

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: _____

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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. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA S, 2-HOUR LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY – Noe Street, both sides, between Elizabeth and 24th Streets. **PH 5/20/11 Requested by Residents.**
- B. ESTABLISH – TOW-AWAY NO PARKING ANYTIME – Arch Street, west side, from 0 to 50 feet north of Alemany Boulevard. **PH 5/20/11 Requested by Citizens.**
- C. RESCIND – RESIDENTIAL PERMIT PARKING AREA N, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH FRIDAY and ESTABLISH – RESIDENTIAL PERMIT PARKING AREA N, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY – Funston Avenue, both sides, between Fulton Street and Geary Boulevard. **PH 5/20/11 Requested by Residents.**
- D. RESCIND – BUS ZONE – Brannan Street, north side, from 3rd Street to 59 feet westerly. **PH 5/20/11 Requested by Citizen.**
- E. RESCIND - PART TIME TAXI ZONE 7 PM – 4 AM and RESCIND - PART TIME BUS ZONE 4 AM – 7 PM – Folsom Street, south side, from 11th Street to 80 feet easterly. **PH 5/20/11 Requested by SFMTA.**
- F. ESTABLISH - BUS ZONE – Folsom Street, north side, from 11th Street to 80 feet westerly; and Folsom Street, south side, from 11th Street to 80 feet easterly. **PH 5/20/11 Requested by SFMTA.**
- G. ESTABLISH – 25 MILES PER HOUR SPEED LIMIT – Howard Street between The Embarcadero and South Van Ness Avenue; and Folsom Street between 13th Street and The Embarcadero (existing speed limit for both street segments is 30mph). **PH 5/20/11 Requested by SFMTA.**
- H. REVOKE – RIGHT TURN ONLY, EXCEPT MUNI – Howard Street, eastbound, at 11th Street. **PH 5/20/11 Requested by Citizen.**
- I. ESTABLISH – TOW AWAY NO STOPPING ANYTIME – Haight Street, north side, from Ashbury Street to 19 feet westerly (removes 1 general metered parking space at meter #1502). **PH 5/20/11 Requested by SFMTA.**
- J. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA W, 1-HOUR PARKING, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY – 17th Street, south side, between Potrero Avenue and Utah Street. **PH 6/3/11 Requested by Residents.**

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- K. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA W ELIGIBILITY ONLY – 17th Street, north side, between Potrero Avenue and Utah Street. **PH 6/3/11 Requested by Residents.**
- L. RESCIND – RESIDENTIAL PERMIT PARKING AREA T, 4-HOUR PARKING, 8 AM TO 3 PM, MONDAY THROUGH FRIDAY and ESTABLISH – RESIDENTIAL PERMIT PARKING AREA T, 2-HOUR PARKING, 8 AM TO 3 PM, MONDAY THROUGH FRIDAY – Vasquez Avenue, both sides, between Woodside Avenue and Laguna Honda Boulevard. **PH 6/3/11 Requested by Residents.**
- M. RESCIND – PARKING METER AREA 3 (2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) and ESTABLISH – PARKING METER AREA 3 (4-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) – Mission Street (1700 block), east side, between Duboce Avenue and 14th Street. **PH 6/3/11 Requested by SFPark.**
- N. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Mariposa Street, north side, from Indiana Street east property line to Pennsylvania Street. **PH 6/3/11 Requested by SFMTA.**
- O. ESTABLISH – NO U-TURNS – Eastbound Harrison Street at Main Street. **PH 6/3/11 Requested by SFMTA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD PRIVATE 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 – RESIDENTIAL PERMIT PARKING AREA S, 2-HOUR LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY – Noe Street, both sides, between Elizabeth and 24th Streets.
- B. ESTABLISH – TOW-AWAY NO PARKING ANYTIME – Arch Street, west side, from 0 to 50 feet north of Alemany Boulevard.
- C. RESCIND – RESIDENTIAL PERMIT PARKING AREA N, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH FRIDAY and ESTABLISH – RESIDENTIAL PERMIT PARKING AREA N, 2-HOUR LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY – Funston Avenue, both sides, between Fulton Street and Geary Boulevard.
- D. RESCIND – BUS ZONE – Brannan Street, north side, from 3rd Street to 59 feet westerly.
- E. RESCIND - PART TIME TAXI ZONE 7 PM – 4 AM and RESCIND - PART TIME BUS ZONE 4 AM – 7 PM – Folsom Street, south side, from 11th Street to 80 feet easterly.
- F. ESTABLISH - BUS ZONE – Folsom Street, north side, from 11th Street to 80 feet westerly; and Folsom Street, south side, from 11th Street to 80 feet easterly.
- G. ESTABLISH – 25 MILES PER HOUR SPEED LIMIT – Howard Street between The Embarcadero and South Van Ness Avenue; and Folsom Street between 13th Street and The Embarcadero.
- H. REVOKE – RIGHT TURN ONLY, EXCEPT MUNI – Howard Street, eastbound, at 11th Street.
- I. ESTABLISH – TOW AWAY NO STOPPING ANYTIME – Haight Street, north side, from Ashbury Street to 19 feet westerly.
- J. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA W, 1-HOUR PARKING, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY – 17th Street, south side, between Potrero Avenue and Utah Street.
- K. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA W ELIGIBILITY ONLY – 17th Street, north side, between Potrero Avenue and Utah Street.
- L. RESCIND – RESIDENTIAL PERMIT PARKING AREA T, 4-HOUR PARKING, 8 AM TO 3 PM, MONDAY THROUGH FRIDAY and ESTABLISH – RESIDENTIAL PERMIT PARKING AREA T, 2-HOUR PARKING, 8 AM TO 3 PM, MONDAY THROUGH FRIDAY – Vasquez Avenue, both sides, between Woodside Avenue and Laguna Honda Boulevard.
- M. RESCIND – PARKING METER AREA 3 (2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) and ESTABLISH – PARKING METER AREA 3 (4-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) – Mission Street (1700 block), east side, between Duboce Avenue and 14th Street.
- N. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Mariposa Street, north side, from Indiana Street east property line to Pennsylvania Street.
- O. ESTABLISH – NO U-TURNS – Eastbound Harrison Street at Main 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; 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

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Deputy Executive Director

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his designees to execute permits, licenses and other real property agreements that are within the contracting authority amounts granted under Resolution No. 10-008, that include terms and conditions requiring the SFMTA to indemnify property owners, without limitation, subject to review and approval by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

SUMMARY:

- SFMTA intends to execute permits, licenses and other real property agreements for access to privately and/or publicly owned property in order to construct the Central Subway Project and other projects.
- Under Resolution No. 10-008, adopted January 5, 2010, the SFMTA Board delegated to the Executive Director/CEO the authority to enter into contracts and leases having anticipated expenditures up to and including \$500,000, with further authority to re-delegate full contracting authority to the Deputy Executive Director, authority up to \$250,000 to the Chief Construction Officer; and contracting authority up to \$150,000 to the Division Directors.
- For those permits, licenses and other real property agreements that are within the contracting authority amounts granted under Resolution No. 10-008, the resolution would also authorize the Executive Director or his designee(s), to include terms and conditions that require the SFMTA to indemnify property owners, without limitation, subject to review and approval as to form of such agreements by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE:

DIRECTOR OF DIVISION

PREPARING ITEM: _____

FINANCE (IF APPLICABLE): _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION BE RETURNED TO: Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The proposed resolution authorizes the Executive Director/CEO or his designees to execute permits, licenses and other real property agreements for access to privately and/or publicly owned property that include terms and conditions requiring the SFMTA to indemnify property owners, without limitation, subject to review and approval by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

GOAL

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

To facilitate construction of the Central Subway Project and other SFMTA construction projects, numerous permits, licenses and other real property agreements are required for property surveys, geotechnical testing, environmental surveys, groundwater monitoring, grouting, shoring improvements, settlement monitoring, construction staging and construction access. Typically, such permit or license agreements require the City/SFMTA to indemnify the property owner for any damage caused by the City's use of the property under such permit or license agreements. Currently, only the SFMTA Board has the authority to approve unlimited indemnity agreements on behalf of the SFMTA. The proposed resolution would give the Executive Director or his designees the authority to execute permits and licenses that include unlimited indemnifications to property owners, subject to review and approval by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

Under Administrative Code Section 23.26, the Board of Supervisors has authorized the Director of Property to enter into certain short-term or year-to-year leases and include in any such lease an appropriate indemnity agreement for the purpose of providing for the City's occupancy or other use of the property for investigatory and other such purposes, subject to written approval as to form by the City Attorney and written recommendation by the head of the department concerned.

Similarly, under Section 1.24 of the Administrative Code, the Board of Supervisors has authorized the Risk Manager to approve indemnity clauses in agreements between the City and other persons or entities if the Risk Manager determines that: (1) entering into such an agreement either (a) falls within normal business practices or (b) represents a prudent decision in light of all the circumstances; (2) the cost of the hold harmless provision is reflected in the price of the agreement; and (3) the hold harmless provision is necessary in order for the City to carry out a public purpose, provided that the Risk Manager confers with the Controller and the City Attorney as necessary and appropriate in making his or her determinations.

In Resolution No. 10-008, adopted January 5, 2010, the SFMTA Board delegated to the Executive Director/CEO the authority to enter into contracts and leases having anticipated expenditures up to and including \$500,000, with further authority to re-delegate full contracting

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authority to the Deputy Executive Director, authority up to \$250,000 to the Chief Construction Officer; and contracting authority up to \$150,000 to the Division Directors.

For those permits, licenses and other real property agreements that are within the contracting authority amounts granted under Resolution No. 10-008, the proposed resolution would authorize the Executive Director or his designee(s), to include terms and conditions that require the SFMTA to indemnify property owners, without limitation, subject to review and approval as to form of such agreements by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

ALTERNATIVES CONSIDERED

None. The only other alternative to having the Executive Director execute permits, licenses, and agreements that include terms and conditions indemnifying property owners would be to continue sending these instruments to the SFMTA Board for approval. This alternative would increase staff costs and prolong approval times thereby delaying the Central Subway program and other SFMTA projects and is therefore not preferred.

FUNDING IMPACT

Streamlining the contracting process will save time and resources.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None are anticipated.

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

RECOMMENDATION

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Executive Director/CEO or his designees to execute permits, licenses and other real property agreements for access to privately and/or publicly owned property that include terms and conditions that require the SFMTA to indemnify property owners, without limitation, subject to review and approval as to form of such agreements by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

MUNICIPAL TRANSPORTATION AGENCY BOARD
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, For the Central Subway Project and other San Francisco Municipal Transportation Agency (SFMTA) projects, SFMTA's consultants, contractors, agents, invitees, representatives, licensees and employees (SFMTA Representatives) will need access to privately and/or publicly owned real property in the vicinity of the projects for work related to the planning, design, construction, monitoring and evaluation of the proposed projects, including, but not limited to, real property surveys, geotechnical testing, environmental surveys, groundwater monitoring, grouting, shoring improvements, settlement monitoring, construction staging and construction access; and

WHEREAS, From time to time, SFMTA Representatives may need access to and use of privately and/or publicly owned real property for other SFMTA purposes; and

WHEREAS, In some cases, SFMTA Representatives will need such access to and use of privately and/or publicly owned real property periodically for up to 10 years, in order to assess conditions before, during and after construction of a project; and

WHEREAS, In order to obtain such access and use rights, the SFMTA proposes to enter into a permit or license agreement with each real property owner; and

WHEREAS, For the Central Subway Project alone, there may be more than 60 of such permit or license agreements required to obtain rights to access or use property in the vicinity of the Project; and

WHEREAS, Typically, such permit or license agreements require the City/SFMTA to indemnify the property owner for any damage caused by the City's use of the property under such permit or license agreements; and

WHEREAS, Currently, only the SFMTA Board has the authority to approve unlimited indemnity agreements on behalf of the SFMTA; and

WHEREAS, Under Administrative Code Section 23.26, the Board of Supervisors has authorized the Director of Property to enter into certain short-term or year-to-year leases and include in any such lease an appropriate indemnity agreement for the purpose of providing for the City's occupancy or other use of the property for investigatory and other such purposes, subject to written approval as to form by the City Attorney and written recommendation by the head of the department concerned; and

WHEREAS, Under Section 1.24 of the Administrative Code, the Board of Supervisors has authorized the Risk Manager to approve indemnity clauses in agreements between the City and other persons or entities if the Risk Manager determines that: (1) entering into such an

agreement either (a) falls within normal business practices or (b) represents a prudent decision in light of all the circumstances; (2) the cost of the hold harmless provision is reflected in the price of the agreement; and (3) the hold harmless provision is necessary in order for the City to carry out a public purpose, provided that the Risk Manager confers with the Controller and the City Attorney as necessary and appropriate in making his or her determinations; and

WHEREAS, Under Resolution No. 10-008, adopted January 5, 2010, the SFMTA Board delegated to the Executive Director/CEO the authority to enter into contracts and leases having anticipated expenditures up to and including \$500,000, with further authority to re-delegate full contracting authority to the Deputy Executive Director, authority up to \$250,000 to the Chief Construction Officer; and contracting authority up to \$150,000 to the Division Directors; and

WHEREAS, For those permits, licenses and other real property agreements that are within the contracting authority amounts granted under Resolution No. 10-008, this Board also wishes to authorize the Executive Director or his designee(s), to include terms and conditions that require the SFMTA to indemnify property owners, without limitation, subject to review and approval as to form of such agreements by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director or his designees to include terms and conditions that require the SFMTA to indemnify property owners for permits, licenses and other real property agreements for the Central Subway Project and other projects that are within the contracting authority amounts granted under Resolution No. 10-008, without limitation, subject to review and approval as to form of such agreements by the City's Risk Manager and the City Attorney's Office, after consultation with the SFMTA Chief Financial Officer.

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. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Deputy Executive Director

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an amendment to an agreement with the American Public Transportation Association (APTA) that would provide an unlimited indemnity for APTA and individual members of an Independent Review Panel to review and evaluate aspects of the SFMTA's deep tunneling program of the Central Subway Project, insofar as it may have an impact on the facilities of BART in San Francisco.

SUMMARY:

- APTA provides a peer review program to assist transportation organizations in addressing public transportation-related needs and issues through subject matter experts within the public transportation industry.
- In accordance with the Cooperative Agreement between the SFMTA and the Bay Area Rapid Transit District (BART) regarding the Central Subway Project, SFMTA has entered into an agreement with APTA to facilitate the formation of an Independent Review Panel (IRP) to review and evaluate aspects of the SFMTA's deep tunneling program, insofar as it may have an impact on the facilities of BART in San Francisco. BART and SFMTA will share the costs of the IRP Agreement.
- Certain members of the IRP have now requested that the SFMTA provide an unlimited indemnification of them for all activities except those resulting from the gross negligence or willful conduct of the IRP members. Such an indemnification requires approval of the SFMTA Board of Directors.

ENCLOSURES:

1. SFMTA Board Resolution
2. Central Subway Project Budget and Financial Plan
3. Amendment to Agreement with APTA

APPROVALS:

DATE:

DIRECTOR OF DIVISION

PREPARING ITEM: _____

FINANCE (IF APPLICABLE): _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION BE RETURNED TO: Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The proposed resolution authorizes the Executive Director/CEO to execute an amendment to an agreement with APTA that would provide an unlimited indemnity for APTA and individual members of an Independent Review Panel to review and evaluate aspects of the SFMTA's deep tunneling program of the Central Subway Project, insofar as it may have an impact on the facilities of BART in San Francisco.

GOAL

The amendment to the IRP Agreement is needed for the construction of the Project's Union Square/Market Street station and its tunnels. The Project is a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with the retail and employment centers in downtown and Chinatown, and is consistent with the SFMTA Strategic Plan in the following goals and objectives:

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 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

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

Objective 2.4 Reduce congestion through major corridors

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 businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

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

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DESCRIPTION

Background:

The Central Subway Project (the "Project") is the second phase of SFMTA's Third Street Light Rail Project, and will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Central Subway will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Central Subway will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to Union Square and Chinatown. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

Current Status of the Project:

The Project has issued the bid package for the Tunnels Contract. The Tunnels Contract is slated to begin construction in the third quarter of 2011.

The IRP Agreement:

On April 11, 2011, the SFMTA Board of Directors adopted Resolution No. 11-043, approving a Cooperative Agreement between the SFMTA and BART for the reimbursement of costs incurred related to BART's activities to accommodate Central Subway work at the BART Market Street tunnel and the BART Powell Street Station. At BART's request, the Cooperative Agreement requires the parties to establish an Independent Review Panel (IRP) comprised of three experts in tunnel engineering and construction. The IRP will review the plans and specifications and data regarding the progress of tunneling of the Project insofar as it impacts BART facilities. If appropriate, the IRP may make recommendations regarding design and construction, including ground movement and protective measures to avoid damage to the BART facilities. This review will include the performance of the Contractor at designated points along the alignment approaching the point where the subway will cross under the BART facilities located adjacent to the Powell Street Station (the Undercrossing). The IRP will be available until two years after the tunnel boring machines complete the Undercrossing.

On April 7, 2011, the SFMTA entered into an agreement with APTA, which was executed by the Executive Director/CEO under his authority, under which APTA will convene and facilitate administration of the IRP. SFMTA and BART have agreed to the three IRP members, Ray Sandiford, from the public sector, and Harvey Parker and Thomas O'Rourke, who are private

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consultants, and there have been preliminary discussions with the IRP.

One of the private sector IRP members has requested that the SFMTA provide an unlimited indemnity to the IRP except in cases of the gross negligence or willful misconduct of the IRP members. Such an indemnity must be approved by the SFMTA Board. However, staff believes that the risk of harm requiring actual indemnification of the IRP is extremely low. The scope of the IRP is limited to making recommendations to the SFMTA regarding tunneling through the Undercrossing; the SFMTA, in consultation with its design consultants, will make the decision whether to accept any recommendations from the IRP.

ALTERNATIVES CONSIDERED

None. Without the indemnity, we will not be able to secure the services of the IRP members who are private consultants, one of whom was selected by BART.

FUNDING IMPACT

The total costs of the IRP Agreement, including fees and travel expenses, should not exceed \$100,000, and will be shared equally between the SFMTA and BART. The Agreement will be funded by a combination of federal, state and local money.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The proposed amendment has been reviewed and approved as to form by the City Attorney's Office. The City Attorney's Office has also reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve a resolution authorizing the Executive Director/CEO to execute an amendment to an agreement with APTA that would provide an unlimited indemnity for APTA and individual members of an Independent Review Panel to review and evaluate aspects of the SFMTA's deep tunneling program of the Central Subway Project, insofar as it may have an impact on the facilities of BART in San Francisco.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The American Public Transportation Association (APTA) provides a peer review program to assist transportation organizations in addressing public transportation-related needs and issues through subject matter experts within the public transportation industry; and

WHEREAS, In accordance with the Cooperative Agreement between the SFMTA and the Bay Area Rapid Transit District (BART) regarding the Central Subway Project, approved on April 11, 2011 by the SFMTA Board of Directors, SFMTA has entered into an agreement with APTA (IRP Agreement) to facilitate the formation of an Independent Review Panel (IRP) to review and evaluate aspects of the SFMTA's deep tunneling program, insofar as it may have an impact on the facilities of BART in San Francisco; and

WHEREAS, The IRP will review the plans and specifications and data regarding the progress of tunneling of the Project and, if appropriate, may make recommendations regarding design and construction, including ground movement and protective measures to avoid damage to the BART facilities; this review will include the performance of the tunneling contractor at designated points along the alignment approaching the point where the subway will cross under the BART facilities located adjacent to the Powell Street Station; and

WHEREAS, BART and SFMTA will share the costs of the IRP Agreement; and

WHEREAS, Certain members of the IRP have requested that the SFMTA provide an unlimited indemnification of them for all activities except those resulting from the gross negligence or willful conduct of the IRP members, which indemnification requires approval of the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute an amendment to the IRP Agreement with APTA that would provide an unlimited indemnity for APTA and individual members of an Independent Review Panel to review and evaluate aspects of the SFMTA's deep tunneling program of the Central Subway Project, insofar as it may have an impact on the facilities of BART in San Francisco.

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
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

San Francisco Municipal Railway

Project Budget and Financial Plan

Cost	(\$Million)
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	27.00
Option Local and Regional Sources	137.09
Total Central Subway Funding	\$ 1,578.30

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

**Amendment No. 1 to
Agreement between the City and County of San Francisco and
the American Public Transportation Association**

This Amendment to Agreement is made this _____ day of June, 2011, in the City and County of San Francisco, State of California, by and between: the American Public Transportation Association, ("APTA") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

A. On or about April 7, 2011, the City and APTA entered into an Agreement for APTA to facilitate the formation of an Independent Review Panel ("IRP") to review and evaluate aspects of the SFMTA's deep tunneling program, insofar as it may have an impact on the facilities of the Bay Area Rapid Transit District ("BART") in San Francisco.

B. The Parties wish to amend the Agreement to provide for an unlimited indemnification of APTA and the IRP members as requested by one of the IRP members. The parties also wish to modify the hourly rate of compensation to be paid to the IRP members who are private consultants.

Now, therefore, the Agreement is amended to read as follows:

1. Section 5 of the Agreement (Compensation) is amended to read as follows:

5. Compensation

The private consultants who are members of the IRP shall be paid a reasonable fee for their services, at hourly rates not to exceed \$250. There shall be no compensation for the services of IRP members who are employed by public transit agencies or other governmental entities. City shall pay APTA an administrative fee of Five Thousand, Five Hundred Dollars (\$5,500). City shall reimburse APTA for the reasonable travel expenses of the IRP, including airfare, hotel accommodations as arranged by SFMTA, and federal per diem. In no event shall the compensation for services paid under this Agreement, including the APTA fee, exceed One Hundred Thousand Dollars (\$100,000).

No charges shall be incurred under this Agreement nor shall any payments become due to APTA until reports, services, or both, required under this Agreement are received from APTA and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to APTA in any instance in which APTA has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

2. Section 16 of the Agreement (Indemnification) is amended to read as follows:

16. Indemnification

To the extent permitted by law, City, through the SFMTA, agrees to release, indemnify and hold harmless APTA, its officers and employees, and any IRP members and their respective agencies and/or companies in the conduct of their activities for claims (including attorney fees) of any kind arising out of the provision of services under this Agreement, except to the extent such claims arise or are caused by the gross negligence or willful misconduct of that indemnitee (APTA, its officers and employees, or IRP members and their respective agencies and/or companies). The IRP members and their respective agencies and/or companies shall be third party beneficiaries of the Agreement for purposes of this indemnification and hold harmless provision.

3. Except as set forth above, all provisions of the Agreement shall remain the same.

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

CITY
MUNICIPAL TRANSPORTATION AGENCY

<p>_____ Nathaniel P. Ford Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By _____ Robin M. Reitzes Deputy City Attorney</p>	<p>Municipal Transportation Agency Board of Directors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <p>_____ Secretary, SFMTA Board of Directors</p> <p>CONTRACTOR American Public Transportation Association</p> <p>_____ Kathryn D. Waters Vice President, Member Services</p> <p>City Vendor Number: 21913</p>
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THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to enter into one or more consensual termination agreements with the equity investors and other parties that participated in the leveraged lease transactions executed in 2002 and 2003 with respect to the San Francisco Municipal Transportation Agency's Breda light rail vehicles, provided that there is no net financial cost to the City/SFMTA for the terminations, including legal and advisor fees.

SUMMARY:

- The City, through the SFMTA, entered into leveraged lease transactions (each, a "Lease Transaction") in 2002 and 2003 with respect to the majority of the SFMTA's Breda light rail vehicles.
- Recent developments have led to a situation in which it would be beneficial for the City to enter into termination agreements for some or all of the Lease Transactions.
- Due to fluctuations in the financial market and the need to move forward quickly when favorable circumstances allow, staff seeks prior authorization to terminate any Lease Transaction, based on certain parameters.
- The parameters include: (1) there shall be no net cost to the SFMTA by virtue of the termination; (2) any termination agreement shall have been reviewed and approved as to form by the City Attorney's Office; and (3) staff will report on any terminations as soon as practicable after they occur.
- If approved by the SFMTA Board, this authorization request will be submitted to the Board of Supervisors for approval.

ENCLOSURES:

1. Resolution
2. Letter to SFMTA Board dated November 18, 2008
3. Letter to SFMTA Board dated February 16, 2010

APPROVALS:

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

DATE

ADOPTED RESOLUTION

BE RETURNED TO Sonali Bose

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

This calendar item authorizes the Executive Director/CEO to enter into one or more consensual terminations with the equity investors and other parties that participated in the Lease Transactions executed in 2002 and 2003 with respect to the SFMTA's Breda light rail vehicles, provided that there is no net financial cost to the City/SFMTA for the terminations, including legal and advisor fees.

GOAL

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

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

DESCRIPTION

Background

In 2002 and 2003, with the encouragement and approval of the Federal Transit Administration (the "FTA"), the City entered into Lease Transactions (also known as "sale in lease out" transactions or "SILOs") with various financial institutions, referred to as "Equity Investors."¹ Under these Lease Transactions, tax ownership of 139 Breda light rail vehicles (LRVs) was sold to single-purpose statutory trusts (each, a "Lessor") formed on behalf of each Equity Investor. In each Lease Transaction, the original purchase price was funded in part with debt and in part with equity. The City leased back the LRVs under a sublease agreement (the "Lease Agreement"), which provided the City with an option to purchase the LRVs at the end of the each sublease term (2025 and 2026). The Lease Transactions were structured to enable the Equity Investors to take certain tax deductions that the City could not enjoy as a public agency. In turn, the SILOs generated net upfront cash payments of over \$40M to the SFMTA. Almost every transit system in the United States had entered into similar leveraged lease transactions with respect to their railcars and other items of equipment.

The City's payment obligations under each Lease Transaction were provided for (economically "defeased") at the outset through certain deposits. One set of deposits was made with Premier International Funding Co. ("Premier"), formed by Financial Security Assurance ("FSA"). Premier's scheduled payments, which are guaranteed by FSA, are made in amounts and at times that satisfy the City's payment schedules under the Lease Transactions.

Another series of deposits were invested in Federal securities that are held in trust by U.S. Bank National Association on behalf of the City and the Equity Investors. These Federal securities

¹ The SFMTA's Equity Investors are Wells Fargo, an American bank, Comerica, an American bank, CIBC, a Canadian bank and ANZ, an Australian/New Zealand bank.

PAGE 3

mature in amounts and at times sufficient to fund the City's purchase options, if exercised at the end of the Lease terms. In 2002, the City purchased Resolution Funding Corporation securities (REFCORPs) and in 2003, it purchased Fannie Mae securities.

In addition to these deposits, FSA provided surety bonds to guarantee full payment to the Equity Investors in the event that the Lease Transactions are terminated, prior to the scheduled maturities, in whole or in part for any reason. In June 2009, Assured Guaranty Corporation acquired FSA and assumed its obligations under the Lease Transactions.

The Lease Transaction documents assume that the LRVs would remain in, or be available for, revenue service throughout the term of the respective Lease Transaction. To that end, the City agreed to certain operating, maintenance and insurance covenants with respect to the LRVs that were consistent with the City's practices and FTA grant agreements that funded the LRVs. In addition, the City cannot sell, lease or transfer the LRVs to other agencies during the term of the Lease Transactions.

The Lease Transaction documents also assume that the financial participants would retain a high degree of creditworthiness. The City is required to replace Assured Guaranty, as successor to FSA, if its ratings are downgraded below certain thresholds: "Baa1/BBB+" with respect to Assured Guaranty's role as debt payment guarantor, and "Aa3/AA-" with respect to Assured Guaranty's role as surety provider. Assured Guaranty's current ratings are "Aa3/AA+."

The Lease Transaction documents include schedules that identify the cost of an early termination due to an event of default or the loss of an LRV. These costs are in the nature of liquidated damages. In addition, the Equity Investors could agree to a consensual termination under different terms than provided for under the Lease Transaction documents.

Recent Developments

From the time that the City entered into its Lease Transactions, several developments have occurred that have affected SILO and other leveraged lease transactions in general, as described in more detail in Enclosures 2 and 3.

- After federal legislation in 2004 prohibited further SILO transactions (except certain "grandfathered" transactions), the U.S. Treasury Department (I.R.S.) waged an aggressive campaign to disallow the tax benefits associated with SILOs and their predecessor structure ("lease in and lease out" transactions or "LILOs"). This effort culminated in settlement agreements with most of the equity investors in these transactions. The effect of these settlement agreements is to disallow the purported tax benefits to be derived from such lease transactions. These settlement agreements produced investment losses to those equity investors – which become realized upon termination of their lease transactions. This "tax" risk was borne *solely* by the equity investors and not the transit agencies.

- The financial guarantors (originally rated “Aaa/AAA”) involved in many SILO and LILO transactions – notably AIG and Ambac – experienced significant rating downgrades due to their sub-prime loan exposure during the recent recession. Such downgrades caused technical defaults in the affected SILO and LILO transactions and, in many instances, resulted in the need for transit agencies to restructure or terminate such transactions because they were unable to replace the affected financial guarantors with institutions with acceptable credit ratings. As examples, Washington Metropolitan Area Transit Authority, Metropolitan Atlanta Rapid Transit Authority, Dallas Area Rapid Transit District and Santa Clara Valley Transportation Authority each terminated SILO transactions with equity investors. Because the ratings of Assured Guaranty remain at or above the relevant thresholds, the City did not experience these difficulties and the Lease Transactions remain in compliance.
- A positive development for transit agencies is that interest rates have plummeted since 2002 and 2003. This decline in interest rates has caused the market value of Federal securities, purchased in a much higher interest rate environment, to increase. Some equity investors have seen the increased value of these Federal Securities as an opportunity to offset the unrealized losses that they are currently carrying with respect to SILO transactions.

In January/February 2010, SFMTA staff, recognizing that the increased market value of the REFCORPs and Fannie Mae securities had increased, approached each of the four Equity Investors to discuss its interest in a potential consensual early termination of its Lease Transaction. None of the Equity Investors expressed an interest to terminate at that time. The SFMTA recently resumed discussions with the Equity Investors, some of whom are now more open to a consensual early termination.

Benefit of an Early Termination

The early termination of the Lease Transactions would benefit the City/SFMTA in many ways, including:

- ***Early termination would eliminate the risk of a technical default under its documents in the event that Assured Guaranty is downgraded below “Aa3/AA-.”*** Assured Guaranty’s current ratings of “Aa3/AA+” are on the cusp of falling below the thresholds under the Lease Transaction documents. As rating agencies are considering a change in the rating criteria applicable to bond insurers, the risk of a future downgrade has grown. If a downgrade below the thresholds were to occur, the SFMTA either would need to replace Assured Guaranty, restructure the Lease Transactions, or terminate them under terms likely to be less favorable. Other transit agencies that have experienced technical defaults have found the replacement option infeasible due to the absence of viable alternatives. In a worst case scenario, a non-consensual termination cost under the SILO documents would expose the City to a significant termination cost.

- ***Early termination would simplify the SFMTA's financial statements and eliminate a contingent liability.*** Each year, the SFMTA prepares an extensive footnote that describes the status of the Lease Transactions and its theoretical financial exposure if an early, non-consensual termination occurred under the documents.
- ***Early termination would remove restrictions on the subject LRVs.*** This would provide the SFMTA with the flexibility to keep the LRVs in operation, remove them from service and/or transfer them to another transit agency without limitations imposed by the existing Lease Transaction documents. The SFMTA, however, would remain subject to the terms and conditions of the original FTA grant agreements.
- ***Early termination would eliminate reporting and filing requirements.*** If the Lease Transactions were terminated, the SFMTA would no longer have to make periodic filings with the Secretary of State as required under the Uniform Commercial Code or continue with its reporting obligations under the Lease Transaction documents.

Timing of a Potential Consensual Early Termination; Parameters

The SFMTA's ability to terminate a Lease Transaction at no cost depends on interest rates and the resulting value of the Federal securities that are held by U.S. Bank and Trust Company. If the SFMTA were able to reach agreement with an Equity Investor, then seek legislative approval, an intervening rise in interest rates could negate the benefit of a termination to the Equity Investor and cause it to decline to move forward. Accordingly, SFMTA staff seeks prior approval to terminate its Lease Transactions, subject to certain parameters, so as to capture any opportunities as they might arise. SFMTA staff suggests the following parameters:

- The termination does not involve any out of pocket costs or liability to the SFMTA – including its counsel and advisor fees (excluding provisions that would otherwise survive at the end of the acceleration of the purchase option);
- Any documentation evidencing such termination must be reviewed and approved as to form by the City Attorney's Office; and
- SFMTA staff will report to the SFMTA Board on any terminations as soon as practicable after they occur.

Documentation

Other transit agencies that have terminated transactions have entered into a "Termination Agreement" containing the following provisions:

- The election to terminate is made by accelerating the end of lease term purchase option;
- All liens are released among the parties to the transaction;

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- The obligations of all parties under the transaction documents would be considered discharged;
- Certain indemnity provisions in the operative documents would survive;
- The Equity Investor or other party would pay all transaction expenses, including the costs of attorneys and advisors; and
- Each party agrees to provide further assurances of cooperation.

SFMTA staff anticipates that the City would need to approve a Termination Agreement with similar terms. It would not execute any such Termination Agreement, however, without the prior review of the City Attorney's Office and any outside counsel to be retained by the City Attorney's Office.

ALTERNATIVES CONSIDERED

The alternative to the proposed consensual terminations is to maintain the Lease Transactions under their current terms and accept the risks associated with maintaining these transactions.

FUNDING IMPACT

None. Under the proposed authorization, all costs would be borne by parties other than the City.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This authorization will require the approval of the Board of Supervisors.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to enter into one or more consensual terminations with the Equity Investors and other parties that participated in the Lease Transactions executed in 2002 and 2003 with respect to the SFMTA's Breda light rail vehicles, provided that there is no net financial cost to the City/SFMTA, including legal and advisor fees.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The City, through the SFMTA, entered into leveraged lease transactions (each, a "Lease Transaction") in 2002 and 2003 with respect to the majority of the SFMTA's Breda light rail vehicles; and,

WHEREAS, Recent developments have led to a situation in which it would be beneficial for the City to enter into termination agreements for some or all of the Lease Transactions; and,

WHEREAS, The benefits to the City of an early termination include (1) elimination of the risk of a technical default under its lease documents in the event that the financial guarantor of the transactions, Assured Guaranty, is downgraded by the credit agencies below "Aa3/AA-;" (2) simplification of the SFMTA's financial statements and elimination of a contingent liability; (3) removal of restrictions on the LRVs imposed by the lease documents; and (4) elimination of certain filing and reporting requirements; and,

WHEREAS, Due to fluctuations in the financial market and the need to move forward quickly when favorable circumstances allow, staff seeks prior authorization to terminate any Lease Transaction, based on certain parameters; and,

WHEREAS, The parameters are: (1) there shall be no net cost or liability to the SFMTA (excluding provisions that would otherwise survive at the end of the acceleration of the purchase option); (2) any termination agreement shall have been reviewed and approved by the City Attorney's Office; and (3) staff will report on any terminations as soon as practicable after they occur; and,

WHEREAS, If approved by the SFMTA Board, this authorization request will be submitted to the Board of Supervisors for approval; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to enter into one or more consensual terminations with the financial institutions and other parties that participated in the Lease Transactions executed in 2002 and 2003 with respect to the SFMTA's Breda light rail vehicles, provided (1) there shall be no net cost or liability to the SFMTA (excluding provisions that would otherwise survive at the end of the acceleration of the purchase option); (2) any termination agreement shall have been reviewed and approved by the City Attorney's Office; and (3) staff will report on any terminations as soon as practicable after they occur; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to take any other actions required to effectuate the termination of the Lease Transactions, including, but not limited to, acceleration of the purchase option for the LRVs; and be it further

RESOLVED, That the SFMTA Board recommends this matter to the Board of Supervisors for approval.

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

MEMORANDUM

DATE: November 18, 2008

TO: SFMTA Board of Directors
Rev. Dr. James McCray, Jr., Chairman
Tom Nolan, Vice Chairman
Cameron Beach, Director
Shirley Breyer Black, Director
Malcolm Heinicke, Director
Jerry Lee, Director
Bruce Oka, Director

THROUGH: Nathaniel P. Ford, Sr.
Executive Director/CEO

FROM: Sonali Bose
CFO/Director of Information and Technology

SUBJECT: Status of Leveraged Lease Transactions

In 2002 and 2003, with the encouragement and approval of the Federal Transit Administration, the City entered into a series of lease-to-service transactions (also known as "sale in lease out" transactions or "SILOs") with various equity investors (the "Investors").² (See Attachment 1 for list of each SILO.) Under these SILOs, tax ownership of 139 Municipal Railway light rail vehicles (LRVs) was sold to single-purpose statutory trusts (each, a "Lessor") on behalf of each Investor. In each SILO, the purchase of the Breda LRVs was funded in part with debt and in part with equity. Each Lessor, in turn, leased the equipment back to the City under a sublease agreement; each sublease agreement provides the City with an option to purchase the LRVs at the end of the respective sublease lease term (2025 and 2026). The SILOs allowed the Investors to take certain tax deductions that the City is not able to enjoy as a public agency. In turn, the sale of tax ownership generated net upfront cash payments to the SFMTA of over \$40M.

At the outset of each SILO, deposits were made into two escrow accounts. One account – a debt account – serves to fund the City's lease payment obligations. The other escrow account, together with interest earned, will fund the City's purchase option, if exercised, at the end of the Lease. In addition, a surety guarantees full payment to the Investor in the event that the City cannot perform under the lease – e.g., an item of equipment is destroyed or an event of default occurs under the Lease.

Financial Security Insurance Inc. (FSA) guarantees obligations of the debt payments

² The SFMTA's Investors are Wells Fargo and Comerica, both American banks; CIBC, a Canadian bank; and ANZ, an Australian/New Zealand bank.

and the surety³ in each of the City's SILOs. On the equity side, the City purchased Resolution Funding Corporation securities (Refcos) in 2002 and Fannie Mae and Freddie Mac securities in 2003.

Under the transaction documents for the SILOs, the City is required to replace FSA if its ratings are downgraded below certain thresholds. FSA currently is rated "Aaa/AAA" – which is above the ratings trigger of AA-/Aa3 in the transaction documents– although Moody's and S&P have indicated the likelihood of a downgrade of the credit rating of FSA. We do not know when or to what level a downgrade, if any, would occur.

The failure of the City to replace FSA following a downgrade below the applicable rating threshold within a specified period of time could allow the Investor, in effect, to issue a default notice to the City. Because replacement of the surety will either be unlikely or very expensive in the current economic climate, the City could be liable to pay a termination cost as provided in certain schedules of the transaction documents. These termination costs are in the nature of liquidated damages – which provide to Investors the present value of its expected profits, including tax benefits lost as a result of early termination. The scheduled termination costs as of November 1, 2008 would approximate \$129.6 million. The scheduled termination costs increase over the next several years, given the nature of the termination schedules. However, there are several legal and equitable arguments, which, if successful, could substantially reduce this exposure.

It has been widely reported that AIG's and Ambac's ratings have been substantially downgraded by the credit rating agencies. To date, the SFMTA has been fortunate in that FSA has not been downgraded and the replacement obligations under the SILOs have not been triggered. By contrast, in the case of the Washington Metropolitan Area Transit Authority (WMATA), one of its investors, KBC, a Belgian bank, did send a default notice to WMATA as a result of the downgrading of AIG's rating, seeking payment of the termination amount. WMATA filed for an injunction in federal court and has reached a settlement with KBC. We know of no banks other than KBC that have issued similar notices of default as a result of the AIG or other sureties hitting their rating trigger.

As all major transit agencies executed SILOs and, thus, are in the same situation, the American Public Transportation Association (APTA) is leading a concerted effort by transit agencies throughout the country to seek a legislative solution from Congress or a policy solution from the Treasury Department to protect transit agencies from prospective defaults by Investors. Under the proposed legislative solution, the Treasury Department would step in as a guarantor of the lease obligations upon request of the transit agency so that the ratings downgrade of an individual surety or payment undertaker would not result in a default. SFMTA is participating in these efforts (see attachment 2).

³ AIG was the surety for many similar SILO transactions entered into by transit agencies nationwide, e.g., VTA (Santa Clara County), the Peninsula Corridor JPB, MARTA (Atlanta) and WMATA (Washington, DC).

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Attachments

cc: Mayor Gavin Newsom
Board of Supervisors

Attachment 1

**Transit Agency—San Francisco Muni
Information by Tranche**

	2002-1	2002-2	2002-3	2002-4	2002-5	2002-6	2003-1
Investor	ANZ	CIBC Capital	CIBC Capital	Comerica Leasing	Comerica Leasing	Wells Fargo Bank MN	Wells Fargo Bank MN
Subject of Lease	29 Breda LRVs	24 Breda LRVs	6 Breda LRVs	26 Breda LRVs	5 Breda LRVs	28 Breda LRVs	21 Breda LRVs
Date	4/18/2002	4/18/2002	4/18/2002	4/18/2002	4/18/2002	4/18/2002	9/25/2003
Asset Value	\$98,745,000	\$80,400,000	\$18,930,000	\$84,448,000	\$16,005,000	\$89,628,000	\$72,555,000

Attachment 2

November 12, 2008

Honorable Henry M. Paulson, Jr.
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Application for Guarantee under the Insurance Program for Troubled Assets

Dear Mr. Secretary:

On behalf of public transportation agencies in 25 metropolitan areas in 17 states across the nation, we submit this application for a guarantee of certain financial instruments under the insurance program for troubled assets authorized by the Emergency Economic Stabilization Act of 2008 (EESA). On October 28, 2008 the American Public Transportation Association (APTA) submitted a comment letter in response to the Department's Notice and request for comments concerning Development of a Guarantee Program for Troubled Assets (the Program), published October 16, 2008 in the Federal Register at 73 FR 61452. That comment letter is attached and incorporated by reference into this application.

The financial instruments for which this application is made are Lease In/Lease Out and Sale In/Lease Out (LILO/SILO) transactions and similarly structured leveraged lease transactions in which a U.S. transit agency is the lessee. Typical transactions involved an investor purchasing assets (rail cars, buses, or facilities) from the transit agency funded by a combination of debt and equity investment. The vast majority of these transactions were entered into with the express approval of the Federal Transit Administration (FTA). Transactions involving locally-funded assets did not require FTA approval. Between 1996 and 2007 approximately \$12 billion of FTA-approved transactions were completed. For these transactions, the FTA required the transit agencies, as lessees, to economically defease their repayment obligations. To do so, the transit agencies purchased "Payment Undertaking Agreements" from private financial entities to provide for their repayment obligations. In many of these transactions, the public transportation agencies secured a significant portion of their repayment obligations through the purchase of U.S. Treasury obligations or Agency securities which provided investors unassailable security for the agencies' payment. In other transactions, the repayment obligations were secured through the payment undertaking agreements with private financial entities, all with AAA credit ratings at the time. Attached please find a list of transactions to which this application relates.

As indicated, certain private financial entities provided an overlay of security for investors by providing letters of credit or acting as a debt payment undertaker, surety, or equity payment undertaker according to the terms of the transactions. Each such financial entity is, in effect, a private guarantor or insurer of the repayment obligations. These private guarantors were required to maintain minimum credit ratings, depending on the investor and the private guarantor's role. With the recent turmoil in the financial markets, the credit ratings for key private guarantors have been downgraded or are in imminent danger of being downgraded. Such downgrades result in technical defaults under the terms of the transactions, even if there has been no default on the repayment obligations and even though the underlying credit risk is very small.

As a result of these technical defaults, transit agencies are required to replace current private guarantors in the transactions. This has proved practically impossible to accomplish in the current market environment. The replacement private guarantor must typically maintain a comparable credit rating, and there are virtually no private guarantors with both the necessary credit ratings and sufficient capacity available to replace the downgraded private guarantors.

If the private guarantees are not replaced in the imminent future, the technical defaults will cause a cascade of significant additional losses and increased costs that will exacerbate, rather than stabilize, the current market turmoil. As the attached chart indicates, more than \$12 billion of FTA-approved LILO/SILO transactions, in addition to similarly structured leveraged leases and other transactions that did not require FTA approval, are at risk, which could cost the transit agencies hundreds of millions of dollars. These significant costs can be averted by prompt action by the Treasury Department to step in as a replacement guarantor of the downgraded private guarantors.

We request that the Department issue a guarantee of letters of credit, debt payment undertakings, surety, equity payment undertakings, and related undertakings of the private guarantors on all LILO/SILO transactions and similarly structured leveraged leases. Alternatively, the Treasury would issue an "umbrella" guarantee that authorizes insurance coverage of private guarantor obligations in all LILO/SILO transactions and similarly structured leveraged leases. In either case, only those transactions in which a technical default of the private guarantor is triggered would actually receive a guarantee. We would envision a fairly straightforward process. When a technical default is triggered, the transit agency would notify the Department and provide the relevant documentation confirming the technical default. The Department would then issue its replacement guarantee applicable to that individual transaction. The transit agency would then work with the investor to document the guarantee in a manner appropriate to the transaction.

We request that the premiums for the guarantee be based on the credit risk associated with LILO/SILO transactions, as provided in Section 102(c)(2) of the EESA. As indicated above and in the attached comment letter, the transit agencies' repayment obligations in many of these transactions are fully funded, and indeed in some cases overfunded, by U.S. Treasury obligations in which the investors maintain a security interest. Consequently, default on the agencies' repayment obligations is highly unlikely, and thus the credit risk associated with these transactions is extremely small. Therefore, it follows that the premiums for the guarantee should be minimal. Because default on the repayment obligations is highly unlikely, there also is an extremely small prospect of anticipated claims or payouts under the guarantee, and so the taxpayers will be fully protected as required by Section 102(c)(3) of the EESA.

In conclusion, we believe that the requested guarantee will allow you to meet the clear requirement in Section 103(f) of the EESA that the statute be implemented taking into consideration the need to ensure stability for public instrumentalities that have suffered significant increased costs and losses in the current market turmoil. A failure to approve this guarantee will only exacerbate further the instability facing public instrumentalities, and thus

frustrate the purpose of Section 103(f). Furthermore, where U.S. Treasury obligations secure the agencies' repayment obligations, the cost of issuing the guarantee, if any, to the Treasury or the taxpayer is likely to be small. On the other hand, a failure to issue the guarantee will result in significant additional costs and losses to the transmit agencies, and, ultimately, to the taxpayer.

Thank you for your prompt attention to this request. Given the urgent circumstances surrounding impending technical defaults on these transactions, we respectfully request a meeting with you and/or the appropriate senior decision-making officials to discuss our application at the earliest possible time.

Sincerely,

Nathaniel P. Ford, Sr.
Executive Director/CEO

Attachments

cc: Congresswoman Nancy Pelosi, Speaker of the House
Senator Dianne Feinstein
Senator Barbara Boxer
Congresswoman Jackie Speier

Enclosure 3

MEMORANDUM

DATE: February 16, 2010

TO: SFMTA Board of Directors
Tom Nolan, Chairman
Dr. James McCray Jr., Vice-Chairman
Cameron Beach, Director
Shirley Breyer Black, Director
Malcolm Heinicke, Director
Jerry Lee, Director
Bruce Oka, Director

THROUGH: Nathaniel P. Ford Sr.
Executive Director/CEO

FROM: Sonali Bose
CFO/Director of Finance and Information Technology

SUBJECT: Update on Leveraged Lease Transactions

On November 18, 2008, staff provided the SFMTA Board of Directors with a memorandum that detailed the status of the City's 2002 and 2003 leveraged lease transactions (SILOs) in light of the well-publicized developments that had been affecting such transactions generally. (See attached copy of November 18, 2008 memorandum). That memorandum noted that many other domestic transit agencies that had entered into SILOs were in technical default of their transactions, because they had employed sureties, such as AIG, whose financial ratings had been downgraded below the thresholds required in the transaction documents. The City's leveraged lease transactions, on the other hand, had used Financial Security Assurance (FSA) to guarantee the debt payments and provide surety. FSA, fortunately, had not had its ratings lowered below the threshold levels; thus, the SILOs were fully performing. The memorandum also described some of the efforts to effectuate an industry-wide solution to the overall SILO situation. This memorandum provides an update on the November 2008 status report.

The City's lease transactions continue to perform without any glitches. The equity portion of the City's transactions remain secured by REFCORPs and US Agencies securities, each rated "Aaa/AAA" and each directly or indirectly guaranteed by the U.S. FSA, the City's surety, was acquired by Assured Guaranty in June 2009. The successor entity, called Assured Guaranty Municipal Corp. (AGM), is currently rated "Aa3/AAA" by Moody's/Standard and Poors. This rating is lower than FSA's "Aaa/AAA" in November 2008, but remains above the rating thresholds that trigger a technical default under the City's lease documents. Moody's reaffirmed its rating of AGM on December 18, 2009 and issued its formal credit opinion for such rating on January 5, 2010. In addition, AGM's parent recently raised \$575 million in capital to support its **Legislative efforts**

have moved from a federal guarantee approach to an excise tax focus. In 2008, the transit industry and their legislative advocates had sought legislation that would have provided a federal guarantee of AIG's and other guarantors' obligations under the leveraged lease transactions. While at least two bills were introduced with such provisions, they were effectively blocked by the Senate Finance Committee. SFMTA staff was also part of a contingent that met with senior members of the San Francisco Federal Reserve Bank in late 2008 to pursue an administrative approach to guarantee the transactions. The Federal Reserve Bank officers advised us that the Federal government will not guarantee municipal obligations as a matter of policy.

For the better part of 2009, the industry efforts have focused on legislation drafted by Senator Menendez (D-NJ). The bill (S. 1341), if adopted, would impose a 100 percent excise tax on equity investors that attempt to force a termination of a leveraged lease transaction – thus, creating a disincentive for early termination. The excise tax would not apply to consensual terminations by the parties to the transactions. While the bill has attracted several co-sponsors, it still awaits formal introduction – with the strategy of attaching it to another tax bill rather than introducing it as a standalone item.

Transit agencies across the U.S. report that their equity investors generally have been cooperative and have not threatened terminations. In 2008, much of the industry concern over leveraged lease transactions stemmed from KBC's actions in seeking a termination of its lease with Washington Metro due to the downgrade of AIG. KBC, a Belgian bank, seems to have been an exception. Other equity investors, particularly those who are domestic banks, have readily provided extension letters to their transit lessees for the replacement of downgraded guarantors and have not threatened termination – especially where the equity investment arrangement is strong (direct pledge of US Government/Agency securities or collateralized obligations of AIG). While investors remain keen on curing technical defaults, at present, they do not seem inclined to force early terminations.

Most equity investors have entered into settlements with the US Treasury Department over the availability of tax benefits from leveraged lease transactions. However, they generally are not interested in consensual terminations except in the case of older transactions that are near lease expiration dates. In 2008, the U.S. Treasury Department Internal Revenue Service (IRS), which had denied tax deductions to investors in leveraged lease cases and had successfully litigated many such cases, offered a global settlement to investors of such transactions. Newspapers and tax journals report that approximately 80 percent of the equity investors entered into tax settlement agreements with the IRS with respect to their leveraged lease transactions. While the specific terms of these settlement agreements are confidential, it is reasonable to conclude that investors agreed to limit the deductions that they had anticipated taking at the outset of the transaction. Investors assumed the tax risk in these lease transactions and, to our knowledge, have not sought any form of indemnification from transit lessees.

One major investor, Wells Fargo, chose to litigate with the IRS in Federal court. In January 2010, the Federal judge ruled against Wells Fargo.

Despite the loss of tax benefits, equity investors remain unwilling to terminate these transactions without additional contributions from the transit agencies. An early termination would result in a net investment book loss, the loss of certain lease accounting benefits, and the loss of an income stream created at a time when interest rates were higher. Nonetheless, some investors have terminated older lease transactions (LILOs) that were entered into in the mid-1990s and that have only a few years remaining on the lease. This is not the case with SFMTA's transactions, which have another 17 to 18 years left.

SFMTA staff has reached out to its equity investors to explore the potential of a consensual termination of the 2002 and 2003 lease transactions. As the 2002 and 2003 transactions are fully performing and have not breached any rating triggers, SFMTA has had little reason to engage its equity investors in conversations relating to the status of their leases over the Breda rail cars. However, SFMTA staff decided to reach out to each equity investor to start a dialogue that ultimately might lead to a consensual termination of its transaction on mutually attractive terms. Letters were sent to each of the four equity investors (ANZ, CIBC, Comerica and Wells Fargo). Three responded favorably to our request; CIBC did not respond.

We held individual conference calls with each investor that expressed an interest in talking with us. As expected, no investor was inclined to an early termination without an additional financial contribution from SFMTA – a non-starter in the current economic environment. However, the calls represented an opportunity for SFMTA staff, which did not participate in the original lease transactions, to meet the current representatives of the equity investors and for SFMTA to confirm with each investor the original terms and current status of its lease. The investors appreciated our overtures and welcome the opportunity to continue the dialogue in the future.

SFMTA staff will continue to monitor closely its leveraged lease transactions and will continue to follow industry-wide developments affecting these transactions in general. Realistically, we do not foresee investors changing their views on early terminations. However, we want to remain opportunistic in case they do.

SFMTA will provide the Board of Directors with periodic updates of the status of the leveraged lease transactions.

Attachment

cc: Mayor Gavin Newsom
SF Board of Supervisors