the date this Agreement is fully executed, Buyer and City shall deposit the fully executed counterpart of this Agreement with the Title Company, and this instrument shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. City and Buyer agree to execute such supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, if there is any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

(b) Closing Date. The Closing hereunder shall be held, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made, at the offices of the Title Company on the earlier day (the "**Closing Date**") to occur of _____, 20__ and the fifteenth (15th) business day immediately following the date that all of the Buyer's Conditions Precedent and all of City's Conditions Precedent are fully satisfied or waived by the respective benefited party. The Closing Date can only be changed with the prior written approval of both City and Buyer.

(c) Deposit of Documents and Funds. At least one (1) business day prior to the Closing Date, City shall deposit into escrow an original copy of the Easement Agreement, duly executed by City and acknowledged. At least one (1) business day prior to the Closing Date, and Buyer shall deposit into escrow an original copy of the Easement Agreement, duly executed by Buyer and acknowledged, and funds sufficient to pay the Purchase Price and pay Buyer's costs under the following subsection (d). City and Buyer shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close Escrow and effect Closing.

(d) Expenses; Prorations. Buyer shall pay all escrow fees, the recording fees for the Easement Agreement (if any), and the cost of any transfer tax applicable to the sale of the Easement. Any other costs and charges of the escrow not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for commercial real estate transactions in San Francisco County, as reasonably determined by Escrow Holder.

7. Risk of Loss. City shall give Buyer notice of the occurrence of damage or destruction of, or the commencement of condemnation proceedings affecting, any portion of the Easement Area. If all or any portion of the Easement Area is condemned, or destroyed or damaged by fire or other casualty prior to the Closing, then Buyer may, at its option to be exercised within ten (10) days of City's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, terminate this Agreement. If Buyer elects to terminate this Agreement or fails to timely deliver notice to City that Buyer will proceed with the purchase, then this Agreement shall terminate at the end of such ten (10) day period, the Title Company shall return the Deposit to Buyer, and neither party shall have any further rights or obligations hereunder except as provided in Section 8 [Brokers] or otherwise expressly provided herein. If Buyer elects to proceed with the purchase of the Easement, then upon the Closing, Buyer shall receive a credit against the Purchase Price payable hereunder equal to the amount of any third party insurance proceeds or condemnation awards actually collected by City as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by City toward the restoration or repair of the Easement Area. If the proceeds or awards have not been collected as of the Closing, then City shall assign such proceeds or awards to Buyer, except to the extent needed to reimburse City for sums expended to collect such proceeds or repair or restore the Easement Area, and Buyer shall not receive any credit against the Purchase Price with respect to such proceeds or awards. Notwithstanding

anything to the contrary in this Section, Buyer acknowledges that City self-insures and shall not be obligated to purchase or carry any third-party comprehensive liability insurance or property insurance for the Easement Area.

8. Brokers. 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 transactions 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 Buyer or City, then the party through whom such person makes a claim shall defend the other party from such claim, and shall indemnify the indemnified party from, and hold the indemnified party against, 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 purchase and sale is not consummated for any reason, any termination of this Agreement.

9. Proprietary Capacity. Buyer understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Buyer to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

10. Notices. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: SFMTA
City and County of San Francisco
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager, Real Estate

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

If to Buyer: Avalon Ocean Avenue, L.P.
c/o AvalonBay Communities, Inc.
Attention: Retail Department
Ballston Towers
617 N. Glebe Road, Suite 800
Arlington, Virginia 22203

with a copy to: Avalon Ocean Avenue, L.P.
c/o AvalonBay Communities, Inc.
185 Berry Street, Suite 3500
San Francisco, California 94107
Attention: Meg Spriggs

11. Authority of Buyer. Buyer represents and warrants to City that Buyer is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of Delaware and Buyer has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. If Buyer is suspended, disbarred, disciplined or prohibited from contracting with any governmental agency at any time during the term of this Agreement, it shall immediately notify City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement. Notwithstanding anything to the contrary in this Agreement, the foregoing representations and warranties and any and all other representations and warranties of Buyer contained herein or in other agreements or documents executed by Buyer in connection herewith, shall survive the Closing Date.

12. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of City.

13. Amendments; Waivers. Except as otherwise provided herein, (i) this Agreement may be amended or modified only by a written instrument executed by City and Seller, (ii) no waiver of any provision of this Agreement will be binding unless executed in writing by the party making the waiver, (iii) no waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision, whether or not similar, and (iii) no waiver will constitute a continuing waiver unless the written waiver so specifies.

14. Survival of Representations and Warranties. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

15. Governing Law; Time of the Essence. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California and City's Charter and Administrative Code. Time is of the essence with respect to the performance of the parties' respective obligations contained herein.

16. Merger of Prior Agreements; No Inducement. The parties intend that this Agreement (including all of the attached exhibits and schedules and any documents specifically described herein, which are hereby incorporated into this Agreement by reference) shall be the final, complete and exclusive expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, term sheets and prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements warranties or agreements other than those expressed herein.

17. 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. In addition, each party has been represented or had the opportunity to be represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

18. Attorneys' Fees. The prevailing party in any action or proceeding to enforce or interpret, or otherwise arising out of or relating to, this Agreement or any provision thereof (including but not limited to any arbitration, trial, administrative hearing, bankruptcy or appeal) will be entitled to recover from the other party all of its costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees. For purposes of this Agreement, reasonable attorneys' fees of City's Office of the City Attorney 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 City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

19. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law.

20. Sunshine Ordinance. Seller 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 public records subject to public disclosure. Seller hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

20. Conflicts of Interest. Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts that would constitute a violation of those provisions, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify City.

21. Notification of Limitations on Contributions. Through its execution of this Agreement, Buyer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (i) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (ii) a candidate for the office held by such individual, or (iii) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Buyer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Buyer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Buyer's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer;

any person with an ownership interest of more than twenty percent (20%) in Buyer; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Buyer. Additionally, Buyer acknowledges that Buyer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Buyer further agrees to provide to City the name of the each person, entity or committee described above.

22. Non-Liability of City Officials, Employees and Agents. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee, agent or consultant of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

23. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

24. 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. Buyer acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

23. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24. 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.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

BUYER:

AVALON OCEAN AVENUE, L.P., a Delaware limited partnership

By: _____

Name: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation acting by and through its
Municipal Transportation Agency

By: _____

Nathaniel P. Ford Sr.
Executive Director/CEO

Date: _____

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Carol Wong
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF CITY PROPERTY

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

[To be updated]

EXHIBIT B

LEGAL DESCRIPTION OF BUYER PROPERTY

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

[To be updated]

EXHIBIT C

LEGAL DESCRIPTION OF EASEMENT AREA

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

[To be updated]

EXHIBIT D

FORM OF EASEMENT AGREEMENT

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
San Francisco Municipal Transportation Agency
Real Estate Section
1 South Van Ness, 8th Floor
San Francisco, CA 94103
Attn: Manager, Real Estate

with a copy to:

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

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

DELIVERY TRUCK EASEMENT AGREEMENT
(Portion of Assessor's Parcel Block No. 3180, Lot 1)

This Delivery Truck Easement Agreement (this "**Agreement**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and AVALON OCEAN AVENUE, L.P., a Delaware limited partnership ("**Avalon**"), is executed as of _____ (the "**Effective Date**"). City and Avalon may also each be referred to herein as a "**Party**" and together as the "**Parties**".

RECITALS

A. Avalon owns the real property described on the attached Exhibit A (the "**Avalon Property**") and City owns the adjacent real property described on the attached Exhibit B (the "**City Property**").

B. The Redevelopment Agency of the City and County of San Francisco ("**Agency**") is interested in developing a mixed-use development with affordable housing (the "**Housing Project**") on the portion of the City Property described on the attached Exhibit C (the "**Housing Parcel**"), and City and Agency are in discussions regarding City's sale of the Housing Parcel to the Agency for such purpose.

C. Avalon is constructing a development (the "**Avalon Development**") on the Avalon Property that includes a ground floor retail grocery store comprised of approximately 27,500 gross square feet (the "**Grocery Store**"), as further described in San Francisco Planning Commission Motion No. 17885 ("**Motion**").

D. Avalon's affiliate, AvalonBay Communities, Inc. ("**AvalonBay**"), is constructing an extension to Lee Avenue on a portion of the Avalon Property and a portion of the City Property (the "**Lee Avenue Extension**") pursuant to the requirements of the Motion, a Public Improvement Agreement between Avalon and the City, dated _____ (the "**PIA**"), City and County of San Francisco Department of Public Works Street Improvement Order No. _____ (the "**DPW Permit**"), an In-Kind Agreement by and among AvalonBay, City, and Pacific Resources Associates, LLC, dated August 18, 2009 (the "**In-Kind Agreement**"), and a Revocable Permit to Enter and Use Property between Buyer and City, acting by and through the San Francisco Municipal Transportation Agency, dated as of _____ (the "**SFMTA Permit**").

E. Avalon wishes to have an easement to allow its Delivery Trucks (as defined in Section 3) to pull onto the Easement Area (as defined in Section 1) from the Lee Avenue Extension and then back out across the Lee Avenue Extension and onto the Avalon Property to facilitate the delivery of goods from such Delivery Trucks to the Grocery Store.

F. City is willing to grant such easement to Avalon, and Avalon is willing to acquire such easement from City, on the terms and conditions specified in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easement. During the Easement Term (as defined in Section 2), City grants to Avalon a temporary exclusive easement (the "**Easement**"), on, over and across the portion of the City Property described in the attached Exhibit D (the "**Easement Area**"), for the Permitted Uses (as defined in Section 3), subject to the terms and conditions set forth in this Agreement and the Reserved Uses (as defined in Section 5). The Easement shall be appurtenant to and for the benefit of the Avalon Property. A depiction of the Avalon Property, the Housing Parcel and the Easement Area is attached hereto as Exhibit E.

Avalon acknowledges that the Easement and the Permitted Uses shall be limited strictly to the Easement Area, and Avalon shall not use, nor allow any of the Avalon Agents (as defined below) to use, any other portion of the City Property. Avalon shall bear all costs or expenses of any kind or nature in connection with the use of the Easement Area by Avalon or the Avalon Agents, and shall keep the Easement Area free and clear of any recorded liens or claims of lien arising out of the use of the Easement Area by Avalon or any of the Avalon Agents. The "**Avalon Agents**" shall mean the Grocery Store lessees and licensees, together with the agents, employees, contractors and subcontractors of Avalon and such Grocery Store lessees and licensees.

2. Term. The "**Condition Precedent**" shall be Avalon's receipt of (i) a temporary certificate of occupancy for the Grocery Store from City acting in its regulatory capacity (the "**TCO**") and (ii) written notice from City's engineer that the Public Improvements (as defined in the PIA) are ready for their intended use and are completed in conformity with the Plans and Specifications (as defined in the PIA) and applicable City regulations, as further set forth in Section 8 of the PIA (the "**Engineer Approval**"). If the Condition Precedent is satisfied on or before _____ (the "**Outside Date**"), the Easement shall become effective on the date (the "**Commencement Date**") the Condition Precedent is satisfied and shall automatically terminate on the fifty-fifth (55th) anniversary of the Commencement Date (the "**Termination Date**"), unless sooner terminated pursuant to the terms hereof. The "**Easement Term**" shall be the period of time between the Commencement Date and the Termination Date.

If the Commencement Date occurs, Avalon and City shall duly execute and acknowledge a mutually-agreeable amendment to this Agreement that sets forth the specific Commencement Date, and City shall cause such executed amendment to be recorded in the Official Records of San Francisco County. If the Condition Precedent is not satisfied on or before the Outside Date, the Easement shall not become effective and this Agreement shall automatically terminate on the Outside Date. Avalon shall duly execute and acknowledge any documentation reasonably requested by City to remove the lien of the Easement and this Agreement from title to the City Property after the date this Agreement is terminated for any reason.

Avalon delivered \$171,360 (the "**Easement Fee**") to City in consideration of the Easement. If the Condition Precedent is not satisfied on or before the Outside Date for any reason other than any default by Avalon under any of the Extension Documents, City shall return the Easement Fee to Avalon within ____ days following the Outside Date. City shall have the right to retain any interest earned on the Easement Fee during the time it was held by City.

Avalon acknowledges and agrees that (i) City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Easement Area and not as a regulatory agency with police powers, (ii) the issuance of the TCO and the Engineer Approval is an action that would need to be taken by City acting in its regulatory capacity, (iii) City, acting in its proprietary capacity as owner of the Easement Area and party to this Agreement, shall have no obligation to cause, or lobby for, the issuance of the TCO or the Engineer Approval by City, and (iv) City has made no representations or warranties regarding the issuance of the TCO or the Engineer Approval or the likelihood of such issuances.

3. Use of Easement Area.

(a) Permitted Uses. During the Easement Term and subject to the terms and conditions of this Agreement, Avalon and the Avalon Agents may enter and use the Easement Area only for the following purposes and subject to the restrictions set forth in this Agreement (collectively, the "**Permitted Uses**"):

(i) To maintain, repair and replace the existing paving, concrete, lighting, instructional/directional signage, no-parking signage and striping in the Easement Area (the "**Avalon Improvements**");

(ii) To, during the hours specified in Section 4, drive delivery vehicles that do not exceed the standards established by AASHTO-H20 or exceed more than sixty-five feet (65') in length and are used to deliver materials to the Grocery Store ("**Delivery Trucks**") from the northbound lane of the Lee Avenue Extension onto the Easement Area and then backing such Delivery Trucks from the Easement Area (and across the Lee Avenue Extension) onto the Avalon Property (collectively, the "**Turnaround Activities**");

(iii) To, during the hours specified in Section 4, temporarily park up to one (1) Delivery Truck at any one given time on the portion of the Easement Area depicted as the "Temporary Parking Location" on the attached Exhibit E (collectively, the "**Temporary Parking Activities**"); and

(iv) To perform Avalon's obligations under this Agreement.

(b) Restrictions on Use. Avalon agrees that, by way of example only and without limitation, the following uses of the Easement Area by Avalon or any of the Avalon Agents are inconsistent with the limited purpose of this Agreement and are strictly prohibited as provided below:

(i) Avalon shall not construct or place any temporary or permanent structures or improvements on the Easement Area, nor shall Avalon alter any existing structures or improvements on the Easement Area.

(ii) Avalon shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Easement Area.

(iii) Avalon shall not conduct any activities on or about the Easement Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights and the maintenance of delivery trucks) to City, to the owners or occupants of neighboring property or to the public, nor shall Avalon do anything about the Easement Area that will cause damage to the City Property or any other City property.

(iv) Avalon and the Avalon Agents shall prevent Delivery Trucks from remaining switched on and idling on the Easement Area.

(v) Avalon shall not place, erect or maintain any sign, advertisement, banner or similar object on or about the Easement Area.

(vi) Avalon shall not interfere, nor allow the Avalon Agents to interfere, with the use of the Easement Area for the Reserved Uses, and Avalon shall, and shall cause the Avalon to, conduct all Permitted Activities in a manner that reasonably minimize interference with the use of the Easement Area for the Reserved Uses.

4. Hours of Use. The Turnaround Activities and the Temporary Parking Activities shall occur only between the hours of 6:00 a.m. and 9:00 p.m. (California time) every day of the week.

5. Reserved Rights. City reserves the right to use the Easement Area during the Easement Term for the purposes set forth in this Section.

(a) Pipeline Facilities. City's Public Utilities Commission ("**SFPUC**") operates an underground pipeline and related facilities (collectively, the "**Pipeline Facilities**") that crosses through the portion of the Easement Area depicted on the attached Exhibit E and further described in the attached Exhibit F (the "**Pipeline Area**"). The Pipeline Facilities shall remain City's property at all times and City shall have the right to enter the Pipeline Area to maintain, repair, replace, remove, take out of active service or install the Pipeline Facilities (collectively, the "**Pipeline Activities**") at any time and for any length of time; provided, however, that City shall (i) provide Avalon at least three (3) business days prior notice of its intent to enter the Pipeline Area for any planned Pipeline Activities except in the event of emergency, the threat of imminent harm to public health or safety, or brief visual inspections of the Pipeline Area, which shall not require any such prior notice, (ii) comply, to the extent reasonably possible, with any of Avalon's reasonable instructions or time restrictions necessary to coordinate the Pipeline Activities and the Permitted Activities, and (iii) promptly complete, to the extent reasonably possible, any of the Pipeline Activities that City performs in the Pipeline Area.

Avalon further acknowledges its rights to use the Pipeline Area pursuant to this Agreement are further subject to a Memorandum of Understanding dated February 13, 2007, between City's Municipal Transportation Agency ("**SFMTA**") and PUC, a copy of which is attached hereto as Exhibit G (the "**Pipeline MOU**"). Avalon's use of the Pipeline Area shall be subject to all requirements and restrictions applicable to SFMTA's use of the License Area under the Pipeline MOU, and Avalon agrees that it shall not take any action that would interfere with SFPUC's rights or obligations under the Pipeline MOU, or would cause SFMTA to be in default of any of its obligations under the Pipeline MOU.

(b) Vehicular Access. Neither Avalon nor any of the Avalon Agents shall prevent vehicular ingress and egress over the Easement Area from the Lee Avenue Extension (if constructed) to prepare for and conduct scheduled activities and events on any public plaza portion of the City Property (the "**Plaza**"), and to remove items related to such scheduled activities and events from the Plaza, by City, any of City's officers, agents, employees, representatives, consultants, contractors, or subcontractors (collectively, the "**City Agents**"), and any Plaza tenants, subtenants, invitees, guests, business visitors, contractors and subcontractors (collectively, the "**Plaza Invitees**"). Avalon and the Avalon Agents shall use commercially reasonable efforts to coordinate their use of the Easement Area for the Permitted Uses in a manner that reasonably accommodates such vehicular ingress and egress, and City, the City Agents and the Plaza Invitees shall use commercially reasonable efforts to coordinate their use of the Easement Area for such vehicular ingress and egress in a manner that reasonably accommodates the Permitted Uses. Avalon shall have the right, but not the obligation, to prevent the Plaza Invitees from using the Easement Area for pedestrian access or for vehicular parking.

(c) Removal of Bus Improvements. City reserves the right to use, and to permit the City Agents to use, the Easement Area to the extent reasonably necessary for City's safe and efficient removal of the Bus Improvements to effect the Relocation Event, and Avalon acknowledges and agrees that such use shall not be deemed an unreasonable interference; provided, however, that City shall (i) provide Avalon at least three (3) business days prior notice of its intent to enter the Easement Area for such removal activities, (ii) comply, to the extent reasonably possible, with any of Avalon's reasonable instructions or time restrictions necessary to coordinate such removal activities and the Permitted Activities, provided that City shall be given no less than two (2) hours of access a day for such removal activities, (iii) promptly complete, to the extent reasonably possible, any of the removal activities that City commences in the Easement Area within an eight (8) month period and between the hours of 7:00 am to 5:00 pm. Avalon and the Avalon Agents shall use commercially reasonable efforts to coordinate their use of the Easement Area for the Permitted Uses in a manner that reasonably accommodates such use by City, and City and the City Agents shall use commercially reasonable efforts to coordinate their use of the Easement Area for such use in a manner that reasonably accommodates the Permitted Uses.

(d) Housing Parcel Construction. [**Language pending from Bernal and Avalon, and will specifically confer right for City, City Agents and Housing Parcel tenants/subtenants**]

6. Maintenance and Repair of Easement Area.

(a) During the Easement Term, Avalon, at its sole cost, shall (i) maintain and repair the Avalon Improvements and keep them in a good and safe condition at all times, (ii) perform any repairs or replacements necessary to maintain the Easement Area in a good and safe condition at all times, and (iii) remove any trash and garbage that accumulates in the Easement Area.

(b) During the Easement Term, City, at its sole cost, shall remove graffiti from the Easement Area; provided, however, that Avalon shall remove any graffiti from the Easement Area to the extent the graffiti is due to the actions of Avalon or any of the Avalon Agents. City shall have no duty whatsoever to maintain, repair or replace any of the Easement Area, including the concrete pad or asphalt in the Easement Area, except to the extent that it is damaged by the willful misconduct or negligence of City or any of the City Agents. In such event, City shall have the right to, at City's sole election, either restore the Easement Area to the condition it was in immediately prior to such damage or to restore the Easement Area to the condition that is reasonably necessary to allow for the Permitted Uses by Avalon or its Agents.

(c) City shall have no obligation to trim or remove any trees, brush or subsurface roots that extends onto the Easement Area from any other portion of the City Property (the "**Intruding Foliage**"). Notwithstanding anything to the contrary in this Agreement, Avalon shall, at its sole cost, have the right, but not the obligation, to trim or remove any Intruding Foliage to the extent reasonably necessary to prevent or stop such Intruding Foliage from interfering with the Permitted Uses.

7. [Intentionally deleted]

8. Insurance.

(a) Avalon acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement. Avalon assumes the risk of damage to any of the personal property of Avalon or any of the Avalon Agents, except for any damage caused by City or any of the City Agents.

(b) Avalon, at its sole cost, shall procure and keep in effect at all times insurance as follows during the Easement Term,:

(i) General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents, employees, successors and assigns; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from the activities of Avalon or any of the Avalon Agents under this Agreement (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City; provided, however, that if such cancellation is caused by non-payment of premiums, ten (10) days' prior written notice of such cancellation will be provided. If Avalon fails to procure such insurance, or fails to deliver such policies or certificates to City within ten (10) business days' following City's written request therefor, City may procure, at its option, the same for the account of Avalon, and the cost thereof shall be paid to City within thirty (30) business days after delivery to Avalon of bills therefor.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate immediately, without notice to Avalon, if Avalon fails to timely cure the lapse of any required insurance coverage or to timely reimburse City pursuant to the foregoing sentence.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above. Should any of the required insurance be provided under a claims made form, Avalon shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the termination of this Agreement, to the effect that, should any occurrences during the term of this Agreement give rise to claims made after termination of this Agreement, such claims shall be covered by such claims-made policies.

Upon City's request, Avalon and City shall periodically review the limits and types of insurance to be carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Avalon for risks comparable to those associated with the Easement Area, then City in its sole discretion may require Avalon to increase the amounts or coverage carried by Avalon hereunder in a manner that corresponds to such general commercial practice.

Avalon's compliance with the provisions of this Section shall in no way relieve or decrease Avalon's indemnification obligations under this Agreement or any of Avalon's other obligations hereunder. Avalon shall be responsible, at its expense, for separately insuring Avalon's personal property.

(c) Notwithstanding anything to the contrary contained herein, each Party hereby waives any right of recovery against the other Party for any loss or damage sustained by such other Party with respect to the Easement Area or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other Party, to the extent such loss or damage is covered by (1) insurance that Avalon is required to purchase under this Agreement or (2) insurance obtained by the Party. Each Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Easement Area; provided, the failure to obtain any such endorsement shall not affect the above waiver.

9. Compliance with Laws. Avalon shall, at its expense, conduct and cause to be conducted all activities on the Easement Area allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the Parties. Avalon shall, at its sole expense, procure and maintain in force at all times during its use of the Easement Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder.

Avalon understands and agrees that City is entering into this Agreement in its capacity as a property owner with a proprietary interest in the Easement Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Avalon's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers. By entering into this Agreement and granting the Easement, City is in no way modifying or limiting Avalon's obligation to cause the use of the Easement Area by Avalon and the Avalon Agents to be in accordance with all applicable laws, as provided further above.

10. Removal or Alteration of Improvements. Without limiting any of City's other rights hereunder, at City's request, Avalon shall promptly alter or remove at its sole expense the Avalon Improvements and any other improvements or property installed or placed in, on, under or about the Easement Area by Avalon pursuant to this Agreement to the extent necessary, as reasonably determined by City, to avoid any actual or potential interference with the Pipeline Facilities or the maintenance or repair thereof. In the event of an emergency, however, City may, at its sole option and without notice, alter, remove or protect, at Avalon's sole expense, the Avalon Improvements and any other facilities, improvements, plantings or other property installed or placed in, on, under or about the Easement Area by Avalon, to avoid any actual or potential interference with the Pipeline Facilities. If City enters the Easement Area pursuant to this Section, City shall (i) comply, to the extent reasonably possible, with any of Avalon's reasonable instructions or time restrictions necessary to coordinate such City activities and the Permitted Activities, and (ii) promptly complete, to the extent reasonably possible, City's performance of such activities in the Easement Area.

11. Surrender. On the Termination Date, or within ten (10) days after any sooner revocation or other termination of this Agreement, Avalon shall surrender the Easement Area in the same condition as received, subject to normal wear and tear, broom clean, free from hazards, and clear of all debris. At such time, Avalon shall remove all of its property from the Easement Area permitted hereunder, and shall repair, at its cost, any damage to the Easement Area caused by such removal. Avalon's obligations under this Section shall survive any termination of this Agreement.

12. Hazardous Materials. Avalon shall not cause, nor allow any of the Avalon Agents to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Easement Area, or transported to or from the Easement Area. Avalon shall immediately notify City when, at any time during the term of this Agreement, Avalon learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Easement Area. Avalon shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. If Avalon or of the Avalon Agents cause a release of Hazardous Material on the Easement Area, Avalon shall, without cost to City and in accordance with all laws and regulations, clean the contaminated property in compliance with applicable laws and return the Easement Area to the condition immediately prior to the release. In connection therewith, Avalon shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

"Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying,

discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area.

If Avalon defaults in its obligations under this Section, Avalon shall indemnify, defend and hold harmless City, the City Agents and the City Invitees against any and all Claims (defined as follows) arising at any time as a result of such default, except to the extent such indemnified party is responsible for such Claims. "**Claims**" shall mean all demands, claims, legal or administrative proceedings, liabilities, losses, costs, penalties, expenses, fines, liens, judgments, damages and liabilities of any kind, and Avalon's foregoing indemnity obligation shall survive the termination or extinguishment of this Agreement or the Easement.

13. Indemnity. Avalon, on behalf of itself and its successors and assigns and the Avalon Agents, shall indemnify, defend and hold harmless City (including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions) and the City Agents, and the respective heirs, legal representatives, successors and assigns of City or the City Agents (each, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against any and all Claims incurred in connection with or arising in whole or in part from (a) any accident, injury to or death of any person (including any of the Avalon Agents or any Avalon invitee) or damage to or destruction of any property occurring in, on or about the Easement Area, or any part thereof, arising out of any use of or activity in or on the Easement Area under this Agreement by Avalon or any of the Avalon Agents during the Easement Term, (b) any failure by Avalon to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, (c) the use of the Easement Area or any activities conducted thereon by Avalon or any of the Avalon Agents or any Avalon invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused by Avalon or any of the Avalon Agents or any Avalon invitees, on, in, under or about the Easement Area or from the Easement Area into the environment; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of such Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Easement Area and claims for damages or decreases in the value of adjoining property. Avalon specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Avalon by City and continues at all times thereafter. Avalon's obligations under this Section shall survive the expiration or other termination of this Agreement.

14. Waiver of Claims and Consequential and Incidental Damages.

(a) Avalon covenants and agrees that City shall not be responsible for or liable to Avalon or any of the Avalon Agents for, and Avalon hereby on behalf of itself and the Avalon Agents waives all rights against City and the City Agents and releases City and the City Agents from, any and all Claims relating to any injury, accident or death of any person or loss or damage to any property, in or about the Easement Area, from any cause whatsoever. Nothing herein shall relieve any party from liability to the extent caused by the negligence or willful misconduct of such party, provided, however, that City shall not be liable under any circumstances for any consequential, incidental or punitive damages. City would not be willing to enter into this Agreement in the absence of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or the City Agents, and Avalon expressly assumes the risk with respect thereto on behalf of itself and the Avalon Agents and any Avalon invitees.

Avalon additionally expressly acknowledges and agrees that the Easement purchase price did not take into account any potential liability of City for any consequential or incidental

damages including, but not limited to, lost profits, arising out of disruption to the Easement Area or any of the Permitted Uses. City would not be willing to grant the Easement or enter in this Agreement without a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or the City Agents, and Avalon expressly assumes the risk with respect thereto.

Accordingly, as a material part of the consideration for this Agreement, Avalon fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims, including those for consequential and incidental damages (including without limitation, lost profits, and covenants not to sue for such damages), and covenants not to sue, City or the City Agents for any Claims arising out of this Agreement or the Easement Area, except to the extent such Claims result from the gross negligence or willful misconduct of such released party. In connection with the foregoing release, Avalon acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Avalon acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Avalon realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

(b) Avalon acknowledges that it will not be a displaced person at the time this Agreement terminates by its own terms, and Avalon fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(c) Accordingly, without limiting any indemnification obligations of Avalon or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Avalon fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits, and covenants not to sue for such damages, City, the City Agents or any Housing Parcel tenant, and all persons acting by, through or under each of them, arising out of this Agreement or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Avalon pursuant to this Agreement, regardless of the cause, and whether or not due to the negligence of such released party, except for the gross negligence or willful misconduct of any such released party.

(d) In connection with the foregoing releases, Avalon acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Avalon acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Avalon realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive the termination of this Agreement.

15. Default.

(a) Default by Avalon. If Avalon fails to timely perform any of its obligations under this Agreement or fails to comply with the terms and conditions of this Agreement, such matter is not fully cured within thirty (30) days of City's delivery of written notice of such failure to Avalon (or if such matter is not susceptible to cure within such thirty (30) day period, if Avalon fails to promptly commence to cure such matter within such thirty (30) day period and to diligently pursue such cure to completion) (an "**Uncured Default**"), City may provide Avalon with a second written notice (the "**Final Notice**") that includes, on the first page of such notice, the following sentence in bold and all capitalized letters in 14 point font: "Avalon's failure to commence to cure the default described in this notice within five (5) business days of receipt hereof may result in City's termination of the Delivery Truck Easement Agreement". If Avalon does not commence to cure the default described in the Final Notice within five (5) business days of Avalon's receipt thereof, or if Avalon fails to diligently pursue such cure to completion, City shall have the right to terminate this Agreement by delivering written notice of such termination to Avalon. In addition to the foregoing termination right, City may, at its sole option, remedy an Uncured Default for Avalon's account and at Avalon's expense by providing Avalon with three (3) business days' prior written or oral notice of City's intention to cure such Uncured Default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing herein shall imply any duty of City to do any act that Avalon is obligated to perform. Avalon shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Uncured Default. Avalon's payment obligations under this Section shall survive the termination of this Agreement.

(b) Cure by Avalon Lender. If City delivers a copy of a notice of an event of default to Avalon pursuant to this Agreement, the beneficiary named in a first priority deed of trust that encumbers the Avalon Property and is recorded in the Official Records of San Francisco (the "**Avalon Lender**") shall have the right, but not the obligation, to cure such default during Avalon's cure period pursuant to this Agreement. City shall accept any such performance to cure by or at the instance of the Avalon Lender as if the same had been made by Avalon. Any entry on the Easement Area by an Avalon Lender or its contractors or subcontractors pursuant to this Section shall comply with the terms and conditions of this Agreement.

No failure by the Avalon Lender to exercise its rights under this Section shall extend any cure period under this Agreement. For purposes of this Section, in the absence of an order from a court jurisdiction that is properly served on City, City may rely on a preliminary report setting forth the order of priority of lien of the deeds of trust encumbering the Avalon Property and prepared by a reputable title company licensed to do business in the State of California as conclusive evidence of the identity of the Avalon Lender.

16. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or

any other address that a Party designates by written notice delivered to the other Party pursuant to the provisions of this Section):

If to City: SFMTA
City and County of San Francisco
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Senior Manager, Real Estate

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

If to Avalon: Avalon Ocean Avenue, L.P.
c/o AvalonBay Communities, Inc.
Attention: Retail Department
Ballston Towers
617 N. Glebe Road, Suite 800
Arlington, VA 22203

with a copy to: Avalon Ocean Avenue, L.P.
c/o AvalonBay Communities, Inc.
185 Berry Street, Suite 3500
San Francisco, CA 94107
Attn: Meg Spriggs

17. As Is Condition of Easement Area; Disclaimer of Representations. Avalon accepts the Easement Area in its "AS IS" condition, without representation or warranty of any kind by City or the City Agents, and subject to all applicable laws, rules and ordinances governing the use of the Easement Area. Without limiting the foregoing, this Agreement is made subject to any and all existing covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Easement Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

18. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the Parties. This Agreement is for the exclusive benefit of Avalon and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

19. Proprietary Capacity. Avalon understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Avalon to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

20. No Joint Venturers or Partnership; No Authorization. This Agreement does not create a partnership or joint venture between City and Avalon as to any activity conducted by Avalon on, in or relating to the Easement Area.

21. Taxes. Avalon recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Avalon may be subject to the payment of property taxes levied on such interest under applicable law. Avalon agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on the interest created by this Agreement and to pay any other taxes, excises, licenses, permit charges or assessments based on Avalon's use of the Easement Area that may be imposed on Avalon by applicable law. Avalon shall pay all of such charges when they become due and payable and before delinquency.

22. 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 San Francisco companies to do business with corporations that abide by the MacBride Principles. Avalon acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

23. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

24. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) In the performance of its obligations under this Agreement, Avalon agrees not to discriminate against any employee of, any City employee working with Avalon, or applicant for employment with Avalon, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Avalon shall include in all agreements with any Avalon Agent using the Easement Area a non-discrimination clause applicable to such party in substantially the form of subsection (a) above. In addition, Avalon shall incorporate by reference the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code in such agreements and shall require all Avalon Agents to comply with such provisions. Avalon's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Avalon does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code. **[In discussions with HRC]**

25. Conflicts in Interest. Through its execution of this Agreement, Avalon acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Avalon becomes aware of any such fact during the term of this Agreement, Avalon shall immediately notify City.

26. Notification of Limitations on Contributions. Through its execution of this Agreement, Avalon acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Avalon acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Avalon further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Avalon's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Avalon; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Avalon. Additionally, Avalon acknowledges that Avalon must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Avalon further agrees to provide to City the name of each person, entity or committee described above.

27. [Intentionally deleted]

28. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to requests for proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

29. Pesticide Prohibition. Avalon shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Avalon to submit to SFMTA an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Avalon may need to apply to the Easement Area during the term of this Agreement, (b) describes the steps Avalon will take to meet City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Avalon's primary IPM contact person with City. In addition, Avalon shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

30. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Avalon and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any Party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the Parties with respect to the Easement Area and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either Party commences an action against the other or a dispute arises under this Agreement, the prevailing Party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Avalon's use of its own attorneys. (f) This Agreement does not create a partnership or joint venture between City and Avalon as to any activity conducted by Avalon on, in or relating to the Easement Area. (g) City's obligations hereunder are contingent upon approval of this Agreement by SFMTA's Board of Directors and City's Board of Supervisors and Mayor, each in their respective sole discretion. (h) Time is of the essence of this Agreement and each Party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement. (l) Avalon represents and warrants to City that the execution and delivery of this Agreement by Avalon and the person signing on behalf of Avalon below has been duly authorized, and City represents and warrants to Avalon that the execution and delivery of this Agreement by City and the person signing on behalf of City below has been duly authorized.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

AVALON:

AVALON OCEAN AVENUE, L.P., a Delaware limited partnership

By: _____

Name: _____

Its: _____

Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____

_____, Director of Property

Date: _____

RECOMMENDED:

Nathaniel P. Ford Sr., Executive Director/CEO
San Francisco Municipal Transportation Agency

Date: _____

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Carol Wong
Deputy City Attorney

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 of Avalon Property

(This is currently in development and will be completed prior to closing)

Exhibit B

Legal Description of City Property

(This legal description will be updated)

All that certain property within the City and County' of San Francisco, described as follows:

PARCEL ONE:

ALL that certain property within Parcel 22 as shown in that certain deed from Spring Valley Water Company, to City and County of San Francisco recorded March 3, 1930 in Book 2002, Page 1 of Official Records, described as follows:

A tract of land bounded on the southerly side by the northerly line of Ocean Avenue, on the easterly side by the westerly line of Phelan Avenue and on the northerly and westerly sides by the subdivision known as Westwood Park, said tract being described as follows:

COMMENCING at the point of intersection of the northeasterly line of Ocean Avenue with the easterly line of that portion of Plymouth Avenue which lies south of Ocean avenue, If said easterly line be extended northerly along its present course, and running thence southeasterly along said northeasterly line of Ocean Avenue 592.788 feet; thence at an angle of $0^{\circ} 26' 04''$ to the left 318.374 feet; thence along the northeasterly line of Ocean Avenue, as formerly laid out, at an angle of $20^{\circ} 4'$ to the right 152.757 feet; thence at an angle of $55^{\circ} 22' 45''$ to the right 34.017 feet; thence at an angle of $89^{\circ} 59' 33''$ to the left 25.591 feet; thence leaving the line of Ocean Avenue, as formerly laid out, and running northerly at an angle of $90^{\circ} 24' 30''$ to the left 33.527 feet to the Intersection of the northeasterly line of Ocean Avenue as now laid out, with the westerly line of Phelan Avenue ; thence northerly 1954.893 feet along the westerly line of Phelan Avenue, thence westerly at an angle of $89^{\circ} 38' 42''$ to the left 1019.46 feet; and thence at right angles southerly along the easterly line of Plymouth Avenue, if produced as aforesaid, 1633.504 feet the northeasterly line of Ocean Avenue and the point of commencement.

EXCEPTING THEREFROM, all that certain property within the map entitled "Map Showing the Opening of the Northeast and Northwest corners of Ocean and Phelan Avenues" filed for record on April 19, 1937 in Book N of Maps at page 31.

FURTHER EXCEPTING THEREFROM, all that certain property within the map entitled, "Map showing the Widening of Phelan Avenue & Ocean Avenue from Ocean Avenue to Judson Avenue" Filed for record on February 15, 1954 in Book R of Maps, at page 56.

FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to the Roman Catholic Archbishop of San Francisco recorded June 14, 1933 in Book 2512, Page 415, Official Records.

FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to Safeway Stores Incorporated, a corporation recorded June 2, 1954 In Block 6386, Page 412, Official Records.

FURTHER EXCEPTING THEREFROM, all that certain property described in the deed from the City and County of San Francisco to San Francisco Community College District, a public entity recorded October 15, 1992 in Book F734, Page 746, Official Records.

PARCEL TWO:

Beginning at the point of intersection of the northeasterly line of Ocean Avenue with the easterly line of that portion of Plymouth Avenue which lies south of Ocean Avenue If said easterly line be extended northerly along its present course, said line bearing N 00° 24' 00"W and being the basis of bearings for this description;

Thence S 75° 21' 56" E a distance of 584.33 feet along a line parallel with and distant 150 feet northerly of the northeasterly line of Ocean Avenue;

Thence N 14° 38' 04" E a distance of 13.86 feet;

Thence N 89° 01' 17" E a distance of 460.15 feet to the westerly line of Phelan Avenue;

Thence N 00° 39' 51" W a distance of 512.45 feet to the westerly line of Phelan Avenue;

Thence S 88° 35' 39" W a distance of 917.58 feet;

Thence S 01° 24' 21" E a distance of 100 feet;

Thence S 89° 36' 00" W a distance of 110.00 feet to a point on said easterly line of Plymouth Avenue Extended:

Thence S 00° 24' 00" E a distance of 262.81 feet along said easterly line of Plymouth Avenue Extended to the True Point of Beginning.

NOTE: This legal description is for convenience only. A legal description based on a current survey will be required.

Exhibit C

Legal Description of Housing Parcel

(This is currently in development and will be completed prior to closing)

Exhibit D

Legal Description of Easement Area

(This is currently in development and will be completed prior to closing)

Exhibit E

Depiction of the Avalon Property, the Housing Parcel and the Easement Area

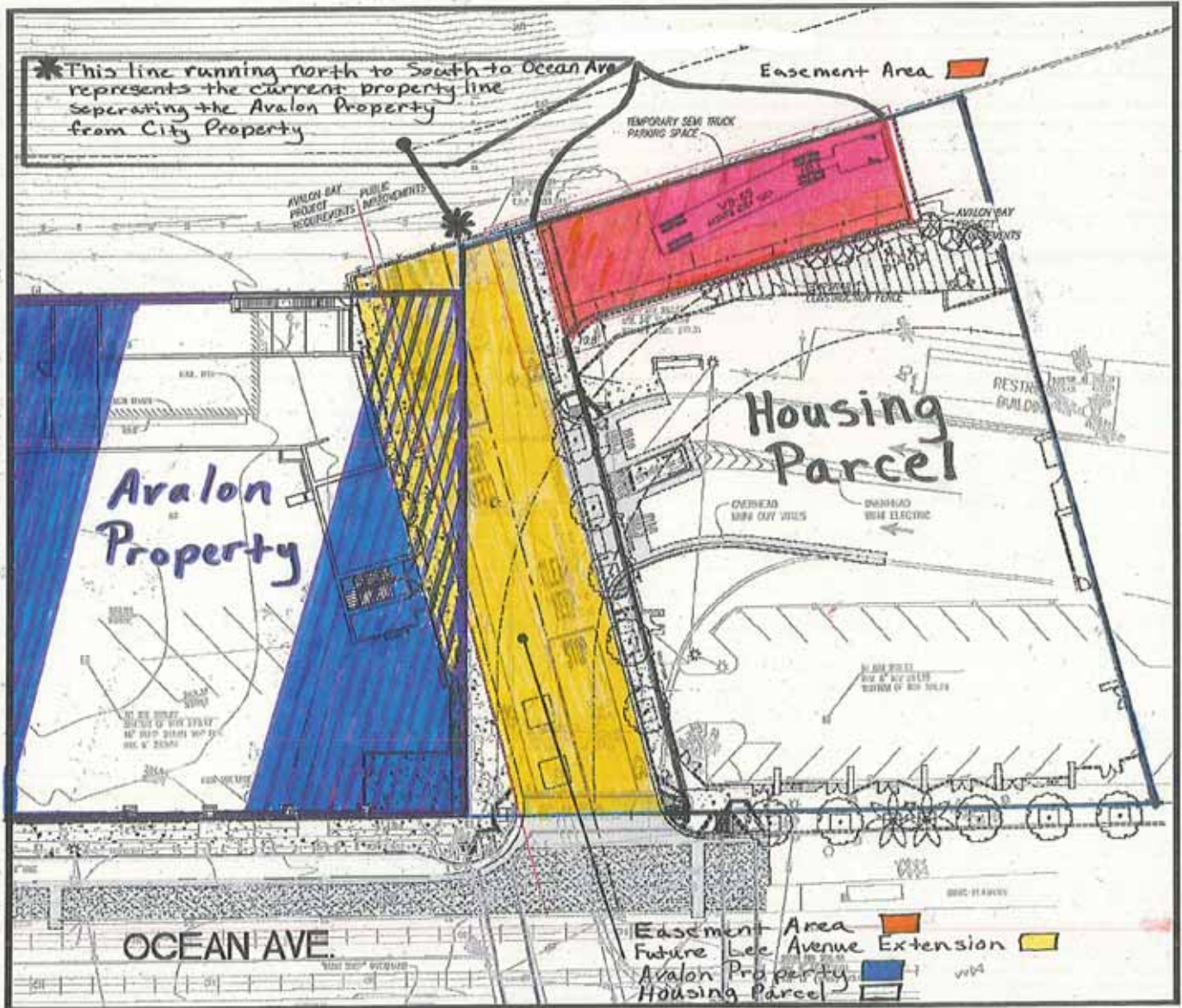


Exhibit F

Legal Description of the Pipeline Area

(This is currently in development and will be completed prior to closing)

Exhibit G

Pipeline MOU

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated for reference purposes only as of February 13, 2007, is entered into by and between the San Francisco Municipal Transportation Agency ("**MTA**") and the San Francisco Public Utilities Commission ("**SFPUC**").

RECITALS

A. Certain property located near the intersection of Phelan Avenue and Ocean Avenue in the City and County of San Francisco ("**City**") is under the jurisdiction of MTA, as generally depicted on the attached Exhibit A (the "**MTA Parcel**"), and certain other property located near such intersection is under the jurisdiction of SFPUC, also as generally depicted on the attached Exhibit A (the "**PUC Parcels**").

B. SFPUC presently maintains a 36-inch pipeline known as the Crosstown Pipeline, which delivers water from the west side of the City to the east side of the City (the "**Existing Crosstown Pipeline**"). A portion of the Existing Crosstown Pipeline is located beneath the surface of a portion of MTA Parcel in the location generally depicted on the attached Exhibit A (labeled "Existing 36" Pipeline (College Hill Feeder Mains)").

C. SFPUC plans to install approximately 4.5 miles of pipeline known as the East-West Transmission Main from the Alemany Pump Station in the eastern part of the City to Junipero Serra Boulevard at Holloway (the "**East-West Pipeline**"). The new East-West Pipeline will enable the SFPUC to move water from the east side of the City into the City's Sunset system in the event of a pipeline failure on the peninsula or in the event of other emergencies. Its installation and operation is critical to the health and safety of residents of the Sunset District. The installation of the East-West Pipeline is referred to herein as the "**Project**."

D. A portion of the East-West Pipeline will be located beneath the surface of a portion of the MTA Parcel and a portion of the East-West Pipeline will be located under a portion of one or more of the PUC Parcels, in the location generally depicted on the attached Exhibit A (labeled "Future Location of 36" Water Line"). SFPUC and MTA have agreed on the alignment identified in Exhibit A and on the construction drawings and specifications for the Project (the "**Initial Plans**") prepared by SFPUC and dated August 2006 (the "**Preferred Alignment**").

E. SFPUC also plans the future installation of an additional 36-inch pipeline running easterly from the future Balboa Reservoir (the "**Future Balboa Reservoir Outlet Pipeline**"). The final alignment of the Future Balboa Reservoir Outlet Pipeline has not yet been fixed, but it is anticipated that portions of the Future Balboa Reservoir Outlet Pipeline may be installed beneath the surface of a portion of the MTA Parcel and the PUC Parcels, parallel to that portion of the Existing Crosstown Pipeline located on the MTA Parcel and the PUC Parcels. The installation of the Future Balboa Reservoir Outlet Pipeline is referred to herein as the "**Future Balboa Reservoir Project**".

F. MTA and SFPUC anticipate entering into one or more future agreements with each other and certain other City agencies or other parties pursuant to which, among other

matters, the jurisdiction over or ownership of portions of one or more of the PUC Parcels will be transferred to MTA and one or more of such other agencies or parties and jurisdiction over or ownership of a portion of the MTA Parcel will be transferred to one or more of such other agencies or parties (the "**Proposed Transfer Agreement**").

G. In connection with the Project, the Future Balboa Reservoir Project and the Proposed Transfer Agreement, SFPUC desires to ensure that SFPUC obtains over the MTA Parcel and reserves over the PUC Parcels an easement in the locations generally depicted on Exhibit A and labeled "60' Wide Future SFPUC Easement" and "23' Wide Future SFPUC Easement" (the "**Permit Area**"), for the installation of the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline, and for the operation, maintenance and repair of the Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline. The Existing Crosstown Pipeline, the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline are sometimes referred to herein collectively as the "**Pipelines**".

H. Not all details of the Proposed Transfer Agreement have been finalized, and it presently appears that the Project may be completed most effectively if construction of that portion of the Project located on the MTA Parcel is permitted to commence prior to the date the Proposed Transfer Agreement is ultimately finalized. Accordingly, SFPUC and MTA now wish to enter into this MOU to set forth the conditions under which the SFPUC will construct the East-West Pipeline and the Future Balboa Reservoir Outlet Pipeline on the MTA Parcel, and maintain the Pipelines on the MTA Parcel, to provide for the future documentation of SFPUC's right to use the Permit Area, to provide for the conditions to MTA's use of the Permit Area, and to provide that any party transferring jurisdiction over or ownership of any portion of the Permit Area shall give such transferee notice of the terms and conditions of this MOU.

NOW, THEREFORE, IN CONSIDERATION of the foregoing, MTA and SFPUC hereby agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Preferred Alignment.** SFPUC and MTA acknowledge and agree that the Preferred Alignment remains subject to minor revisions as may be reasonably required by additional design considerations, future environmental review and field modifications, which revisions shall be mutually agreed to by SFPUC and MTA. SFPUC and MTA shall cooperate in identifying and resolving any revisions to the Preferred Alignment which are reasonably required. Any revisions to the Preferred Alignment shall be confirmed by the parties in writing, and following such revision the term "Preferred Alignment" shall refer to the Preferred Alignment, as so revised. Further, upon written notice from SFPUC that SFPUC desires to proceed with plans to install the Future Balboa Reservoir Outlet Pipeline, MTA shall cooperate with SFPUC in establishing the alignment of the Future Balboa Reservoir Outlet Pipeline. Once installed, SFPUC shall provide MTA with a copy of the as-built plans for any installed Pipeline.
3. **SFPUC Use of MTA Parcel.** MTA hereby grants to SFPUC and its agents and contractors the right to enter that portion of the MTA Parcel located in the Permit Area (the "**Subject Area**") to install the East-West Pipeline in the Preferred Alignment, to install the Future Balboa Reservoir Outlet Pipeline, to access, operate, repair, replace and maintain the Pipelines, and to perform such other actions as are reasonably necessary for the SFPUC to install and operate the Pipelines.

In addition to the foregoing, MTA and SFPUC shall cooperate to identify an access route for SFPUC construction equipment to cross over the MTA Parcel from Ocean Avenue to the Subject Area in connection with construction activities to be performed during the installation of the East-West Pipeline, and MTA shall establish terms and conditions for such access designed to minimize the impact on MTA's use, maintenance, repair, removal or replacement of the current and future bus loops, boarding areas and temporary parking areas located on the MTA Parcel (collectively, the "**Bus Activities**"). Once such route and terms and conditions are established, MTA shall permit SFPUC to cross over the permitted access route in accordance with such terms and conditions.

SFPUC acknowledges that its entry on the Subject Area or other areas of the MTA Parcel pursuant to this Section shall be subject to reasonable restrictions established by MTA to protect the safety of its employees and passengers and to maintain its efforts to provide reliable public transit services. Such restrictions shall include mutually-agreeable access routes for construction equipment and equipment storage and staging areas required in connection with the exercise of SFPUC's rights hereunder. SFPUC and MTA acknowledge that such access routes and storage and staging areas will need to be created to minimize the impact to MTA's use of the Subject Area and the surrounding area for the Bus Activities, while permitting the access reasonably required for the exercise of SFPUC's rights hereunder.

4. **MTA Use of Permit Area.** Subject to MTA's rights to continue the Bus Activities, MTA shall not do anything in, on, under or about the Subject Area that could cause damage to or interference with the Pipelines or related facilities. Without limiting the foregoing, MTA agrees that no trees or shrubs shall be planted, no structures or improvements of any kind or character shall be constructed or placed, and no excavation shall occur, on the Subject Area without the prior written consent of SFPUC, except as provided in Section 6 below. To prevent damage to the Pipelines, MTA shall not use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Subject Area during construction and/or maintenance of any improvements on or adjacent to the Subject Area, or for any other purpose, without SFPUC's prior written approval. SFPUC acknowledges that for the purposes of this Section 4, the passage, boarding, and temporary parking of buses and trolley coaches over the Subject Area shall not be deemed to violate the foregoing restriction regarding vehicle and equipment weight.

5. **Reserved Rights with Respect to Subject Area.** In addition to MTA's reserved right to perform the Bus Activities, MTA further reserves the right to use the Subject Area for all purposes which are not inconsistent with SFPUC's rights hereunder, including the right to maintain the following over and across and along the Subject Area: roads, streets, sidewalks, electric power lines, and telephone and telegraph lines; provided, however, that MTA shall not use the Subject Area, or permit the same to be used, for any purpose or in any manner which will interfere with, damage or endanger the Pipelines.

6. **Installation of Future Bus Loop on Reconfigured MTA Parcel; General Restrictions on Installations.** Although not all details of the Proposed Transfer Agreement have been finalized, the parties anticipate that the Proposed Transfer Agreement will provide for a jurisdictional transfer of a portion of the PUC Parcels to MTA to accommodate its anticipated construction and operation of a replacement bus loop and all related appurtenances, and a jurisdictional transfer of a portion of the MTA Parcel to SFPUC to accommodate its anticipated sale of property to San Francisco City College (the "**Anticipated Transfers**"). SFPUC acknowledges and agrees that, if the Anticipated Transfers occur, MTA shall have the right to conduct the Bus Activities on the portions of the PUC Parcels so acquired by MTA, the definition of "Subject Area" shall be deemed to include the portion of the Permit Area located on such acquired PUC Parcels, and for the purpose of this MOU, the "MTA Parcel" shall be deemed to include the portions of the PUC Parcels so acquired by MTA. In addition, notwithstanding the provisions of Section 5 above, if the Anticipated Transfers occur, MTA shall have the right to

install, maintain, use, repair and replace up to four (4) trolley wire support pole foundations and two (2) boarding islands, together with all appurtenances related to the replacement bus loop, including, but not limited to, pavement, sidewalks and shallow utility conduits (collectively, the "**Proposed MTA Installations**"), on the Subject Area.

The following restrictions (collectively, the "**Improvement Conditions**") shall apply to the Proposed MTA Installations as well as any other proposed installations by MTA in the Subject Area: (i) MTA shall provide to SFPUC, at the address for the Manager of City Distribution Division set forth in Section 10 below, a copy of each of the conceptual engineering report, the 95% completed plans, and the final plans and specifications for any proposed installation, as each becomes available, to provide SFPUC an opportunity to review and comment on such report and plans, (ii) MTA shall obtain SFPUC's approval of the plans and specifications for any proposed installation, which approval shall not be unreasonably withheld or delayed, (iii) there shall be a minimum of an eight foot (8') linear clearance on a horizontal plane between any trolley wire support pole foundation and any then-existing Pipeline within the Subject Area, unless SFPUC otherwise consents in writing, (iv) such installation, repair and replacement shall be performed in a manner which does not endanger or damage any then-existing Pipelines within the Subject Area, and (v) once installed, SFPUC shall provide MTA with a copy of the as-built plans for such installation.

If MTA is prepared to commence construction activities for its replacement bus loop over a portion of the PUC Parcels before the Anticipated Transfers occur, MTA shall obtain SFPUC's consent prior to commencing such activities, which consent shall not be unreasonably withheld, and shall ensure that each installation so made over the PUC Parcels complies with the Improvement Conditions.

7. **Preparation of Legal Description.** If MTA transfers any portion of the Subject Area to a third party, and such third party requires a legal description of the Subject Area (the "**Legal Description**"), MTA shall have the right to either obtain such Legal Description or to require SFPUC to obtain such Legal Description in a form that is reasonably acceptable to MTA. If MTA requires SFPUC to obtain such Legal Description, SFPUC shall do so at its sole cost within the thirty (30) day period following receipt of MTA's written request therefor. If MTA elects to obtain such Legal Description, SFPUC shall reimburse MTA for all third party costs reasonably incurred by MTA in preparing or obtaining such Legal Description within sixty (60) days following MTA's request therefor, which request shall include reasonable documentation of such costs together with a copy of the Legal Description.

8. **Effective Date; Term.** The term of this MOU shall commence the date specified in the introductory paragraph of this MOU, and shall terminate on the earlier of the date an easement deed or agreement is recorded to memorialize an easement across the Subject Area in favor of SFPUC (in which event the terms and conditions of such easement deed or agreement shall govern the rights of the parties) or at such time as the SFPUC elects to permanently terminate operation of the Pipelines for distribution of potable water.

9. **Restriction on MTA Access; Limits on Interference with Bus Activities.** The parties acknowledge that the future construction and installation of the Future Balboa Reservoir Project may temporarily interfere with the use of the Proposed MTA Installations. Accordingly, SFPUC and its contractors may restrict access to the immediate vicinity of the Project, the Future Balboa Reservoir Project, and other construction projects, if any, related to the Pipelines during construction if reasonably necessary to ensure the health and safety of the public, and MTA shall cooperate with such restrictions. SFPUC shall use reasonable efforts to conduct all Pipeline construction and maintenance activities on the Subject Area in a manner that minimizes interference with the Bus Activities, taking into account the scope of work to be performed. MTA and SFPUC shall negotiate in good faith regarding the manner of SFPUC's exercise of its

rights hereunder, with the dual goals of minimizing interference with the Bus Activities and minimizing extra cost to SFPUC resulting from construction requirements and restrictions and from measures required to minimize interference with Bus Activities.

Notwithstanding anything to the contrary herein, except to the extent otherwise agreed by MTA in writing, SFPUC shall ensure that, at all times, (a) MTA has reasonable means for the passage of at least one lane of buses over the MTA Parcel (provided that, if the Anticipated Transfers occur, the reconfigured MTA Parcel has a bus passage corridor that is at least fifty-five feet (55') in width at Phelan Avenue), and (b) lines of construction vehicles entering the MTA Parcel are limited to five (5) vehicles per hour.

10. **Notice of Construction.** SFPUC shall provide at least sixty (60) days' prior written notice of SFPUC's planned construction activities in the Subject Area (unless such planned construction activities are to perform the work described in the Initial Plans, in which case SFPUC shall only need to provide at least twenty-one (21) days' prior written notice), together with plans and specifications for such construction activities, to MTA at the following address:

Chief Operating Officer / Director of Muni Operations
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103
Tel.: (415) 701-4202

MTA shall provide at least twenty-one (21) days' prior written notice of MTA's planned construction activities in the Subject Area to SFPUC at the following address:

General Manager
San Francisco Public Utilities Commission
1155 Market Street, Eleventh Floor
San Francisco, CA 94103

with a copy of such notice, together with plans and specifications for such construction activities, to SFPUC at the following address:

Manager of City Distribution Division
San Francisco Public Utilities Commission
1990 Newcomb Ave.
San Francisco, CA 94124

11. **Restrictions on SFPUC Use; Compliance with Law.** SFPUC, at SFPUC's expense, shall comply with all laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to SFPUC's activities hereunder, including compliance with all laws relating to Hazardous Materials (as defined below), which impose any duty upon SFPUC with respect to the use, occupancy or alteration of the MTA Parcel. SFPUC shall immediately notify MTA in writing of any release or discharge of any Hazardous Materials, whether or not the release is in quantities that would be required under the law requiring the reporting of such release to a governmental or regulatory agency. As used herein, "**Hazardous Materials**" shall mean any substance, water or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety or property.

12. **SFPUC Maintenance and Repairs.** SFPUC agrees that, subject to the terms of Section 13 below, any damage to the MTA Parcel caused by construction, installation, maintenance, repair or any other activity of SFPUC permitted hereunder shall be repaired and restored to its prior condition upon completion of the construction, maintenance, repair or other activities at no cost to MTA. Following the completion of any excavation work by SFPUC in the Subject Area, SFPUC shall promptly return the surface of the Subject Area to its prior condition, including repaving and regrading any existing roadway as required, subject to the terms of Section 13 below. During the term hereof, SFPUC shall maintain in good repair and condition the improvements made pursuant to this MOU.

13. **Landscaping.** MTA acknowledges that installation of the East-West Pipeline in the Preferred Alignment and installation of the Future Balboa Reservoir Outlet Pipeline will require removal of certain trees and may require the trimming of roots of other trees, and will result in damage to grass in the Subject Area. SFPUC shall replace affected grass with like-kind grass, and at MTA's request shall plant the same kind of grass over areas in which trees are removed by SFPUC. Neither SFPUC nor MTA shall replace any trees in the Subject Area.

14. **Insurance.** SFPUC shall require any contractor or subcontractor it hires in connection with its use of the MTA Parcel to secure such insurance as is recommended by the City Risk Manager and reasonably approved by MTA. The City shall be included as an additional insured with respect to any such insurance.

15. **Indemnification.** SFPUC shall require MTA to be included as an indemnified party in any indemnification provision between SFPUC and any agent, contractor or subcontractor it hires in connection with its use of the MTA Parcel.

16. **Damages.** It is the understanding of the parties that MTA shall not expend any funds due to or in connection with SFPUC's activities on the MTA Parcel. Therefore, SFPUC agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise as a result of the activities on or about the MTA Parcel by SFPUC, its agents or contractors. The foregoing obligation of SFPUC shall survive the termination of this MOU.

17. **Notices.** All notices, demand, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of MTA and SFPUC as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to MTA to:

Executive Director/CEO
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

and if to SFPUC to:

General Manager
San Francisco Public Utilities Commission
1155 Market Street, Eleventh Floor
San Francisco, CA 94103

or such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Section.

18. **Obligations Run With the Land; Future Easement.** If a party transfers any portion of the Permit Area to a non-City entity, such transferring party shall reserve an easement to the City that incorporates the rights and obligations set forth in this MOU, and the parties intend that any such future reserved easement shall run with the land and be binding on future owners of such transferred portion of the Permit Area. A reserved easement shall be recorded in the City's Official Records, and shall incorporate the party's respective rights and obligations set forth herein as to such portion of the transferred Permit Area, provided that such reserved easement shall be subject to any necessary approval of the San Francisco Municipal Transportation Agency Board of Directors or the San Francisco Public Utilities Commission, as applicable, and, to the extent required, the City's Board of Supervisors and Mayor. If MTA transfers jurisdiction over or permits the use of all or any portion of the MTA Parcel, MTA shall provide such transferee or permittee with a copy of this MOU. If SFPUC transfers jurisdiction over or permits the use of the Pipelines or all or any portion of the affected PUC Parcels, SFPUC shall provide such transferee or permittee with a copy of this MOU.

19. **Miscellaneous Provisions.**

a. **Further Assurances.** The parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to carry out the mutual intent of the parties as expressed in this MOU.

b. **Incorporation of Exhibits.** All exhibits to this MOU are incorporated herein by this reference and made a part hereof as set forth in full.

[No further text this page]

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

AGREED TO AS WRITTEN
ABOVE:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

By: /S/ Nathaniel P. Ford, SR.
NATHANIEL P. FORD, SR.
Executive Director/CEO

Date: 3/20/2007

AGREED TO AS WRITTEN
ABOVE:

SAN FRANCISCO PUBLIC
UTILITIES COMMISSION

By: /S/ Susan Leal
SUSAN LEAL
General Manager

Date: 2/13/07
Resolution No.: 07-0028

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration, Taxis & Accessible Services

BRIEF DESCRIPTION:

Approving the issuance of a Muni transit pass at no cost for use by transportation professionals and their spouses attending the 2011 Annual Conference of the Women’s Transportation Seminar (WTS) in San Francisco May 18 to 20, 2011 at the Hyatt Embarcadero.

SUMMARY:

- The California Women’s Transportation Seminar has selected San Francisco as the site for its Annual Conference, and approximately 400 transportation professionals and their spouses are expected to attend.
- It is customary for the host city transit operators to provide a transit pass, at no cost, to all registered conferees and their spouses.
- Muni is coordinating with other transit operators in the Bay Area on the provision of a transit pass on the following system: AC Transit, BART, Caltrain, Golden Gate Bridge, Highway and Transportation District, Muni, SamTrans and the Santa Clara Valley Transportation Authority.
- Conference transit pass recipients would be able to ride free on the participating systems beginning Wednesday, May 18, 2011 through Friday, May 20, 2011.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Annie Knight

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

Providing a transit pass to registered participants at the Annual Conference of the Women's Transportation Seminar, as has been done with other such conferences in San Francisco, will allow these conferees to experience Bay Area transit services first hand while also providing free transit to the City's wealth of attractions, shopping, dining, entertainment and cultural institutions which contributes to local businesses and tax revenues.

GOAL

Goal 3-External Affairs/Community Relations: To improve the customer experience, community value and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

Objective 3.1: Improve economic vitality by growing relationships with business, community and stakeholder groups.

Objective 3.4: Enhance proactive participation and cooperatively strive for improved regional transportation.

DESCRIPTION

The California Women's Transportation Seminar has selected San Francisco as the site for its Annual Conference, and approximately 400 transportation professionals and their spouses are expected to attend. It is customary for the host city transit operators to provide a transit pass, at no cost, to all registered conferees and their spouses. Muni is coordinating with other transit operators in the Bay Area on the provision of a transit pass on the following system: AC Transit, BART, Caltrain, Golden Gate Bridge, Highway and Transportation District, Muni, SamTrans and the Santa Clara Valley Transportation Authority. Conference transit pass recipients would be able to ride free on the participating systems beginning Wednesday, May 18, 2011 through Friday, May 20, 2011. The transit pass listing all participating agencies will be produced and distributed to conferees when they register for the event at the Hyatt Embarcadero. Each participating agency will advise its employees about the pass and to accept it on vehicles and in stations between May 18 and 22. Text on pass will advise holders on which systems the pass is accepted and how to present it for free rides.

ALTERNATIVES CONSIDERED

As it has been a long-standing practice for Muni and other transit operators in the Bay Area to provide passes to registered participants and their spouses at transportation conferences in San Francisco, no other alternatives were considered.

FUNDING IMPACT

The Chief Financial Officer has determined that providing transit passes for this conference has a minimal financial impact to the revenues. The City Attorney has reviewed this calendar item.

PAGE 3

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None required.

RECOMMENDATION

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Each year the Women's Transportation Seminar holds an Annual Conference in different cities throughout the nation; and, Conference in San Francisco May 18 to May 20, 2011 at the Hyatt Embarcadero; and,

WHEREAS, The 2011 Annual Conference of the Women's Transportation Seminar will be held in San Francisco at the Hyatt Embarcadero May 18 to 20 with approximately 400 participants and,

WHEREAS, It is customary for Muni and other transit agencies in the Bay Area to provide transit passes at no cost to registered participants and their spouses while attending such conclaves of transportation professionals; and,

WHEREAS, The SFMTA is coordinating with other Bay Area transit operators to provide the pass at no cost to registered conference participants and spouses, including AC Transit, BART, Caltrain, Golden Gate Bridge, Highway and Transportation District, Muni, SamTrans and the Santa Clara Valley Transportation Authority; and,

WHEREAS, The Chief Financial Officer has determined that provision of a transit pass at no cost to conference participants and their spouses will have a minimal impact on the fare revenue of the SFMTA and will allow the conferees to experience Bay Area transit service first hand and while also providing free transit to the City's wealth of attractions, shopping, dining, entertainment and cultural institutions which contributes to local businesses and City tax revenues; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the issuance of a transit pass at no cost for use by registered transit professionals and their spouses attending the Annual Conference of the Women's Transportation Seminar in San Francisco from May 18 to 20, 2011.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors to ask the Taxi Advisory Council to prepare, for consideration by the Board, a report on its recommendations regarding a pilot program for peak time taxi permits designed to supplement the level of available taxi vehicles in San Francisco during periods of high taxi demand.

SUMMARY:

- All San Francisco taxicabs are required to operate 24 hours, 7 days a week, 365 days a year as a condition of the medallion permit.
- The ‘continuous operation’ requirement prevents addressing fluctuations of taxi demand through management of the vehicle supply, and there can often be too many or too few taxis on the street.
- An oversupply of taxis at periods of low demand means that taxi drivers may ‘pay to work.’
- An undersupply of taxis reduces the public’s confidence in taxi service. If San Francisco residents begin to think of taxis as a reliable, responsive, door-to-door transportation option and leave their private cars at home, congestion and competition for parking will be reduced, air quality will improve, and residents may tend to go out more and patronize local businesses.
- Implementation of a pilot program for “peak-time” taxi permits could provide valuable information that will assist the SFMTA in determining whether issuance of such permits would serve the public interest.
- The details of a pilot program, including the number of permits to be issued, the number of hours to which a part-time vehicle’s operation should be restricted, the cost and pricing structure of a part-time permit from the SFMTA, appropriate minimum qualifications of participating taxi companies, the mechanism of distributing part-time permits among qualifying companies, and reporting requirements should be the subject of an open public discussion that will include the views of the Taxi industry and the public. The Taxi Advisory Council is an appropriate forum for a discussion of these issues. The Taxi Advisory Council can further assist the Board by providing a report containing its recommendation whether, and if so how, the Board should adopt a pilot program for peak time permits.
- Information derived from a pilot project could be considered in conjunction with an analysis by an industry consultant as to taxi supply and demand in San Francisco to assist the Board in determining whether the issuance of peak time taxi permits will serve the public interest.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:	DATE
DIRECTOR OF DIVISION	
PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____

ADOPTED RESOLUTION

BE RETURNED TO Christiane Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this request to the Taxi Advisory Council for a report on a peak time taxi pilot program to supplement the level of available taxi vehicles in San Francisco during periods of high taxi demand, such as Thursday-Saturday nights, during conventions and special events and commute hours, is to provide the Board with assistance in determining whether such a pilot program is warranted.

GOAL

Goal 1—Customer Focus:

To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.5 Increase the percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

A peak time taxi program could increase the availability of taxi service at times of high demand and thereby increase the confidence of the public that a taxi is a reliable alternative to using a private automobile for local trips.

Goal 2—System Performance:

To get customers where they want to go, when they want to be there.

Objectives:

2.1 Improve transit reliability to meet 85% on-time performance standard

2.4 Reduce congestion through major corridors

2.5 Manage parking supply to align with SFMTA and community goals

The availability of additional taxi vehicles through a peak time taxi program could improve taxi response times to dispatch requests, and encourage potential taxi customers to leave their private vehicles at home for local trips, thus reducing congestion and competition for parking.

Goal 3—External Affairs/Community Relations:

To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objectives:

3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

A peak time taxi program that creates good shifts for “gas and gates” drivers could provide economic support for taxi companies and taxi drivers. It could also address recent requests from taxi companies that the City allow operation of additional vehicles so that they can meet the demand for taxi service received through their dispatch services.

PAGE 3.

Goal 4—Financial Capacity:

To ensure financial stability and effective resource utilization

Objectives:

4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.

A peak time taxi program could generate an as-yet undetermined level of new revenue for the SFMTA from the taxi industry for the right to operate peak time vehicles.

DESCRIPTION

For at least 30 years, all San Francisco taxicabs have been required to operate 24 hours, 7 days a week, 365 days a year as a condition of the medallion permit. Every taxi vehicle in San Francisco goes out on one ten-hour shift at about 4:00a.m., returns to the lot after the shift, and goes out again for its second shift of the day with another driver at about 4:00 p.m. The result of this ‘continuous operation’ requirement is that fluctuations of taxi demand cannot be addressed by managing the vehicle supply, and there can often be too many or too few taxis on the street. An oversupply of taxis at periods of low demand means that taxi drivers may ‘pay to work’ because they cannot make enough money on a shift to pay their fuel costs and gate fees, roughly \$100-\$125 per shift at the present time. When there is an undersupply of taxis people who need taxi service get frustrated and consider taxi service to be generally unreliable. This defeats the SFMTA’s strategic goals because the next time the individual needs to get somewhere they will not consider calling a cab, but will take a private vehicle instead. SFMTA Taxi Services proposes that the SFMTA ask the Taxi Advisory Council to study the issue of a “peak-time” or part-time taxi pilot program that will allow flexibility in managing taxi supply and demand, and provide the Board with a report containing its recommendation whether, and if so, how, such a pilot program should be implemented.

The concept of peak-time taxis has been discussed by the industry and the City for many years. However, there has always been one glaring obstacle: part-time operation of a vehicle may not generate enough revenue to cover vehicle purchase and operating costs. Over time people have recommended using the mechanical ‘spare’ vehicles (the extra vehicles kept at taxi lots in case a primary vehicle requires repair). However, current liability insurance policies held by taxi companies provide that either the primary vehicle or the spare vehicle is covered by the policy, but one or the other vehicle is not insured if they are operated simultaneously. Adoption of a peak-time pilot program will require taxi companies to negotiate liability policies that either discount premiums for part-time operation of a primary peak-time vehicle, or that involve additional premiums for part-time operation of spare vehicles.

If companies propose to use spare vehicles there will be additional considerations, such as making sure that the spare vehicle fleet is maintained in adequate condition for increased use, and that the companies continue to have sufficient numbers of spare vehicles when mechanical repair of a primary vehicle is required.

A key issue related to this proposal is determining the correct numbers of vehicles to adequately address demand for taxi services. Staff is currently drafting a Request for Proposals for a consultant to conduct a “public convenience and necessity” study regarding overall taxi supply and demand in San Francisco, and to review meter rates and gate fees in concert with the Controller’s Office. Analysis of San Francisco’s taxi

PAGE 4.

supply and demand has not been performed by a professional consultant since 2005. Taxi meter rates have not changed since 2003.

Pending the outcome of that study, staff proposes that the Board ask the Taxi Advisory Council to consider, and recommend to the Board, whether the Board should implement a pilot program to test the peak-time concept. There is already evidence to demonstrate unmet demand at certain times, such as Thursday, Friday and Saturday nights, during special events and conventions, commute hours and rainy weather. The Board will consider the Taxi Advisory Council's recommendation in determining whether to adopt such a pilot program. If the Board adopts a pilot program, the information gathered during the pilot program could be considered, in conjunction with the analysis of the SFMTA consultant, in determining whether to adopt a full and more permanent peak time permit program.

Staff recommends the concept of a peak-time pilot program be forwarded to the Taxi Advisory Council for discussion and recommendation to the Board. After the work of the Taxi Advisory Council is concluded, Staff will present the Taxi Advisory Council's recommendation and any proposal for a pilot program to the Board for its consideration. The issues to be considered by the Taxi Advisory Council with respect to a pilot program for peak time permits include, but are not limited to:

- The number of peak time vehicle permits;
- The hours of operation. The maximum hours of operation should be determined by balancing the need for these permits to be profitable to companies so that they can purchase and maintain the vehicles, and the need to prevent flooding the streets with taxis at times of low demand. The actual times of operation might be at the discretion of the companies because demand for taxis does not always follow a predictable schedule;
- The minimum qualification standards for participating taxi companies related to service performance and regulatory compliance;
- The mechanism for distributing part-time permits;
- Payment structure for the right to operate the peak-time permits; and
- Reporting requirements.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED.

If this resolution is not adopted, the agency will not receive the advice of its Taxi Advisory Council regarding whether, and if so how, to initiate a pilot program for supplementary, part-time permits to operate taxi vehicles.

FUNDING IMPACT

A peak time taxi program, even on a small scale such as is proposed, would have positive revenue impacts for the SFMTA. The exact revenue benefits are not currently quantifiable until a decision is made on the appropriate payment structure for the right to operate these franchise permits.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that the SFMTA Board request the Taxi Advisory Council to address the concept of peak time taxi permits and to prepare its recommendation on a peak time permit pilot program for consideration by the Board.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Dispatch reports from San Francisco taxi companies show a high level of unmet demand for taxi services at certain times, especially Thursday, Friday and Saturday nights, during special events and conventions, commute hours and rainy weather; and

WHEREAS, Due to a continuing trend of medallion owners choosing to operate taxi medallions outside of the 'gas and gates' system, gas and gates taxi drivers have been losing lucrative working shifts to medallion owners and lease drivers; and

WHEREAS, The Taxi Advisory Council has expressed that there is a need to preserve the gas and gates system so that gas and gates taxi drivers get more good working shifts and so that taxi companies are more profitable and have better control over vehicle operations; and

WHEREAS, Reliable taxi service will encourage residents to leave private cars at home for local trips, resulting in reduced congestion and competition for parking and better air quality; and

WHEREAS, When San Francisco residents know they can rely on responsive, on-demand door-to-door taxi service they will tend to come out of their homes more often to patronize local businesses such as entertainment venues, restaurants and clubs; and

WHEREAS, Pending completion of a comprehensive taxi supply and demand study by a professional taxi industry consultant, dispatch records may provide ample evidence for at least a limited supply of part-time taxi vehicles to address periods of undersupply; and

WHEREAS, A pilot program could inform the SFMTA, the Taxi industry and the public so that a full ongoing program can include the lessons learned from a pilot program; and

WHEREAS, The details of a proposed peak-time program require development through consultation with the industry through the Taxi Advisory Council; now, therefore, be it

RESOLVED, The SFMTA Board requests that the Taxi Advisory Council prepare a proposal for a peak time taxi permit pilot program to supplement the level of available taxi vehicles in San Francisco during periods of high taxi demand to be reviewed by the Board for possible implementation.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO.: 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Requesting the SFMTA Board of Directors to make the existing Required Right Turns pilot project on eastbound Market Street permanent. This includes making the existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations on eastbound Market Street at 10th and 6th streets permanent. Under these regulations, motorists will still be able to access eastbound Market Street by turning right from northbound 9th, 7th, 6th, or 5th streets, or by turning left from southbound Polk, Hyde or Stockton streets. These regulations are currently in place as a pilot project begun in September 2009 and need to be approved by the SFMTA Board of Directors in order to be made permanent.

SUMMARY:

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- The existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations were implemented as a pilot project in September 2009 at 8th and 6th streets and were changed to 10th and 6th streets in January 2010.
- A Before-and-After study shows that transit travel time on eastbound Market Street has decreased by three percent since the Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations were implemented, and conditions for bicyclists and taxis have improved without causing any significant changes on parallel streets such as Mission and Folsom streets.
- The environmental review by the Planning Department determined that this project is categorically exempt under the California Environmental Quality Act Guidelines Section 15301(c) or Class I.
- Staff recommends that the current restrictions be made permanent.

ENCLOSURE:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Jerry Robbins _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

Requesting the SFMTA Board of Directors to make the existing Required Right Turns pilot project on eastbound Market Street permanent. This includes making the existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations on eastbound Market Street at 10th and 6th streets permanent. Under these regulations, motorists will still be able to access eastbound Market Street by turning right from northbound 9th, 7th, 6th, or 5th streets, or by turning left from southbound Polk, Hyde or Stockton streets.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

Objective 1.1: Improve safety and security across all modes of transportation.

Goal 2: System Performance – To get customers where they want to go, when they want to be there.

Objective 2.4: Reduce congestion through major corridors.

ITEMS

- A. RESCIND – TRANSIT AND TAXIS ONLY AT ALL TIMES
ESTABLISH – TRANSIT, TAXIS AND TRUCKS ONLY AT ALL TIMES – Eastbound Market Street, left lane, between 11th and 10th streets. **Public Hearing 2/4/11.**
- B. ESTABLISH – RIGHT TURN ONLY EXCEPT TRANSIT, TAXIS TRUCKS AND BICYCLES AT ALL TIMES – Eastbound Market Street at 6th Street. **Public Hearing 2/4/11.**

DESCRIPTION

The SFMTA initiated a pilot Required Right Turns project on September 29, 2009 in order to test whether transit, bicycle and taxi conditions could be improved by restricting through movements at one or two Market Street intersections. Market Street is the spine of the city's transit network, used by 13 SFMTA Transit (Muni) routes, carrying tens of thousands of transit customers each day. The pilot project originally required that all traffic on eastbound Market Street turn right at 8th and 6th streets with the exception of transit vehicles, taxis, delivery trucks and bicycles. In January 2010, the regulation was removed on eastbound Market Street at 8th Street and implemented on eastbound Market Street at 10th Street instead. The project did not "close" any portions of Market Street to general traffic, as traffic may still turn onto eastbound Market Street from nearly all cross streets. Figures 1 through 3 show elements on the Required Right Turns pilot project.

The SFMTA collected extensive Muni travel time and traffic and bicycle volume data on eastbound Market, Mission and Folsom streets before and after these changes were implemented. As shown on the following pages, the project has been successful in improving transit speeds on eastbound Market

Street. Transit travel times on eastbound Market Street have decreased by approximately three percent, while the transit travel time on Mission Street has been virtually unchanged. Traffic volumes have increased on Mission Street, but congestion problems have not arisen. Bicycle traffic has increased on eastbound Market Street, although some of this increase appears to be a result of bicyclists diverting from eastbound Folsom Street to eastbound Market Street as a result of this project and other recent bicycle improvements on Market Street.

Transit Travel Times

Figure 4 shows the change in average transit travel times on three Muni routes on Market Street and one Muni route on Mission Street between Monday, September 21 through Friday, September 25, 2009 and Monday, September 27 through Friday, October 1, 2010. The SFMTA used NextMuni data to determine the actual time required for each bus to traverse the study area between Market/9th streets and Market/1st streets. The sample included approximately 300 “before” and “after” bus runs on each of the three routes on Market Street (for a total sample of 904 “before” and 904 “after” bus runs on Market Street) and 480 “before” and “after” bus runs on Mission Street.

As shown on Figure 4, average travel times decreased on each of the three bus routes on Market Street. Average transit travel times on Market Street decreased from eleven minutes, 17 seconds (677 seconds) “before” the project to ten minutes, 56 seconds (656 seconds) “after” the project, a savings of 21 seconds or just over three percent. The transit travel time study found virtually no change in the average transit travel times for Muni buses on eastbound Mission Street, where much of the traffic removed from eastbound Market Street was diverted.



Figure 1
Required Right Turn Pilot on Market Street at 10th Street



Figure 2
Required Right Turn Pilot on Market Street at 6th Street



Figure 3
Signs Installed on Market Street at 10th and 6th Streets

The SFMTA conducted traffic counts along eastbound Market, Mission and Folsom streets in mid-September 2009 and mid-September 2010. Figure 5 shows the change in traffic volumes on these three streets just west of 8th Street. In general, the right turn only requirement caused about 150 vehicles during both the a.m. and p.m. peak hours to shift from eastbound Market Street to eastbound Mission Street west of 8th Street. The SFMTA also conducted traffic counts at several intersections on Market, Mission and Folsom streets between 10th and 3rd streets in February 2010 that indicated that all intersections were operating at Level of Service C or better in the a.m. and p.m. peak hours. Therefore, no significant traffic congestion problems arose on any of these three streets as a result of the Required Right Turns pilot project.

Bicycle Volumes

Figure 6 shows the before-and-after bicycle volumes on eastbound Market, Mission and Folsom streets west of 8th Street. In general, bicycle volumes increased on eastbound Market Street, remained about the same on eastbound Mission Street and decreased somewhat on eastbound Folsom Street. In general, bicyclists have responded favorably to the Required Right Turn project on Market Street as well as to other bicycle improvements on Market Street including painting of sections of the bicycle lanes green and separating sections of bicycle lanes from adjacent traffic with flexible plastic posts.

Taxi Volumes

Figure 7 shows a slight increase in taxi use of eastbound Market Street during the a.m. peak period in the “after” condition. In general, taxi drivers have responded favorably to the Required Right Turns project and the decrease in general traffic on eastbound Market Street.

Truck Volumes

The study defined vehicles with commercial license plates such as pick-up trucks and vans as “trucks.” Many of these vehicles complied with the right turn requirement at 10th and 6th streets, leading to a decrease in the volume of commercial vehicles on eastbound Market Street, as shown on Figure 7. Delivery trucks were allowed to use eastbound Market Street throughout the study period.

Enforcement

The SFMTA monitored the percentage of vehicles that complied with the Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations. Approximately 80 percent of the traffic required to turn right at 10th Street currently does so. Because the Required Right Turns project was a pilot project and the regulations have not been legislated, some of the violators of the Right Turn Only provision cannot be cited by the Police Department. Adopting permanent legislation for the Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations would allow the Police Department to cite violators of the Right Turn Only regulation at both 10th and 6th streets.

Environmental Review

Changes in traffic regulations are subject to environmental review under the California Environmental Quality Act (CEQA). The Planning Department issued a Categorical Exemption from

PAGE 6

Environmental Review on September 21, 2009 for the Required Right Turns pilot project for “data collection and evaluation activities which do not result in a serious or major disturbance to an environmental resource” For a period of approximately three months. The Planning Department issued a second Categorical Exemption on March 17, 2010 in order to extend the duration of the pilot project until December 31, 2010. On August 23, 2010, the Planning Department issued a Categorical Exemption to make the Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations permanent. This determination was based on California Environmental Quality Act Guidelines Section 15301 (c) or Class I which provides for the exemption from environmental review of minor alternations to existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities where no more than a negligible increase in the use of the street will result.

Study Conclusions

The Required Right Turns pilot project has demonstrated that transit speeds can be improved by diverting nonessential vehicle trips from eastbound Market Street to other streets. The before-and-after study indicates that the diversion of eastbound Market Street traffic did not lead to any significant negative traffic impacts on Mission or Folsom streets.

ALTERNATIVES CONSIDERED

If the existing pilot is not made permanent, the existing temporary regulations would be removed and the street would revert to its prior condition. Alternatives to making the existing project permanent include reducing or expanding the number of intersections with Right Turn Only regulations on eastbound Market Street. This study found that the intersection of Market and 10th streets is more amenable to Right Turn Only regulations than other Market Street intersections because it does not have a transit boarding island (which allows trucks to operate in the transit lane without delaying transit) and has a continuous bicycle lane (which helps to clarify where bicyclists should ride in relation to other traffic). The City’s on-going Better Market Street study may suggest other long-term alternatives for improving transit, bicycle, pedestrian and taxi conditions on Market Street.

FUNDING IMPACT

Since the pilot project is already in place, no roadway changes will be needed in order to make the pilot permanent. Once the project becomes permanent, some minor improvements may be made to signage and striping at a cost of approximately \$3,000-\$5,000.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Planning Department reviewed the environmental impacts of the Required Right Turns pilot program traffic regulations and issued a Categorical Exemption from Environmental Review for making these regulations permanent. This determination was based on California Environmental Quality Act Guidelines Section 15301 (c) or Class I which provides for the exemption from environmental review of minor alternations to existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities where no more than a negligible increase in the use of the street will result. Copies of the Categorical Exemptions for the Required Right Turns pilot project as well as the Categorical Exemption for making these regulations permanent are on file with the SFMTA Board Secretary.

RECOMMENDATION

PAGE 7

That the San Francisco Municipal Transportation Agency Board of Directors approve making the existing Required Right Turns pilot project on eastbound Market Street permanent including making the existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations on eastbound Market Street at 10th and 6th streets permanent.

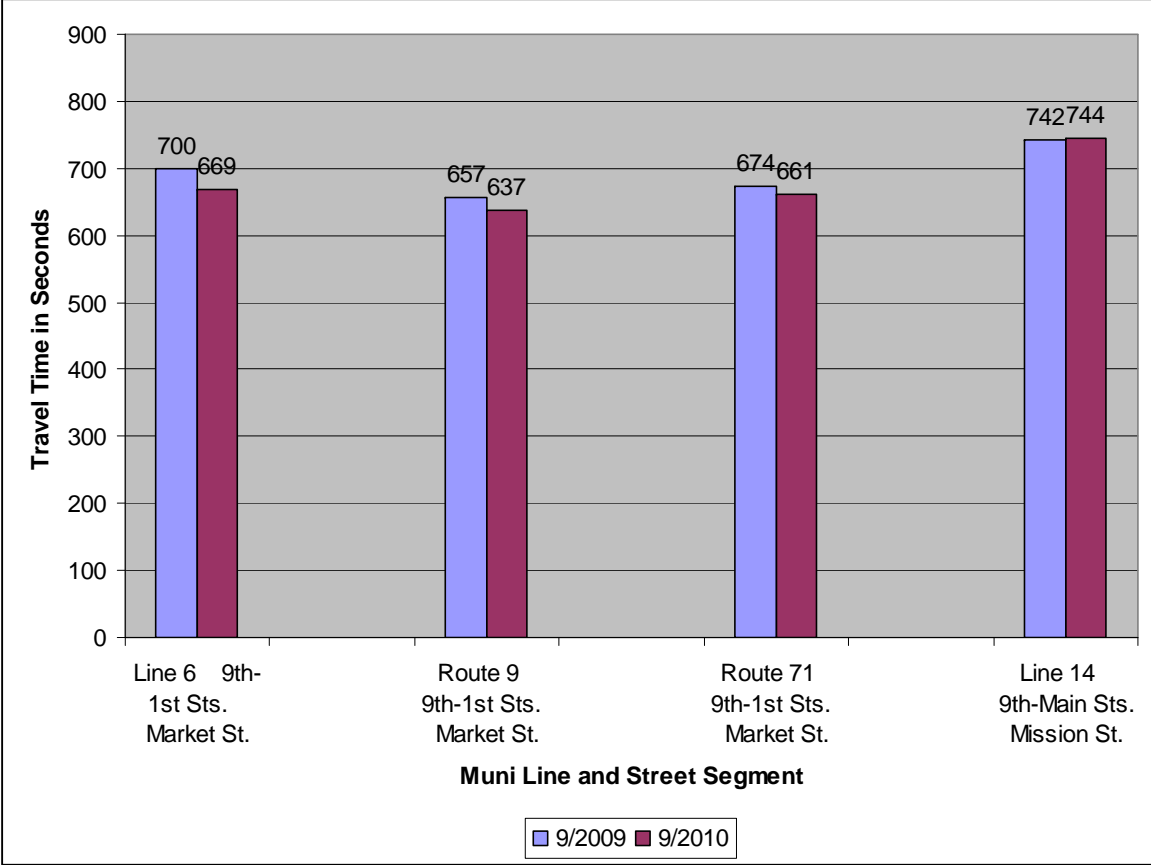


Figure 4
Before-and-After Transit Travel Times, Eastbound Market and Mission Streets

Table for Figure 4

ROUTE	SEGMENT	9/2009 TRAVEL TIME	9/2010 TRAVEL TIME
Line 6	Market St., 9th – 1st Sts.	700 seconds	669 seconds
Route 9	Market St., 9th – 1st Sts.	657 seconds	637 seconds
Route 71	Market St., 9th – 1st Sts.	674 seconds	661 seconds
Line 14 9th	Mission St. 9th – Main Sts.	742 seconds	744 seconds

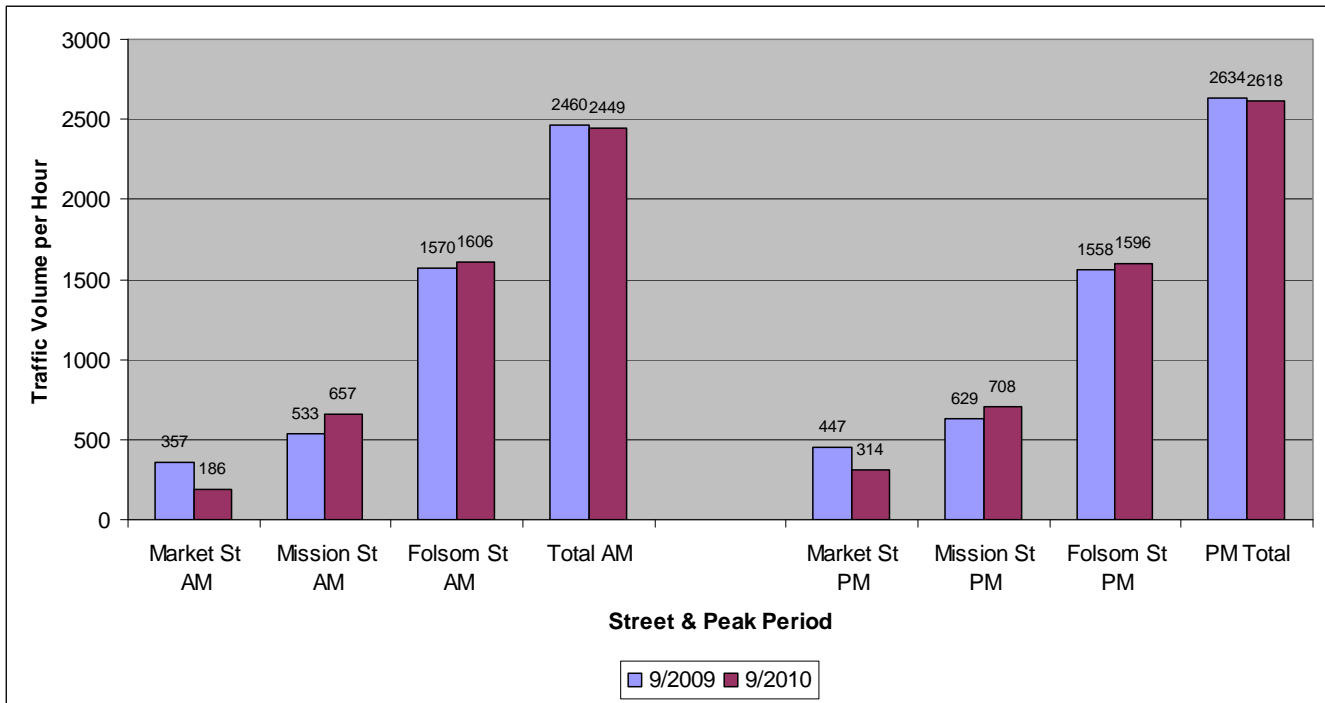


Figure 5
Before-and-After Traffic Volumes, Eastbound Market Street, West of 8th Street

Table for Figure 5

STREET AND TIME	9/2009 VOLUME	9/2010 VOLUME
Market AM	357	186
Market PM	447	314
Mission AM	533	657
Mission PM	629	708
Folsom AM	1570	1606
Folsom PM	1558	1596
Total AM	2460	2449
Total PM	2634	2618

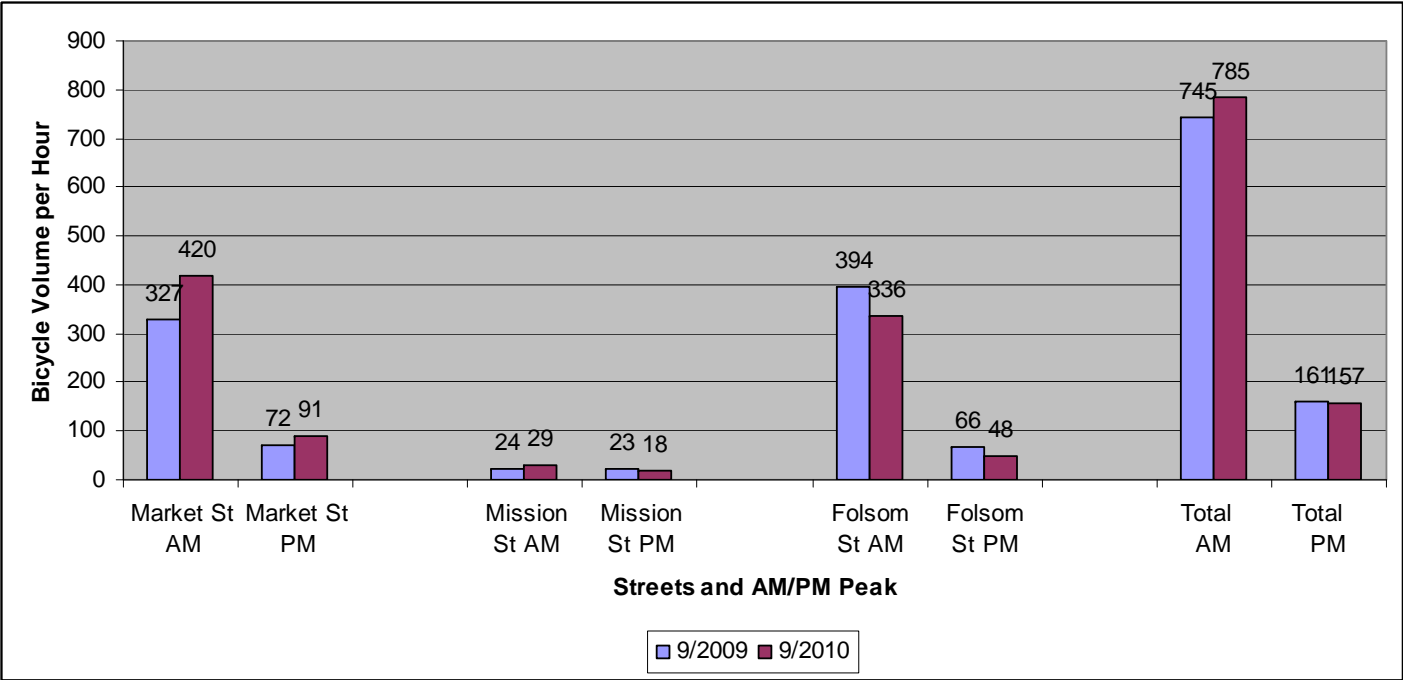


Figure 6
Before-and-After Bicycle Volumes, Eastbound Market Street, West of 8th Street

Table for Figure 6

STREET AND TIME	9/2009 VOLUME	9/2010 VOLUME
Market AM	327	420
Market PM	72	91
Mission AM	24	29
Mission PM	23	18
Folsom AM	394	336
Folsom PM	66	48
Total AM	745	785
Total PM	161	157

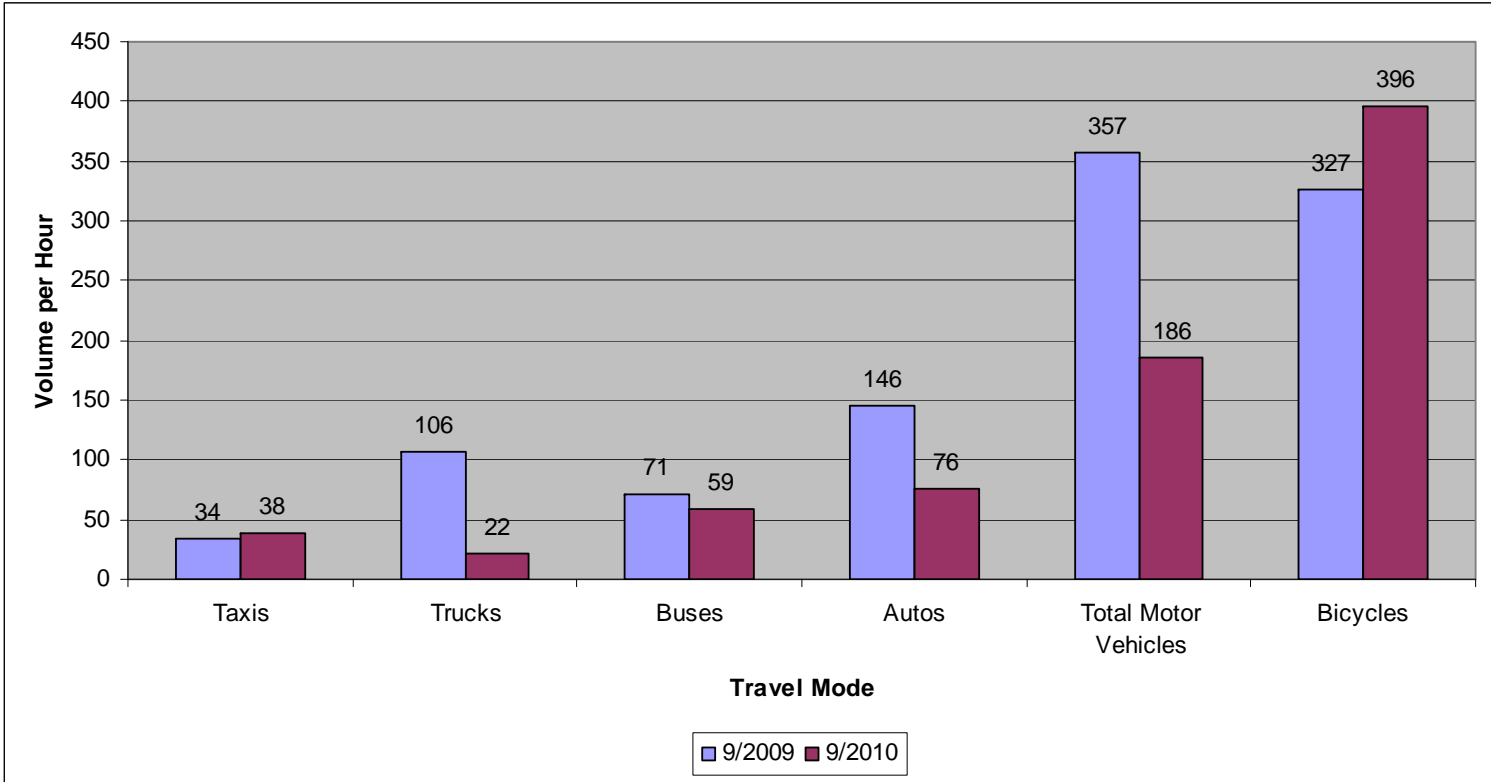


Figure 7
Before-and-After AM Peak Eastbound Market Street Volumes by Mode, West of 8th Street

Table for Figure 7

DATE	TAXIS	TRUCKS	BUSES	AUTOS	TOTAL VEHICLES	BICYCLES
9/2009	34	106	71	146	357	327
9/2010	38	22	59	76	186	396

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (“SFMTA”) has received a request, or identified a need for traffic modifications as follows:

- A. RESCIND – TRANSIT AND TAXIS ONLY AT ALL TIMES
ESTABLISH – TRANSIT, TAXIS AND TRUCKS ONLY AT ALL TIMES – Eastbound Market Street, left lane, between 11th and 10th streets.
- B. ESTABLISH – RIGHT TURN ONLY EXCEPT TRANSIT, TAXIS, TRUCKS AND BICYCLES AT ALL TIMES – Eastbound Market Street at 6th Street.

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; and

WHEREAS, The Planning Department has determined that making the existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations on eastbound Market Street at 10th and 6th streets permanent is Categorically Exempt from Environmental Review under California Environmental Quality Act Guidelines Section 15301 (c) or Class I which provides for the exemption from environmental review of minor alternations to existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities where no more than a negligible increase in the use of the street will result; and,

WHEREAS, Said CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by this reference; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors approves making the existing Required Right Turns pilot project on eastbound Market Street permanent including making the existing Right Turn Only Except Transit, Taxis, Trucks and Bicycles regulations on eastbound Market Street at 10th and 6th streets permanent.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving the Transit Impact Development Fee (TIDF) Update Report (the “Report”) and authorizing the Executive Director/CEO to submit the Report and related recommendations to the Board of Supervisors in accordance with Sections 411.5 and 421.7 of the San Francisco Planning Code.

SUMMARY:

- The SFMTA engaged a team of consultants to conduct three interrelated nexus studies. One of these studies is to support a policy initiative to replace the automobile Level-of-Service (LOS) standard for measuring the transportation-related environmental impacts of new development under the California Environmental Quality Act with an automobile trip generation methodology. The remaining two studies are to support the imposition and/or continuation of certain fees on the development of real property in San Francisco and to meet the requirements of Sections 411.5 and 421.7 of the Planning Code. These include (1) the TIDF Study and (2) a study supporting a new proposed fee on developments to finance bicycle and pedestrian improvements.
- Section 411.5 of the Planning Code provides that “Every five years ... the Director of the MTA shall prepare a report for the MTA Board and the Board of Supervisors with recommendations regarding whether the TIDF for each economic activity category should be increased, decreased, or remain the same.... In making such recommendations, the Director ... shall update the information and estimates that were used ... to calculate the base service standard fee rates”
- Furthermore, Section 421.7 of the Planning Code calls for “a nexus study establishing the impact of new residential development and new parking facilities on the City’s transportation infrastructure ... and, if justified, to impose impact fees on residential development and projects containing parking facilities.”
- The consultants have completed the TIDF Report and incorporated analysis to support new application of the fee to residential development and parking facilities.
- Staff recommends that the SFMTA Board of Directors approve the Report and approve recommendations to change the TIDF schedule of rates, extend the TIDF to new residential development and establish discounted rates for development projects that restrict parking and that the Board of Directors authorize transmittal of the Report and related recommendations to the Board of Supervisors for approval.

ENCLOSURES:

1. SFMTA Board Resolution
2. TIDF Nexus Study Update

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION RETURNED TO: Sonali Bose

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

This item requests approval of the Transit Impact Development Fee (TIDF) Update Report (“the Report”) and authorization for the SFMTA Executive Director/CEO to submit it and recommendations to the Board of Supervisors in accordance with Sections 411.5 and 421.7 of the San Francisco Planning Code.

GOAL

The recommended revisions to the TIDF will help further the following goals and objectives in the SFMTA Strategic Plan:

Goal 2 - System Performance: To get customers where they want to go, when they want to be there.

Objective 2.2 Ensure efficient transit connectivity and span of service.

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

Background

The TIDF was originally established in 1981, when the Board of Supervisors enacted San Francisco Administrative Code Chapter 38 (now Section 411 et seq. of the SF Planning Code). The fee was initially set at \$5.00 per square foot of new office development in downtown San Francisco to mitigate the impact of such development on the City’s public transit services and to allow the San Francisco Municipal Railway (MUNI) to support transit service as new office development projects were built in the downtown commercial district of the City.

In 2004, the TIDF ordinance was substantially revised and expanded to cover all new non-residential development throughout the City. This update was based on a 2000 nexus study that was further revised in 2004. The TIDF rates are adjusted every two years for inflation using the Consumer Price Index for All Urban Consumers in the greater San Francisco Bay Area and currently range from \$9.07 to \$11.34 per square foot. The next adjustment will be on July 1, 2011. Since the fee’s creation in 1981 through FY 2010, \$100.4 million in base fees has been collected or an average of \$3.5 million per year. For the last five fiscal years, ending in FY 2010, the average collected TIDF base fee was \$2.0 million.

The 2004 ordinance requires that the information and calculations used in setting the rates be updated every five years and that the SFMTA Executive Director prepare a report for the SFMTA Board of Directors and the Board of Supervisors with recommendations as to whether the TIDF should be increased, decreased, or remain the same.

In April, 2008, the Board of Supervisors added Section 326.8 (now Section 421.7) to the San Francisco Planning Code. This section authorized the formation of a committee, consisting of representatives

from several City agencies including the San Francisco County Transportation Authority (SFCTA) to conduct “a nexus study establishing the impact of new residential development and new parking facilities on the City’s transportation infrastructure ... and, if justified, to impose impact fees on residential development and projects containing parking facilities.” The Report reflects this policy direction.

More recently, the Board of Supervisors passed legislation effective July 1, 2010 which, among other things, centralizes the collection of development impact fees, including TIDF, at the Department of Building Inspection, specifies that development impact fees are due and payable prior to the issuance of the first building permit, and consolidates sections of the SF Planning and Administrative Codes governing development impact fees, including the Transit Impact Development Fee, in Article 4 of the Planning Code.

To comply with the requirements of Sections 411.5 and 421.7 and to support the above described policy initiative, the SFMTA and the City Attorney’s Office, with input from an advisory committee consisting of representatives of the SFCTA, the Mayor’s Office of Economic and Workforce Development, and the Planning Department, engaged a team of consultants to conduct the nexus studies.

Data Sources

Table 1 summarizes the data sources used to calculate the maximum justified TIDF rates or “base service standard” rates in the previous and current TIDF update. It should be noted that the steps in the calculation of such rates in the current and previous analysis are the same; what differs is the source of the trip generation rates and the date of the input data.

Table 1: TIDF Update Data Sources

	Existing	2011 Update
Input Data: ♦ Fiscal ♦ Revenue Service Hours ♦ Land Use	FY 2002-03	Update fiscal and revenue service hour data to most recent fiscal year available from the National Transit Database (FY 2008-09) (1). Update base year land use data to 2009 based on SF Planning Dept. estimates.
Trip Generation Rates	SF Planning Dept. & ITE (2)	Used only SF Planning Dept. rates for greater consistency with City-specific planning studies
Land Use Sub- Categories	No sub-categories	Sub-categories added for a more detailed relationship between type of new development and amount of fee
Residential Land Use Category	Residential not included	Residential included
(1) For (a) capital costs, (b) capital funding, (c) cost inflation, and (d) interest earned on invested funds used average amounts for fiscal year noted and four prior fiscal years.		
(2) Institute for Transportation Engineers.		
Sources: Cambridge Systematics; Urban Economics.		

Table 2A identifies the six Economic Activity Categories (EAC) that are currently used to differentiate the TIDF charges to new developments to reflect the different level of transit activity generated by those developments.

Table 2A: Current Economic Activity Category (EAC)

Economic Activity Category (EAC)
Cultural/Institution/Education
Management, Information and Professional Services
Medical and Health Services
Production/Distribution/Repair
Retail/Entertainment
Visitor Services

As illustrated in Table 2B, the Cultural/Institution/Education and Retail/Entertainment EACs have been separated into sub-categories to reflect significant variations in transit trips generated by different uses within these categories.

Table 2B: Revised Sub-Economic Activity Criteria for Cultural/Institution/Education and Retail/Entertainment EACs

Economic Activity Categories (EACs) and Sub-EACs
Cultural/Institution/Education
Day Care/Community Center
Post-Secondary School
Museum
Other Institutional (1)
Retail/Entertainment
Supermarket
Quality Sit-Down Restaurant
Fast Food Restaurant
Restaurant – Composite
Athletic Clubs
Cineplex/Theaters
Other Retail/General Retail (1)

(1) “Other...” sub-categories are included for developments that do not fall under one of the listed sub-categories.

TIDF Recommendations

The TIDF Nexus Study update has been completed (Attachment 2). Based on that study and its findings, SFMTA staff recommends six changes to the current TIDF as outlined below:

Recommendation 1: Apply the TIDF to new residential development.

The recommendation to add a Residential Economic Activity Category to the TIDF Schedule is responsive to the requirement in Section 421.7 of the Planning Code calling for a “nexus study establishing the impact of new residential development and new parking facilities ... on the City's transportation infrastructure ...and, if justified, to impose impact fees on residential development and ... parking facilities.” Charging the TIDF to residential development mirrors the changing pattern of

new development in the City which has seen a significant growth in residential developments. Staff does not propose to apply the TIDF to remodeling projects for existing housing units. Rather, we propose applying the TIDF to new units 1,000 square feet or greater.

Recommendation 2: Review the exemptions

Review the exemptions in the exiting TIDF to determine which are required by law and which can be removed from the list of exempted developments in accordance with the Transit First Policy.

The SFMTA will make recommendations for the Board of Supervisors approval if any exemptions should be removed from the existing TIDF legislation.

Recommendation 3: Revise the fees

Maximum Justified Fees

The maximum justified fees based on the nexus study are summarized in Table 3 comparing the maximum justified fee in the prior study to the maximum justified fee in the current update.

Table 3: Maximum Justified TIDF

Economic Activity Categories (EACs) and Sub-EACs	Existing (per sq. ft.)	2011 Update (per sq. ft.)	Change (per sq. ft.)
Cultural/Institution/Education	\$51.25	NA	NA
Day Care/Community Center	\$51.25	\$ 76.71	\$25.46
Post-Secondary School	\$51.25	\$54.01	\$2.76
Museum	\$51.25	\$17.20	(\$34.05)
Other Institutional (1)	\$51.25	\$32.68	(\$18.57)
Management, Information and Prof. Services	\$18.30	\$18.58	\$0.28
Medical and Health Services	\$28.96	\$31.30	\$2.34
Production/Distribution/Repair	\$11.63	\$9.98	(\$1.65)
Retail/Entertainment	\$202.10	NA	NA
Supermarket	\$202.10	\$180.26	(\$21.84)
Quality Sit-Down Restaurant	\$202.10	\$122.12	(\$79.98)
Fast Food Restaurant	\$202.10	\$854.50	\$652.40
Restaurant – Composite	\$202.10	\$366.36	\$164.26
Athletic Clubs	\$202.10	\$35.43	(\$166.67)
Cineplex/Theaters	\$202.10	\$31.30	(\$170.80)
Other Retail/General Retail (1)	\$202.10	\$92.19	(\$109.91)
Visitor Services	\$16.11	\$18.58	\$2.47
Residential			
2+ Bedrooms	\$0	\$9.08	\$9.08
1 Bedroom/Studio	\$0	\$7.83	\$7.83
Senior Housing	\$0	\$5.21	\$5.21
Other Residential (1)	\$0	\$8.57	\$8.57

(2) “Other...” sub-categories are included for developments that do not fall under one of the listed sub-categories. The TIDF rate for “Other...” represents the average for the major economic activity category.

Recommended Fees

Table 4, Column D includes a recommended fee by EAC with Residential development included. The proposed fees for the nonresidential EACs in Column D are based on modest increases to existing fee levels (\$1.00 or \$4.00 per square foot) to reflect the need for additional funds to address the growing transit service needs.

A fee increase of \$1.00 is proposed for EACs where the 2011 maximum justified fee is between \$1.00 and \$10.00 higher than the current adopted fee. A fee increase of \$2.00 is proposed for EACs where the 2011 maximum justified fee is between \$11.00 and \$50.00 higher than the current adopted fee. A fee increase of \$3.00 is proposed for EACs where the 2011 maximum justified fee is \$51.00 and \$100.00 higher than the current adopted fee. A fee increase of \$4.00 is proposed for EACs where the 2011 maximum justified fee is \$101.00 or more than the current adopted fee.

Table 4, Column C includes the recommended fee by EAC that would generate equivalent revenues if the Board of Supervisors were not to approve extension of the TIDF to residential development. The proposed fees for the residential EACs in Column D in Table 4 are set so that residential development is subject to the same burden to fund transit as nonresidential development (based on the proposed fees as a percent of the maximum justified fees) given the trips generated by residential developments.

Table 4: Proposed TIDF Schedule and Alternatives

Economic Activity Categories EACs and Sub-EACs	A Maximum Justified Fee Allowed 2011 Update (per sq. ft.)	B Current TIDF (per sq. ft.)	C Recommended TIDF Without the Inclusion of Residential Development (per sq. ft.)	D Recommended TIDF With the Inclusion of Residential Development per (sq. ft.)
Cultural/Institution/Education		\$11.34	Sub-EACs below	Sub-EACs below
Day Care/Community Center	\$76.71	\$11.34	\$17.64	\$14.34
Post-Secondary School	\$54.01	\$11.34	\$16.41	\$13.34
Museum	\$17.20	\$11.34	\$15.18	\$12.34
Other Institutional (3)	\$32.68	\$11.34	\$16.41	\$13.34
Management, Information and Professional Services	\$18.58	\$11.34	\$15.18	\$12.34
Medical and Health Services	\$31.30	\$11.34	\$16.41	\$13.34
Production/Distribution/Repair	\$9.98	\$9.07	\$9.07	\$9.07
Retail/Entertainment		\$11.34	Sub-EACs below	Sub-EACs below
Supermarket	\$180.26	\$11.34	\$18.87	\$15.34
Quality Sit-Down Restaurant	\$122.12	\$11.34	\$18.87	\$15.34
Fast Food Restaurant	\$854.50	\$11.34	\$18.87	\$15.34
Restaurant – Composite	\$366.36	\$11.34	\$18.87	\$15.34
Athletic Clubs	\$35.43	\$11.34	\$16.41	\$13.34
Cineplex/Theaters	\$31.30	\$11.34	\$16.41	\$13.34
Other Retail/General Retail (3)	\$92.19	\$11.34	\$17.64	\$14.34
Visitor Services	\$18.58	\$9.07	\$12.39	\$10.07
Residential (1)				
2+ Bedrooms	\$9.08	\$0.00	\$0.00	\$4.81
1 Bedroom/Studio	\$7.83	\$0.00	\$0.00	\$4.14
Senior Housing	\$5.21	\$0.00	\$0.00	\$2.76
Other Residential (3)	\$8.57	\$0.00	\$0.00	\$4.54

- (1) Proposed TIDF rates for the Residential sub-categories (Column D) are discounted from maximum justified rates based on the average discount (53%) of revised non-residential rates (Column D), as weighted by the amount of employment projected by category, 2010-2030. The residential discount of 53% is based on the average discount for all non-residential categories.
- (2) Non-residential TIDF rates have to be increased by 23% in Column C compared to Column D to generate same total revenue under this option, i.e., without the Residential EAC and sub-categories, as the option in Column D, i. e. with Residential EAC and sub-categories.
- (3) “Other...” sub-categories are included for developments that do not fall under one of the listed sub-categories. The TIDF rate for “Other...” represents the average for the major category.

Recommendation 4: Discount the TIDF rates for new development projects that restrict parking.

The proposed discounting of TIDF rates for development projects that choose to restrict parking supply is shown below in Table 5. Different parking discount rates are recommended for projects located in areas with minimum parking requirements and for projects located in areas with maximum parking requirements. The former typically represents areas of the city that have not had a recent zoning update. The latter typically represents areas with recently plans adopted within the past 15 years such as Downtown, Eastern Neighborhoods, Market and Octavia, Mission Bay, and Rincon Hill.

Table 5: TIDF Discount Based On Parking Provided By Development Project

A. For Development Projects In Zoning Districts With MINIMUM PARKING Requirements (No Maximum Specified)

DISCOUNT	No Parking	25% of Min.	50% of Min.	75% of Min.	100% of Min.	Above Min.
TIDF Discount	50%	40%	30%	20%	10%	0%

¹ Parking levels below 100 percent of minimum would require a zoning variance.

B. For Development Projects In Zoning Districts With MAXIMUM PARKING Requirements (No Minimum Specified)

DISCOUNT	No Parking	25% of Max.	50% of Max.	75% of Max.	100% of Max.	Above Max.
TIDF Discount	40%	30%	20%	10%	0%	0%

¹ Parking levels above 100 percent of maximum would require a zoning variance.

The discounts shown in Table 5A and 5B reflect the following considerations:

- Discounts increase as a development project further restricts parking below either the minimum or maximum required
- No development project is granted a discount higher than 50 percent even if no parking is supplied because there will be a need for increased transit service regardless of the level of automobile trip generation
- Discounts are greater for development projects in areas with minimum as opposed to maximum parking requirements because of the additional effort required to obtain a variance to restrict parking below the minimum required level

Recommendation 5: Make the following changes to the appropriate provisions of the Planning Code to clarify certain provisions of the existing legislation and improve the application and administration of the TIDF:

- Clarify that the prior use credit apply only to uses active for at least two (2) of the last five (5) years before submittal of a building permit application;
- Add provisions to ensure the application of the TIDF regardless of entitlements and approvals given by any City or public agency;
- Clarify that TIDF applies to temporary as well as permanent uses;
- Clarify that the prior versions of the ordinance do not apply in the case of permits issued prior to the recent legislation effective July 1, 2010 when development modifications are sought after that date; and
- Require that public hearings on future TIDF Nexus Study updates, studies, and recommendations be held before the SFMTA Board of Directors

Recommendation 6: Develop an administrative appeals process for use prior to the formal appeals process before the Board of Appeals to allow a two-step appeals process

It is in the best interest of the SFMTA and the development community to work together towards a resolution of TIDF issues prior to embarking on a formal appeals process through the Board of Appeals (Planning Code 404(b)) as there may be several two-way discussions required around trip generation, development type, etc. to finalize the fee amount.

As mentioned previously, the SFMTA will develop administrative appeals process that will include the guidelines for handling the above cases for SFMTA Board approval within 60 days of the approval of the Report by the SFMTA Board of Directors and Board of Supervisors.

To support the community outreach efforts on the proposed TIDF modifications, the SFMTA discussed the Nexus Study to expand the TIDF to potentially include residential construction and nonprofit organizations in its Citizens' Advisory Council Finance and Administration Committee meeting on Wednesday, July 21, 2010.

Pursuant to Charter Section 16.112 and the Rules of Order of the SFMTA Board of Directors, advertisements were placed in the City's official newspaper for a five-day period beginning February 9th to provide notice that the Board of Directors will hold a public hearing on March 1, 2011 to review proposed recommendations by the San Francisco Municipal Transportation Agency (SFMTA) Executive Director/Chief Executive Officer to the SFMTA Board of Directors and the San Francisco Board Of Supervisors regarding changes to the Transit Impact Development Fee (TIDF), including possible fee increases.

Other Nexus Studies

In addition to the TIDF update, two other nexus studies are underway:

PAGE 9

The second study aims to determine the impact of all new development, whether residential or commercial, on the City’s bicycle and pedestrian modes of transportation in the City. This study is anticipated to be completed in the next few weeks, at which time a new Bicycle Impact Development

Fee (BIDF) and Pedestrian Impact Development Fee (PIDF) will be presented to the SFMTA Board of Directors and the Board of Supervisors for approval.

The third study is designed to support the policy initiative to replace the automobile Level-of-Service (LOS) standard for measuring the transportation-related environmental impact of new developments under the California Environmental Quality Act (CEQA). A new automobile trip mitigation fee (ATMF) to fund facilities and services that, if constructed, would help prevent significant cumulative transportation-related environmental impacts of new developments. This study, once completed in the summer of 2011, will require significant outreach efforts as well as a full environmental and feasibility analyses before the SFMTA Board of Directors, the Planning Commission, the SFCTA Commission and the Board of Supervisors can take action.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

Adoption of the proposed TIDF rate recommendations may increase the annual average TIDF revenues by two to five million dollars, subject to new developments moving forward, growth projections for the City economy and population being met, and new developments being pursued fully.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this calendar item.

RECOMMENDATION

SFMTA staff recommends that the SFMTA Board of Directors approves the Transit Impact Development Fee (TIDF) Update Report and authorize the Executive Director/CEO to submit the Report and related recommendations to the Board of Supervisors for approval in accordance with Sections 411.5 and 421.7 of the San Francisco Planning Code.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The original Transit Impact Development Fee (TIDF) ordinance as enacted by the San Francisco Board of Supervisors in 1981 imposed an impact fee on new office development in Downtown San Francisco to mitigate the impact of such development on the City's public transit system; and

WHEREAS, Section 411.5 of the San Francisco Planning Code requires that "Every five years ... the Director of the MTA shall prepare a report for the MTA Board and the Board of Supervisors with recommendations regarding whether the TIDF for each economic activity category should be increased, decreased, or remain the same.... In making such recommendations, the Director ... shall update the information and estimates that were used ... to calculate the base service standard fee rates;" and

WHEREAS, Section 421.7 of the San Francisco Planning Code calls for a nexus study to determine the impact of new residential development and new parking facilities on the City's transportation infrastructure and "make policy and/or program recommendations to the Board of Supervisors on the most appropriate mechanisms for funding new transportation infrastructures and services, including but not limited to new residential transit impact fees and new parking fees;" and

WHEREAS, The SFMTA, working with an advisory committee composed of representatives from various San Francisco City departments and the San Francisco County Transportation Authority, engaged a team of consultants to conduct nexus studies to meet the requirements of Sections 411.5 and 421.7; and

WHEREAS, The TIDF Update report has been completed and incorporates a nexus analysis for an impact fee on new residential development and parking facilities, expands the economic activity categories, and allows for a discounting of the TIDF rates based on the amount of parking provided compared to the zoning requirement; and

WHEREAS, The Executive Director/CEO has reviewed the TIDF Update report and based on that report recommends revisions to the TIDF schedule of rates, extending the TIDF to new residential development, review of the existing exemptions from the TIDF, establishing an administrative appeals process for use prior to the formal appeals process and establishing discounted TIDF rates for development projects that restrict parking; and

WHEREAS, The Executive Director/CEO also recommends amendments to the Planning Code provisions governing the TIDF in order to clarify provisions of the existing TIDF legislation and improve administration of the TIDF as follows: (1) Clarify that the prior use credit apply only to uses active for at least two of the last five years before submittal of a building permit application; (2) Add provisions to ensure the application of the TIDF regardless of entitlements and approvals given by any City or public agency; (3) Clarify that TIDF applies to temporary as well as permanent use; (4) Clarify that the prior versions of the ordinance do not apply in the case of permits issued prior to the recent legislation effective July 1, 2010 when development modifications are sought after that date; and (5)

Require that public hearings on future TIDF Nexus Study updates, studies, and recommendations be held before the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves the Transit Impact Development Fee Update Report and the Executive Director/CEO's recommendations to: (1) apply the TIDF to new residential development; (2) review the existing exemptions from the TIDF; (3) revise the TIDF fee schedule; (4) discount the TIDF rates for new development projects that restrict parking, (5) amend the Planning Code to clarify provisions of the existing TIDF legislation and improve administration of the TIDF; and (6) develop an administrative appeals process for use prior to the formal appeals process before the Board of Appeals; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to submit the TIDF Update Report and the Executive Director/CEO's specific related recommendations to the Board of Supervisors in accordance with Sections 411.5 and 421.7 of the San Francisco Planning Code.

I hereby certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Attachment 2

TIDF Nexus Study Update Report

San Francisco Transit Impact Development Fee Update

final draft report

prepared for

City and County of San Francisco

prepared by

Cambridge Systematics, Inc.

with

Robert D. Spencer (Urban Economics)

final draft report

San Francisco Transit Impact Development Fee Update

prepared for

City and County of San Francisco

prepared by

Cambridge Systematics, Inc.
555 12th Street, Suite 1600
Oakland, CA 94607

with

Robert D. Spencer (Urban Economics)
1135 Clarendon Crescent
Oakland, CA 94610

date

February 2011

Table of Contents

1.0 Introduction	1-1
2.0 Maximum Justified (Base Service Standard) Rates	2-1
3.0 Discount for Reduced Parking	3-1
A. Appendix A: Trip Generation Rates	A-1
B. Appendix B: SF CHAMP Regression Analysis	B-1
C. Appendix C: Economic Activity Category Definitions	C-1
D. Appendix D: Net Present Value Factor	i

List of Tables

Table 2.1	Net Annual Cost Per Revenue Service Hour	2-1
Table 2.2	2009 Trip Generation	2-3
Table 2.3	Net Annual Cost Per Trip	2-4
Table 2.4	Base Service Level Standard	2-4
Table 3.1	TIDF Discount Based on Parking Provided by Development Project	3-2
Table A.1	SF CHAMP-Derived Trip Generation Rates	A-3
Table A.2	San Francisco Planning Department Trip Generation Rates for Office, Retail, Visitor, and Industrial Categories	A-4
Table A.3	Source of Composite Trip Generation Rates for Residential, Medical and Health Services, and Cultural/Institution/Education Categories	A-5
Table A.4	Comparison of Motorized Trip Generation Rates for Economic Activity Categories <i>Motorized Person-Trips Per Dwelling Unit or 1,000 sq. ft.</i>	A-6
Table A.5	TIDF Trip Generation Rates by Economic Activity Category	A-7
Table A.6	Residential Subcategory Trip Generation Rates	A-8
Table A.7	Cultural/Institution/Education Subcategory Trip Generation Rates	A-9
Table A.8	Retail/Entertainment Subcategory Trip Generation Rates	A-9
Table A.9	TIDF Motorized Trip Generation Rates	A-10
Table B.1	SF CHAMP-Derived Trip Generation Rates	B-2
Table D.1	Inflation and Interest Rates	i
Table D.2	Net Present Value Factor	ii

1.0 Introduction

Section 411 of the Planning Code of the City and County of San Francisco (the Code) authorizes the City to impose a Transit Impact Development Fee (TIDF) on new development. The Board of Supervisors sets TIDF rates for six nonresidential economic activity categories up to a maximum level. This maximum level is identified in Section 411 as the “base service standard”.

Section 421.7 (formerly Section 326.8) of the Code approved in April 2008 authorizes a nexus study to determine if an impact fee is also justified (1) for residential development, and (2) for variations in parking supply associated with development projects. This update integrates residential development into the TIDF by adding it as a seventh economic activity category. This update also integrates parking supply into the TIDF by proposing discounted rates for development projects that restrict parking.

2.0 Maximum Justified (Base Service Standard) Rates

As required by Section 411.5 of the Code, this report updates the maximum justified TIDF rates by economic activity category based on the most recent available data.

This update is based on the same methodology used to calculate the current maximum justified rates and is presented in the following four steps:

1. Calculate the net annual cost per revenue service hour.
2. Calculate trip generation.
3. Calculate the net annual cost per trip.
4. Calculate the maximum justified (base service standard) rate by economic activity category.

We calculated net annual cost per revenue service hour based on fiscal data for the San Francisco Municipal Transportation Agency (SFMTA). The changes incorporated into this update reflect use of the most recent available data which is for fiscal year 2008-2009. The updated net annual cost per revenue service hour is presented in Table 2.1.

Table 2.1 Net Annual Cost Per Revenue Service Hour

	Formula	Updated Value	Source	Justification
A. Calculate Total Annual Costs				
Annual Operating Costs	a	\$610,493,175	National Transit Database	Most recently reported data (FY 2009)
Average Annual Capital Costs ^a	b	\$112,389,896	National Transit Database	Most recently reported data (FY 2005-FY 2009 average)
Total Annual Costs	c = a+b	\$722,883,071	Calculated	Revised result
B. Calculate Net Annual Costs				
Total Annual Costs	c	\$722,883,071	Calculated	Revised result
Non-Vehicle Maintenance	d	(\$41,159,600)	National Transit Database	Most recently reported data (FY 2009)
General Administration	e	(\$162,802,500)	National Transit Database	Most recently reported data (FY 2009)

Table 2.1 Net Annual Cost Per Revenue Service Hour (continued)

	Formula	Updated Value	Source	Justification
B. Calculate Net Annual Costs				
Farebox Revenue	f	(\$152,114,027)	National Transit Database	Most recently reported data (FY 2009)
Federal and State Capital Funds ^a	g	(\$73,158,896)	National Transit Database	Most recently reported data (FY 2005-FY 2009 average)
Total Net Annual Costs	$h = c + d + e + f + g$	\$293,648,048	Calculated	Revised formula inputs
C. Calculate Net Annual Cost Per Revenue Service Hour				
Net Annual Costs	h	\$293,648,048	Calculated	Revised result
Average Daily Revenue Service Hours ^b	i	9,643	National Transit Database	Most recently reported data (FY 2009)
Net Annual Cost Per Daily Revenue Service Hour	$j = h / i$	\$30,452	Calculated	Revised result

^a Capital costs and funding are averaged using data for the most recent five fiscal years because of the relative volatility of the capital program from year to year.

^b Based on annual revenue service hours reported in National Transit Database divided by 365.

Source: National Transit Database (<http://www.ntdprogram.gov>).

We updated estimates of total trip generation based on updated land use data provided by the San Francisco Planning Department and updated trip generation rates. The land use data is updated to 2009 to be consistent with the fiscal data in Table 2.1. Residential development is included to comply with Section 421.7 and enable calculation of residential maximum justified fees (base service standard). Trip generation rates have been revised to more closely reflect current Planning Department guidelines for transportation impact analysis and incorporate more recent data (see Appendices A through C). Total estimated trip generation for 2009 is shown in Table 2.2.

Table 2.2 2009 Trip Generation

Trip Generation	2005	2010	2009 ^a	Sq. Ft. (per emp.)	Building Vacancy Rate	Building Space (ksf)	Trip Rate ^b	Trips
	(dwelling units or employment)							
Formula	a	b	c = a + .80 * (b- a)	d	e	f = c * d / (1 - e) / 1,000	g	h = c * g or h = f * g
Residential	358,644	367,575	365,789	NA	NA	NA	7	2,560,523
Nonresidential								
Management, Information and Professional Services	275,380	293,901	290,197	276	5.0%	84,310	13	1,096,030
Retail/Entertainment	88,710	95,997	94,540	350	5.0%	34,831	65	2,264,015
Production, Distribution, Repair	73,003	64,174	65,940	567	5.0%	39,356	7	275,492
Cultural/Institution/ Education	59,524	58,329	58,568	350	5.0%	21,578	23	496,294
Medical and Health Services	38,027	37,543	37,640	350	5.0%	13,867	22	305,074
Visitor Services	17,350	20,090	19,542	441	5.0%	9,072	13	117,936
Total (emp or ksf)	551,994	570,034	566,427			203,014		
Total (trips)								7,115,364

Note: “emp” refers to employment and “ksf” refers to thousand building square feet of nonresidential space.

^a Estimate for 2009 based on interpolation of 2005 and 2010 estimates. This year is used to be consistent with the fiscal data in Table 2.1.

^b Person-trip rates are for auto and transit and exclude bicycle and pedestrian trips.

Sources: Aksel Olsen, San Francisco Planning Department, Land Use Allocation Model Output (ID 726 December 23, 2009, and ID 926 April 7, 2010); Aksel Olsen, San Francisco Planning Department, memorandum to Elizabeth Sall, San Francisco County Transportation Authority, regarding San Francisco Land Use Allocation, January 27, 2010, Tables 1 and 2, p. 10; Appendix A.

Net annual cost per trip is calculated based on the results from Tables 2.1 and 2.2, and is shown in Table 2.3.

Table 2.3 Net Annual Cost Per Trip

	Formula	Amount	Amount
Net Annual Cost per Revenue Service Hour	a		\$30,452
Average Daily Revenue Service Hours	b	9,643	
2009 Total Annual Trips ^a	c	7,115,364	
Revenue Service Hours Per 1,000 Trips	$d = b/c * 1,000$		1.3552
Net Annual Cost Per Trip ^a	$e = a * d/1,000$		\$41.27

^a Auto and transit trips only. Excludes bicycle and pedestrian trips.

Sources: Tables 2.1 and 2.2.

Finally, the updated maximum justified rates by economic activity category are calculated based on the trip generation rates shown in Table 2.2, the net annual cost per trip shown in Table 2.3, and the net present value factor. Calculation of the net present value factor has been updated based on five-year average inflation and interest rates through FY 2008-2009 (see Appendix D). The updated maximum justified fees (base service standard rates) are shown in Table 2.4.

Table 2.4 Base Service Level Standard

Economic Activity Category	Trip Rate (per unit or ksf)	Net Annual Cost per trip (\$/trip)	Net Annual Cost (per unit or sq. ft.)	Net Present Value Factor ^a	Base Service Standard Rate (per unit)	Square Feet (per unit ^b)	Base Service Standard Rate (per sq. ft.)
Residential							
Formula	a	b	$c = a * b$	d	$e = c * d$	f	$g = e / f$
2+ Bedrooms	8	\$41.27	\$330	34.40	\$11,352	1,250	\$9.08
1 Bedroom/Studio	6	\$41.27	\$248	34.40	\$8,531	1,090	\$7.83
Senior Housing	4	\$41.27	\$165	34.40	\$5,676	1,090	\$5.21
Other Residential	7	\$41.27	\$289	34.40	\$9,942	1,160	\$8.57
Nonresidential							
Formula	a	b	$c = a * b/1,000$	d			$g = c * d$
Management, Information and Professional Services	13	\$41.27	\$0.54	34.40			\$18.58

Table 2.4 Base Service Level Standard (continued)

Economic Activity Category	Trip Rate (per unit or ksf)	Net Annual Cost per trip (\$/trip)	Net Annual Cost (per unit or sq. ft.)	Net Present Value Factor^a	Base Service Standard Rate (per unit)	Square Feet (per unit^b)	Base Service Standard Rate (per sq. ft.)
Formula	a	b	$c = a * b / 1,000$	d			$g = c * d$
Retail/Entertainment							
Supermarket	127	\$41.27	\$5.24	34.40			\$180.26
Quality Sit-Down Restaurant	86	\$41.27	\$3.55	34.40			\$122.12
Fast Food Restaurant	602	\$41.27	\$24.84	34.40			\$854.50
Restaurant – Composite Rate	258	\$41.27	\$10.65	34.40			\$366.36
Athletic Clubs	25	\$41.27	\$1.03	34.40			\$35.43
Cineplex Theaters	22	\$41.27	\$0.91	34.40			\$31.30
Other Retail, Including General Retail	65	\$41.27	\$2.68	34.40			\$92.19
Production, Distribution, Repair	7	\$41.27	\$0.29	34.40			\$9.98
Cultural/Institution/Education							
Day Care/Community Center	54	\$41.27	\$2.23	34.40			\$76.71
Post-Secondary School	38	\$41.27	\$1.57	34.40			\$54.01
Museum	12	\$41.27	\$0.50	34.40			\$17.20
Other Cultural/Institution/ Education	23	\$41.27	\$0.95	34.40			\$32.68
Medical and Health Services	22	\$41.27	\$0.91	34.40			\$31.30
Visitor Services	13	\$41.27	\$0.54	34.40			\$18.58

Note: Values per ksf and per sq. ft. refer to gross building square feet, and “ksf” refers to thousand building square feet of nonresidential space.

^a Net present value factor represents the multiplier for \$1.00 in annual costs to be fully funded over a 45-year period, given interest earnings and inflation.

^b Gross building square feet.

Sources: Seifel Consulting, Inc., San Francisco Eastern Neighborhoods Nexus Study, prepared for the City of San Francisco Planning Department, May 2008; Tables 2, 3, and Appendix D Table D.2.

Unlike the current TIDF rates the updated rates shown in Table 2.4 are divided into subcategories for the retail/entertainment and cultural/institution/education economic activity categories as well as the newly added residential category. The use of subcategory rates in these areas reflects the comparatively greater diversity of trip generation rates among these types of land uses. The trip rates developed for the subcategories reflect current San Francisco Planning Department practice and the most recent available data.

3.0 Discount for Reduced Parking

As mentioned previously, Section 421.7 of the Code requires an analysis of the impact of parking supply on transit infrastructure. This section provides that analysis.

The trip generation rates underlying the TIDF already account for the overall effect of parking, among many other factors. That forecloses the possibility of adding a parking-based surcharge to the overall fee, because such a surcharge would effectively charge for parking twice. But there is also insufficient data to require a lower TIDF rate for development projects that provide reduced parking, because the current state of research has not yet established a quantifiable relationship between lower parking levels and fewer motorized (automobile and transit) trips. Simply shifting trips from automobiles to transit as a result of less parking supply is not a sufficient justification to lower the TIDF because the impact of development on transit is based on the total number of motorized (auto plus transit) trips generated by a development project. As explained in the 2001 TIDF study, "...increases in both auto and transit have a direct impact on transit service. Increases in transit trips tax already crowded routes, while increases in auto trips result in overall increases in congestion, which slows transit vehicles and increases the cost of providing transit service."¹

Cambridge Systematics conducted an extensive review of the research literature regarding the impact of parking supply on travel behavior. The review found very few studies that directly analyzed the impact of restricted parking supply on the number of motorized trips generated by a development project. One recent unpublished study noted that "[d]espite the many arguments against minimum parking requirements, there has been virtually no research conducted to specifically describe... the influence of the availability of a residential off-street parking space on individuals' travel behavior."²

It is challenging to try to quantify the relationship between parking and trip generation because it is difficult to isolate the effect of parking supply from the many other variables that affect trip generation and mode choice (auto, transit, bike, and pedestrian). Although many studies have examined mode choice in response to parking pricing, pricing is not a proxy for parking supply.

¹ Nelson/Nygaard Associates, *Transit Impact Development Fee Analysis*, Technical Memorandum #6 – Calculation of Fee Schedule prepared for the San Francisco Planning Department, April 2001, p. 3.

² Sherman, Alyssa B., *The Effects of Residential Off-Street Parking Availability on Travel Behavior in San Francisco*, presented to the Department of Urban and Regional Planning, San José State University, in partial fulfillment of the Master in Urban Planning degree, May 2010, p. 15.

The unpublished study cited above did conduct a survey in San Francisco of 182 residents to examine the effect of off-street parking availability and parking maximum zoning policies on travel behavior. The survey found that residents without off-street parking or living in areas with parking maximums commute by bicycle more often than those with off-street parking or living in areas without parking maximums. However, the survey was not able to find a correlation between restricted parking and fewer motorized trips overall (auto and transit). Thus, although a precise relationship between parking supply and motorized trip generation has not been documented at this time, the research does suggest the potential for a positive correlation (less parking causes fewer motorized trips). To provide an incentive to shift travel to non-motorized (bike and pedestrian) trips, policymakers may but are not required to adopt a policy lowering the TIDF in areas with restricted parking supply.

A proposed fee discount for development projects that choose to restrict parking supply is shown below in Table 3.1. The parking discount rates are separated between projects located in areas with minimum and maximum parking requirements. The former typically represents areas of the city that have not had a recent zoning update. The latter typically represents areas with recently plans adopted within the past 15 years such as Downtown, Eastern Neighborhoods, Market and Octavia, Mission Bay, and Rincon Hill.

Table 3.1 TIDF Discount Based on Parking Provided by Development Project

A. For Development Projects In Zoning Districts With MINIMUM PARKING Requirements (No Maximum Specified)

	No Parking ^a	25% of Minimum ^a	50% of Minimum ^a	75% of Minimum ^a	100% of Minimum	Above Minimum
TIDF Discount	50%	40%	30%	20%	10%	0%

B. For Development Projects In Zoning Districts With MAXIMUM PARKING Requirements (No Minimum Specified)

	No Parking	25% of Maximum	50% of Maximum	75% of Maximum	100% of Maximum	Above Maximum ^b
TIDF Discount	40%	30%	20%	10%	0%	0%

^a Parking levels below 100 percent of minimum would require a zoning variance.

^b Parking levels above 100 percent of maximum would require a zoning variance.

The discounts shown in Table 3.1 reflect the following considerations:

- Discounts increase as a development project further restricts parking below either the minimum or maximum required level;

- No development project is granted a discount higher than 50 percent even if no parking is supplied because there will be the need for increased transit service regardless of the level of automobile trip generation; and
- Discounts are greater for development projects in areas with minimum as opposed to maximum parking requirements because of the additional effort required to obtain a variance to restrict parking below the minimum required level.

A. Appendix A: Trip Generation Rates

This Appendix presents trip generation rates to be used in the update to the Transit Impact Development Fee (TIDF), including trip generation rates by economic activity category and for subcategories.

A.1 Trip Generation Rates by Economic Activity Category

We developed trip generation rates for each of the seven economic activity categories used by the City to analyze the impact of growth on the transportation system.³

We developed trip rates for economic activity categories and subcategories by evaluating estimates from the following sources:

- The San Francisco Chained Activity Modeling Process 4.0 Travel Demand Model (SF CHAMP model) using a regression analysis to estimate emergent trip rates by economic activity category;
- Trip generation rates compiled by the San Francisco Planning Department's Major Environmental Analysis Division, which are based primarily on traffic impact studies completed in San Francisco; and
- A national compilation of local studies published by the Institute of Transportation Engineers (ITE) in their 8th Edition *Trip Generation* (2008).

The first source, the SF CHAMP model, was not available when the TIDF was last reviewed in 2004. The second source provides the basis for current TIDF trip generation rates. The third source is the most commonly cited national reference source on this topic. This appendix analyzes all three sources to select rates for the TIDF update.

Trip generation rates in this appendix refer to all motorized trips, both automobile and transit trips, and exclude bicycle and pedestrian trips, unless otherwise noted. Trip rates are average daily one-way trip rates and are expressed as person-trips, not vehicle trips. A person-trip is a trip taken by an individual and should not be confused with a vehicle trip.⁴

³ The SF CHAMP travel demand model used by the city to evaluate impacts on the transportation system includes six nonresidential categories covering all employment-related land uses (cultural/institutional, medical, office, retail, lodging, and industrial) and one residential category for all residential land uses.

⁴ A vehicle-trip is a trip taken by a vehicle. For example, an automobile traveling with three occupants represents one vehicle trip and three person-trips. A transit bus traveling with 30 passengers represents one vehicle trip and 30 person-trips.

San Francisco Travel Demand Model Derived Trip Generation Rates

The San Francisco County Transportation Authority has developed the SF CHAMP model to predict the travel patterns of persons traveling to, from, or within San Francisco. This software tool predicts the number of trips made in San Francisco in a given year, including trip origins and destinations, mode of travel (i.e., automobile, transit, pedestrian, bicycle), the duration of travel, and other trip characteristics. The model was developed using surveys of household travel behavior in the San Francisco Bay Area, specifically the Bay Area Travel Survey and the United States Census. Model results are validated (adjusted) based on traffic and transit count data collected by local agencies to ensure accuracy. The SF CHAMP model uses state-of-the-art modeling techniques and has been certified by the Bay Area regional transportation planning agency, the Metropolitan Transportation Commission.⁵

The SF CHAMP model results can be used to predict trip generation rates for each of the economic activity categories that the model uses to describe land use in the city: residential uses; cultural/institutional uses; medical uses; office uses; retail uses; lodging uses; and industrial uses. The SF CHAMP model predicts the number of trips coming from these uses. The number of trips can be related to the number of households associated with residential uses and the number of workers associated with the six nonresidential categories to produce a trip generation rate per household or per worker. This is done through a statistical process known as linear regression. Appendix B describes the regression analysis used to estimate trip generation rates based on the SF CHAMP model in more detail.

Table A.1 shows the trip generation rates by economic activity category estimated by the SF CHAMP model rounded to the nearest whole number, along with motorized (auto and transit) person-trip rates and the share these trips represent as a percent of total person-trips. Total person-trips include bicycle and pedestrian trips. The TIDF relies only on motorized person-trip rates so total trip rates are shown for reference only. All values have been adjusted for vacancy. See Appendix B for more detail.

⁵ The model is an “activity-based” travel demand model that is the most sophisticated type of regional travel demand model available today.

Table A.1 SF CHAMP-Derived Trip Generation Rates

SF CHAMP-Derived Trip Generation Rates	Average Daily Motorized Person-Trips	Total Person Trips	Motorized Mode Share
Residential	9	12	75%
Cultural/Institution/Education	16	19	79%
Medical and Health Services	23	29	79%
Management, Information and Professional Services	10	14	71%
Retail/Entertainment	25	34	74%
Visitor Services	11	17	65%
Production, Distribution, Repair	6	6	100%

Note: Trips per Dwelling Unit or 1,000 sq. ft. is used to measure Motorized Person-Trips and Total Person Trips.

Source: San Francisco County Transportation Authority, regression of SF CHAMP 4.0 model output representing 2010 conditions. Analysis produced August 2010.

San Francisco Planning Department Trip Generation Rates

The Major Environmental Analysis (MEA) Division of the San Francisco Planning Department produces guidelines for project proponents to use in preparing environmental impact analyses that contain trip generation rates for a variety of land uses (SF Guidelines).⁶ These rates are developed primarily through direct counts at specific sites in the city, for example as a result of transportation impact studies prepared as part of the environmental review process for a development project.

A single representative rate was available from the SF Guidelines for four of the seven economic activity categories (management, information and professional services; retail/entertainment; visitor services; and production, distribution, repair). Table A.2 provides these rates. The table also shows the conversion of these rates that are based on total trips (including bicycle and pedestrian trips) to motorized trips (automobile and transit trips only) using mode share estimates. Mode share estimates are drawn from mode shares contained in the SF Guidelines. The range of mode shares provided reflects the geographic variation in mode share in different regions of the city.

⁶ City and County of San Francisco Planning Department, *Traffic Impact Analysis Guidelines*, October 2002, <http://www.sfplanning.org/Modules/ShowDocument.aspx?documentid=6753>.

Table A.2 San Francisco Planning Department Trip Generation Rates for Office, Retail, Visitor, and Industrial Categories

Economic Activity Category	San Francisco Planning Department Land Use	Total Person-Trips per 1,000 Sq. ft.	Motorized Mode Share	Motorized Mode Source (See SF Guidelines)	Motorized Person-Trips per 1,000 sq. ft.
Management, Information and Professional Services	General Office ^a	18	70-95%	Table E-1, E-7	13-17
Retail/Entertainment	General Retail	150	43-82%	Tables E-8, E-10, E-12, E-14, E-16	65-123
Visitor Services	Hotel/ Motel ^b	21	61-92%	Tables E-11, E-13, E-15, E-17	13-19
Production, Distribution, Repair	Industrial	8	85-93%	Tables E-3 to E-6	7

^a The general office rate was selected as most representative of management, information and professional services because the rate is reflective of office uses only within the downtown core (C-3) district where the majority of new development in this economic activity category is expected to occur.

^b The Visitor Services rate of 21 trips per 1,000 square feet was derived from the rate of 7 trips per hotel/motel room listed in the San Francisco Planning Department Guidelines. The trips per room rate was converted into trips per 1,000 sq. ft. using a conversion factor of 330 sq. ft. per room based on 3.50 rooms per employee and 1,156 sq. ft. per employee. The rooms per employee factor is the weighted average of total rooms divided by total employees for the Hotel (category 310) and Motel (category 320) rates from the ITE *Trip Generation Manual*. The square feet per employee factor is from a study conducted for the Southern California Association of Governments.

Sources: City and County of San Francisco Planning Department, *Traffic Impact Analysis Guidelines*, October 2002, Tables C-1, E-1, E-3 to E-8, and E-10 to E-17.

For the three remaining economic activity categories (residential, medical and health services, and cultural/institution/education) no single rate was available in the SF Guidelines to allow direct comparison to the SF CHAMP-derived rates. We developed trip generation rates for these categories by analyzing available rates for more detailed subcategories, as described below.

- **Residential.** For residential land uses, a composite trip generation rate was developed based on a weighted average of rates provided in the SF Guidelines for 1-bedroom/studio units and 2+ bedroom units. Weightings were based on housing stock estimates for 2009 from the U.S. Census Bureau. Person-trip rates were converted to motorized trip rates using the motorized mode share

for residential land uses provided by the SF CHAMP model (see Table A.1). Mode share for residential land uses is not provided by the SF Guidelines.

- **Medical and Health Services.** A composite trip generation rate was developed based on a weighted average of trip generation rates from three recent representative San Francisco projects involving construction of new spaces for medical uses.
- **Cultural/Institution/Education.** A composite trip generation rate was developed based on a weighted average of rates from six recent representative projects, including four museums, a community center, and an academic institution. These studies reflect the types of new development projects most typically occurring within this category.

Table A.3 shows the motorized person-trip rates for these categories.

Table A.3 Source of Composite Trip Generation Rates for Residential, Medical and Health Services, and Cultural/Institution/Education Categories

Category	Source	Motorized Person Trips
Residential	SF Guidelines – weighted average of residential rates for 1-bedroom/studio units and 2-bedrooms or more units	7 per unit
Medical and Health Services	San Francisco Planning Department – weighted average of rates from recent representative projects	22 per 1,000 sq. ft.
Cultural/Institution/ Education	San Francisco Planning Department – weighted average of rates from recent representative projects	23 per 1,000 sq. ft.

Selected TIDF Trip Generation Rates For Economic Activity Categories

To develop the trip generation rate schedule by economic activity category for use in the TIDF program, we compared SF CHAMP model-derived and Planning Department trip generation rates. We also considered average rates based on studies conducted throughout the country and compiled by ITE. Table A.4 presents the comparison, summarizing the rates previously presented and showing comparable rates from ITE.

The ITE source contains data on trip generation rates for 162 individual land uses. For most economic activity categories we could identify an appropriate ITE land use category that could represent the same broad range of land uses reflected by the corresponding economic activity category. ITE did not have an appropriately broad category for the cultural/institutional category so an ITE rate is not shown in Table A.4 for that category.

Overall, the rates presented in Table A.4 show a great deal of consistency among the different sources presented (SF CHAMP, Planning, and ITE). In nearly all cases the Planning Department rates are within plus or minus 30 percent of both the SF CHAMP-derived and ITE rates. These results suggest a high degree of confidence given that ITE studies routinely show standard deviations equal to 50 percent of the mean.⁷

Table A.4 Comparison of Motorized Trip Generation Rates for Economic Activity Categories
Motorized Person-Trips Per Dwelling Unit or 1,000 sq. ft.

Comparison of Motorized Trip Generation Rates for Economic Activity Categories	SF CHAMP-Derived Rates	San Francisco Planning Department Rates	ITE Rates ^a	ITE Land Use Category and Category Number
Residential	9	7	9	Condo/Townhouse – 230
Cultural/Institution/Education	16	23	N/A	
Medical and Health Services	23	22	25	Hospital – 610
Management, Information and Professional Services	10	13-17	13	General Office – 710
Retail/Entertainment	25	65-123	71	Shopping Center – 820
Visitor Services	11	13-19	29	Motel – 320
Production, Distribution, Repair	6	7	8	Light Industrial – 110

^a ITE rates are expressed as vehicle trips. Rates were converted to motorized person-trips using auto occupancy factors by trip purpose derived from the 2009 National Household Transportation Survey. A national rather than local occupancy rate was used to be consistent with the fact that ITE rates are collected from national studies. ITE land use categories are too detailed to provide an overall average rate for the cultural/institution/education category. The rate for visitor services was translated from trips per room to trips per 1,000 square feet using conversion factors described in Table A.2.

Sources: Tables A.1, A.2, and A.3; Institute of Transportation Engineers, *Trip Generation*, 8th Edition, 2008.

⁷ See results for average vehicle trip ends for land use categories (ITE category number in parentheses) such as General Light Industrial (110), Single-Family Detached Housing (210), Hotel (310), Motel (320), General Office Building (710), and Shopping Center (820) in Institute of Transportation Engineers, *Trip Generation*, 8th Edition, 2008.

Given the consistency between these sources, any source could serve as a generally reliable basis for the TIDF trip generation rate schedule. The Planning Department rates are preferred because:

- Planning Department rates tend to represent a midrange between the two other sources (SF CHAMP and ITE) and are within an acceptable margin given the statistical variance found in ITE trip generation rate studies.
- Planning Department rates are based on empirical studies of trip generation from sites throughout the city.
- Use of the Planning Department rates maintains consistency with current practice for transportation impact analysis by the Department.

For three of the economic activity categories (office, retail, lodging) a range of Planning Department rates was provided reflecting variation in motorized mode shares throughout the city. For all three categories, we selected the low end of the range for the TIDF trip generation rate schedule. The low end was selected to align the rates more with the SF CHAMP-derived rates versus the ITE rates because the former is more reflective of local conditions compared to the latter.

The selected TIDF rates by economic activity category are shown in Table A.5.

Table A.5 TIDF Trip Generation Rates by Economic Activity Category

Economic Activity Category	Source	TIDF Trip Generation Rate (Motorized Person-Trips)
Residential	Derived from SF Guidelines	7 per dwelling unit
Cultural/Institution/Education	SF Planning Dept – average of recent projects	23 per 1,000 sq. ft.
Medical and Health Services	SF Planning Dept – average of recent projects	22 per 1,000 sq. ft.
Management, Information and Professional Services	Derived from SF Guidelines	13 per 1,000 sq. ft.
Retail/Entertainment	Derived from SF Guidelines	65 per 1,000 sq. ft.
Visitor Services	Derived from SF Guidelines	13 per 1,000 sq. ft.
Production, Distribution, Repair	Derived from SF Guidelines	7 per 1,000 sq. ft.

Source: Table A.4.

A.2 Trip Generation Rates For Subcategories

The following four economic activity categories have relatively consistent trip generation rates among the types of land uses reflective of development likely to occur in San Francisco and be subject to the TIDF:

- Medical and Health Services;
- Management, Information and Professional Services;
- Visitor Services; and
- Production, Distribution, Repair.

For these categories the average rate for each category shown in Table A.5 is sufficient to provide a generally reliable approximation of the impact of a specific development project. For the other three economic activity categories (residential, cultural/institutional/education, and retail/entertainment) each includes a wide range of trip generation rates among the land uses within the respective category. For these categories the TIDF trip generation rate schedule uses land use subcategories to provide a more tailored approximation of the impact of a specific development project. Subcategory rates for residential and retail reflect land uses listed in the SF Guidelines. Subcategory rates are developed for the cultural/institutional/education category because this category also has a wide variety of land uses and trip generation rates.⁸

Each category also has an “other” subcategory if a development project falls within the general economic activity category but not any of the specific subcategories. The trip generation rate for the “other” subcategory equals the overall average rate for the economic activity category.

Table A.6 presents subcategory rates for residential land use. The rates are drawn from rates for residential land uses included in the SF Guidelines. These were converted to motorized trips using the motorized mode share for the residential category derived from the SF CHAMP model (Table A.1), because no representative mode share was available from the SF Guidelines.

Table A.6 Residential Subcategory Trip Generation Rates

Residential Subcategory	Source	Motorized Person-Trips
2+Bedrooms	SF Guidelines p. C-3	8 per unit
1 Bedroom/Studio	SF Guidelines p. C-3	6 per unit
Senior Housing	SF Guidelines p. C-3	4 per unit
Other Residential	Table A.3	7 per unit

Notes: Rates in the guidelines were converted from person-trips to motorized trips using motorized mode share for residential drawn from SF CHAMP model output (Table A.1).

Table A.7 presents subcategory rates for the cultural/institutional/education land use category. These rates were developed from recent traffic impact studies

⁸ ITE includes over 30 land uses that fall within the cultural/institutional category (Institute of Transportation Engineers, *Trip Generation Manual*, 8th Edition, 2008).

collected by the San Francisco Planning Department (see Table A.5) and from the SF Guidelines.

Table A.8 presents subcategory rates for the retail category. These rates are drawn from rates for retail land uses included the SF Guidelines. Rates were converted to motorized trips using the lower end of the motorized mode share for retail trips available from the SF Guidelines (Table E-11).

Table A.7 Cultural/Institution/Education Subcategory Trip Generation Rates

Cultural/Institution/ Education Subcategory	Source	Motorized Person-Trips
Day Care Center and Community Center	SF Guidelines Table C-1 and Jewish Community Center EIR (1999)	54 per 1,000 sq. ft.
Post-Secondary School	City College Master Plan EIR (2004)	38 per 1,000 sq. ft.
Museum	Average of EIRs from Butterfly Museum (1998), Golden Gate Academy of Sciences Building (2003), Exploratorium (2008), Asian Art Museum (1996)	12 per 1,000 sq. ft.
Other Cultural/Institution/ Education	Composite Rate (Weighted Average)	23 per 1,000 sq. ft.

Notes: The rate for Day Care Center converted to a motorized trip rate using the average mode share of 80 percent for the cultural/institution/education category obtained from the SF CHAMP model.

ITE rates were converted to motorized person-trip rates using the national average automobile occupancy rate of 1.5 for school/day care/religious activity trip purposes (2009 National Household Travel Survey). A national rather than local occupancy rate was used to be consistent with the fact that ITE rates are collected from national studies.

Table A.8 Retail/Entertainment Subcategory Trip Generation Rates

Retail/Entertainment Subcategory	Source	Motorized Person Trips Per 1,000 sq. ft.
Supermarket	SF Guidelines, page C-3	127 per 1,000 sq. ft.
Quality Sit-Down Restaurant	SF Guidelines, page C-3	86 per 1,000 sq. ft.
Fast Food Restaurant	SF Guidelines, page C-3	602 per 1,000 sq. ft.
Restaurant – Composite Rate	SF Guidelines, page C-3	258 per 1,000 sq. ft.
Athletic Clubs	SF Guidelines, page C-3	25 per 1,000 sq. ft.
Cineplex Theaters ^a	SF Guidelines, page C-3	22 per 1,000 sq. ft.
Other Retail/Entertainment, including General Retail	SF Guidelines, page C-3	65 per 1,000 sq. ft.

^a Trip rate of 1.13 per seat converted to trips per 1,000 sq. ft. based on 44 seats per 1,000 sq. ft. trips per seat (see Saturday trip rates for Movie Theater with Matinee, land use category 444), from ITE *Trip Generation*).

Notes: Rates in the guidelines were converted from total person-trips to motorized person trips using the low end of motorized mode shares listed in the SF Guidelines (Table E-11).

A.3 TIDF Trip Generation Rate Schedule

Table A.9 presents a summary trip generation rate schedule for the TIDF showing rates by economic activity category and specific rates for subcategories where applicable. See Appendix C for definitions of the types of development included in each category and subcategory.

Table A.9 TIDF Motorized Trip Generation Rates

Economic Activity Category and Subcategory	TIDF Motorized Person-Trip Generation Rate
Residential	
2+ Bedrooms	8 per dwelling unit
1 Bedroom/Studio	6 per dwelling unit
Senior Housing	4 per dwelling unit
Other Residential	7 per dwelling unit
Cultural/Institution/Education	
Day Care Center/Community Center	54 per 1,000 sq. ft.
Post-Secondary School	38 per 1,000 sq. ft.
Museum	12 per 1,000 sq. ft.
Other Cultural/Institution/Education	23 per 1,000 sq. ft.
Medical and Health Services	22 per 1,000 sq. ft.
Management, Information and Professional Services	13 per 1,000 sq. ft.
Retail/Entertainment	
Supermarket	127 per 1,000 sq. ft.
Quality Sit- Down Restaurant	86 per 1,000 sq. ft.
Fast Food Restaurant	602 per 1,000 sq. ft.
Restaurant – Composite Rate	258 per 1,000 sq. ft.
Athletic Clubs	25 per 1,000 sq. ft.
Cineplex Theaters	22 per 1,000 sq. ft.
Other Retail/Entertainment, including General Retail	65 per 1,000 sq. ft.
Visitor Services	13 per 1,000 sq. ft.
Production, Distribution, Repair	7 per 1,000 sq. ft.

Sources: Tables A.5, A.6, A.7, and A.8.

B. Appendix B: SF CHAMP Regression Analysis

This appendix describes the statistical process used to derive trip generation rates from SF CHAMP model results. The SF CHAMP model produces estimates of trips by economic activity category for each of the 981 traffic analysis zones used by the model to represent the entire city. For each zone the number of auto and transit trips by economic activity category was compared to the amount of employment (for each of the six nonresidential categories) or households (for the residential category) and then analyzed across all zones using linear regression. Linear regression is a widely accepted mathematical model used to estimate the causal relationship between one or more independent variables and one dependent variable. In this case the model estimated the total number of trips generated by a zone based on the number of workers (by economic activity category) and households in that zone. The final regression model was a 0-intercept⁹ with a linear function¹⁰. Results are presented below in Equation 1.

Equation 1:

Automobile + transit trips in zone_(i) =

$$\begin{aligned} & 9.6 * \text{Households}_{(i)} + \\ & 5.7 * \text{Cultural/Institution/Education employment}_{(i)} + \\ & 8.6 * \text{Medical and Health Services employment}_{(i)} + \\ & 2.8 * \text{Management, Information and Professional Services employment}_{(i)} + \\ & 9.2 * \text{Retail/Entertainment employment}_{(i)} + \\ & 5.1 * \text{Visitor Services employment}_{(i)} + \\ & 3.6 * \text{Production, Distribution, Repair employment}_{(i)} \end{aligned}$$

Where: (i) refers to each of the 981 traffic analysis zones that comprise the entire city in the SF CHAMP model.

Source: San Francisco County Transportation Authority, SF CHAMP model, August 2010.

The independent variable for each economic activity category in Equation 1 (9.6 for households, 5.7 for CIE employment, etc.) represents the estimated motorized (auto and transit) person-trip generation rates for that category. Thus, the

⁹ The function was constrained to pass through the origin. This formulation was chosen so that zones with no economic or residential activity would not generate trips.

¹⁰ Alternative formulations were tested with square and cubic powers of the key variables, as well as regressions using the natural log of key variables. None of these alternatives were an improvement in the statistical fit of the linear model.

regression model estimates that households generate about 9.6 motorized person-trips per household, and CIE employment generates 5.7 person-trips per worker, etc.

The degree to which the independent variables of a linear regression model accurately predicts the same result as the model’s underlying data is typically expressed in terms of the R-squared statistic. The R-squared statistic for Equation 1 measures the degree to which the independent variables (the estimated trip rates) predicts the actual number of total trips generated in an individual TAZ based on the employment and households in that TAZ. An R-squared statistic will range from zero to one, where a value of zero indicates that the equation does not match the data at all, and a value of one indicates it a perfect match. The adjusted R-squared term for Equation 1 is 0.92 indicating that the equation predicts 92 percent of the variation in trip generation across TAZs based on the employment and households in each TAZ. The 0.92 R-squared statistic indicates that Equation 1 represents a very strong statistical fit to the underlying data.

The trip rates shown in Equation 1 represent trips per household or worker. The TIDF is levied on new development projects on the basis of dwelling units (both occupied and vacant) and total building square feet (both occupied and vacant). Consequently we converted the trip generation rates estimated by the regression model in Equation 1 to rates per dwelling unit and total building square foot. The conversion factors were developed by the San Francisco Planning Department for transportation impact analysis. The conversion is shown in Table B.1.

Table B.1 SF CHAMP-Derived Trip Generation Rates

Category	Trip Rate (per household or worker)	Employment Density (sq. ft. per worker)	Trip Rate (per household or occupied 1,000 sq. ft.)	Vacancy Rate	Trip Rate (per dwelling unit or total 1,000 sq. ft.)
Residential	9.6	NA	9.6	5.0%	9.1
Cultural/Institution/ Education	5.7	350	16.3	5.0%	15.5
Medical and Health Services	8.6	350	24.6	5.0%	23.4
Management, Information and Professional Services	2.8	276	10.1	5.0%	9.6
Retail/Entertainment	9.2	350	26.3	5.0%	25.0
Visitor Services	5.1	441	11.6	5.0%	11.0
Production, Distribution, Repair	3.6	567	6.3	5.0%	6.0

Sources: Aksel Olsen, San Francisco Planning Department, memorandum to Elizabeth Sall, San Francisco County Transportation Authority regarding San Francisco Land Use Allocation, January 27, 2010, Tables 1 and 2, p. 10; Equation 1 (above).

C. Appendix C: Economic Activity Category Definitions

This appendix provides sources for definitions of the types of development included in each economic activity category and subcategory (most references are to sections of the San Francisco Planning Code):

- Economic activity categories:
 - Residential: Section 401(a)(124);
 - Management, Information and Professional Services: Section 401(a)(74);
 - Retail/Entertainment: Section 401(a)(126);
 - Production, Distribution, and Repair (PDR): Section 401(a)(112);
 - Cultural/Institution/Education: Section 401(a)(29);
 - Medical and Health Services: Section 401(a)(82); and
 - Visitor Services: Section 401(a)(146).
- Residential and Retail/Entertainment subcategories: as determined by the San Francisco Planning Department based on the Department’s Traffic Impact Analysis Guidelines, October 2002, Table C-1, p. C-3.
- Cultural/Institution/Education subcategories:
 - Day Care Center: Section 401(a)(18)/Community Center: Section 401(a)(26);
 - Post-Secondary School: Section 209.3(i); and
 - Museum: as determined by the San Francisco Planning Department.

As explained in the report the Other Residential, Other Retail/Entertainment, and Other Cultural/Institution/Education subcategories are not defined in the planning code. The trip generation rates for these subcategories represent an average rate for the respective economic activity category. These subcategories are intended for development projects not represented by any other subcategory.

D. Appendix D: Net Present Value Factor

This appendix provides the detailed assumptions and methodology used to update the net present value factor used in Table 4. Table D.1 provides the inflation and interest rate assumptions used to calculate the net present value factor. Table D.2 shows the model used to calculate the factor.

Table D.1 Inflation and Interest Rates

Cost Inflation^a

Calendar Year	Index	Annual Rate
2009	224.4	0.72%
2008	222.8	3.15%
2007	216.0	3.25%
2006	209.2	3.21%
2005	202.7	1.96%
2004	198.8	NA
Five-Year Compounded Annual Average		2.45%

Interest Earned^b

Fiscal Year Ending	Index	Annual Rate
2009	120.0	2.57%
2008	117.0	4.30%
2007	112.2	5.19%
2006	106.6	4.20%
2005	102.3	2.33%
2004	100.0	NA
Five-Year Compounded Annual Average		3.71%

^a San Francisco Bay Area Consumer Price Index (1982-84 = 100).

^b Average annual interest earning on City and County of San Francisco fund balances (2004 = 100).

Sources: Association of Bay Area Governments (<http://www.abag.ca.gov/planning/research/cpi>); San Francisco Treasurer's Office (<http://sftreasurer.org/index.aspx?page=16>).

Table D.2 Net Present Value Factor

NPV	Formula	Year 1	Year 2	Year 3	Year 4	Year 43	Year 43	Year 44	Year 45
Beginning Fund Balance ^a	a	34.40	34.65	34.89	35.11	10.47	8.09	5.56	2.87
Interest Earnings ^b	$b = a * 3.52\%$	1.28	1.29	1.29	1.30	0.39	0.30	0.21	0.11
Expenditures ^c	$c = c \text{ (prior yr)} * 2.45\%$	(1.02)	(1.05)	(1.08)	(1.10)	(2.76)	(2.83)	(2.90)	(2.97)
Ending Fund Balance	$d = a + b - c$	34.65	34.89	35.11	35.31	8.09	5.56	2.87	(0.00)
Net Present Value Factor^a		34.40							

Note: This table models the amount necessary to collect in Year 1 such that \$1.00 in expenditures can be sustained for 45 years given inflation and interest earnings. Years 5 through 42 are omitted.

^a Beginning fund balance in Year 1 is solved for to calculate the Net Present Value Factor. The Year 1 value is set such that the Year 45 ending fund balance equals \$0.00. In all other years the beginning fund balance equals the ending fund balance from the prior year.

^b Assumes interest earned on beginning fund balance and all expenditures made at end of year.

^c Expenditures at beginning of Year 1 equals \$1.00 and are inflated assuming all costs represent end of year (inflated) values.