

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to accept from KLA a gift of \$500,000 to fund the design, construction and inspection of a new traffic signal system at Masonic Avenue and Ewing Terrace and a signal modification at Masonic Avenue, Anza Street and O'Farrell Street, under the terms and conditions set forth in an Agreement negotiated between the parties.

SUMMARY:

- KLA Geary, a Delaware limited liability corporation, owns commercial property located at 2675 Geary Boulevard at Masonic Avenue, and is in lease negotiations with Target Corporation for a potential Target Store that would open at this location in July 2013.
- KLA has offered to give a gift of \$500,000 to SFMTA to design, construct and inspect a new traffic signal system at Masonic Avenue at Ewing Terrace and to modify an existing signal system at Masonic Avenue, Anza Street and O'Farrell Street.
- SFMTA and KLA believe that these improvements will improve traffic circulation in the vicinity of the Property for the benefit of Target's customers and its neighbors.
- Traffic legislation to establish a new signal on Masonic Avenue is scheduled for approval by the SFMTA Board on March 6, 2012.
- An agreement has been negotiated, which sets forth the process for completion of the signal system and payment of the amounts for design, construction and inspection.
- The proposed work would be added to upcoming Signal Contract 33, which is anticipated to begin construction in early 2013.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement between SFMTA and KLA

APPROVALS:

DATE

DIRECTOR _____

2/22/12

SECRETARY _____

2/22/12

ASSIGNED SFMTAB CALENDAR DATE: March 6, 2012

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PURPOSE

To accept from KLA a gift of \$500,000 to fund the design, construction and inspection of a new traffic signal system at Masonic Avenue and Ewing Terrace and a signal modification at Masonic Avenue, Anza Street and O'Farrell Street.

GOAL

This action is consistent with goals of the SFMTA Strategic Plan, specifically:

- Goal 1: Customer Focus – To provide safe, accessible, 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 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
- Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
Objective 4.2: Ensure efficient and effective use of resources

DESCRIPTION

KLA Geary ("KLA"), a Delaware limited liability corporation, owns commercial property located at 2675 Geary Boulevard and is in lease negotiations with Target Corporation to open a Target Store in the currently vacant property previously occupied by Mervyns on the southwest corner of Masonic Avenue and Geary Boulevard. Pending these negotiations, Target Corporation anticipates opening a Target Store at this location in July 2013.

To improve traffic circulation in the vicinity of this property, KLA has offered to provide \$500,000 to design, construct and inspect a new traffic signal system at Masonic Avenue at Ewing Terrace ("new signal") and to modify an existing signal system at Masonic Avenue, Anza Street and O'Farrell Street ("signal modification"). City Staff, including the Transportation Advisory Staff Committee, have reviewed these proposals and do not have objections to the New Signal or the Signal Modification.

The new signal on Masonic Avenue at Ewing Terrace would improve traffic circulation for residents on Ewing Terrace, a neighborhood of approximately 80 residences accessed only from Masonic Avenue. Traffic legislation for the New Signal was reviewed and approved at an Engineering Public Hearing on May 13, 2011, and scheduled for approved by the SFMTA Board on March 6, 2012.

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The signal modification would add a dedicated left-turn phase from southbound Masonic Avenue onto eastbound O'Farrell Street to improve access to the potential future Target parking lot. This change does not require any new traffic legislation and is supported by City staff.

Both of the new signal and the signal modification can be added to upcoming Signal Contract 33, which will allow for efficient use of funds and resources. We expect to complete the design for Signal Contract 33 in August 2012, advertise the construction contract in fall 2012, and issue the Notice to Proceed for construction in early 2013.

An agreement has been negotiated, which sets forth the process for completion of the signal system and payment of the amounts for design, construction and inspection. SFMTA has agreed that KLA will not be responsible for the cost of maintenance of the new signal or the signal modification.

There have been other traffic signals installed on public streets that were constructed with private funds, most recently on 3rd Street at Stevenson Street. Some other examples include the signals at Embarcadero Center on Front Street and on Drumm Street (both mid-block), International School (mid-block on Oak Street), City College at its new parking lot on Phelan Avenue, and Laguna Honda at Woodside Avenue. The construction of these signals was funded by the private parties in accordance with agreements between the City and the developers.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Given limited public funds and several other locations citywide in need of signalization, it would be unlikely that the new traffic signal at Ewing and Masonic would be funded by the SFMTA for several years. STOP signs were considered but are not appropriate on a major arterial and transit street like Masonic.

The signal modification at Anza and Masonic desired by the development could be implemented concurrent with an upcoming signal upgrade for the Masonic corridor. The alternative would be to have the signal upgrade fund the improvement, however public funds would need to be identified to do so, since it was not on the original scope.

Accepting this gift will allow these improvements to be implemented without using City funds.

FUNDING IMPACT

KLA has agreed to provide funding to SFMTA for actual costs of the design, construction and inspection of the New Signal and the Signal Modification, up to a total of \$500,000. If the actual costs of the design, construction and inspection are lower than \$500,000, SFMTA will refund KLA the amount in excess of the actual costs. Staff expects the funds to be sufficient to install the traffic signal hardware in the agreement. Staff commits to working with the developer closely and report regularly on costs incurred on the project.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The proposal to install a new signal system on Masonic Avenue at Ewing Terrace received environmental clearance through a categorical exemption approved by SFMTA on February 10, 2012. The traffic legislation to install a new signal at this location is scheduled for approval by the SFMTA Board of Directors on March 6, 2012. No additional approvals are required.

RECOMMENDATION

To authorize the Director of Transportation to accept from KLA a gift of \$500,000 to fund the design, construction and inspection of a new traffic signal system at Masonic Avenue and Ewing Terrace and a signal modification at Masonic Avenue, Anza Street and O'Farrell Street, under the terms and conditions set forth in the Agreement negotiated between the parties.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, KLA Geary LLC, a Delaware limited liability corporation (“KLA”) owns certain commercial property located at 2675 Geary Boulevard and is in lease negotiations with Target Corporation, which intends to open a retail store at the Property in July of 2013; and,

WHEREAS, KLA and the SFMTA agree that installation of a new traffic signal system at the intersection of Masonic Avenue and Ewing Terrace (the “New Signal System”) and modifications (“Modifications”) of the existing traffic signals at the intersection of Masonic Avenue and O’Farrell Street will improve traffic circulation in the vicinity of the Property for the benefit of Target’s customers and its neighbors; and,

WHEREAS, Accordingly, KLA is willing to fund the design of the New Signal System and the Modifications, and, upon execution of a lease with Target, provide SFMTA with the costs of the construction and inspection of the New Signal System and the Modifications, under the terms and conditions set forth in the Agreement negotiated between the parties; and,

WHEREAS, SFMTA is willing to undertake the design, construction and inspection of the New Signal system and the Modifications; and,

WHEREAS, The SFMTA Board is scheduled to approve traffic legislation for the installation of a New Signal System at the intersection of Masonic Avenue and Ewing Terrace on March 6, 2012; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to accept from KLA a gift of \$500,000 to fund the design, construction and inspection of a new traffic signal system at Masonic Avenue and Ewing Terrace and a signal modification at Masonic Avenue, Anza Street and O’Farrell Street, under the terms and conditions set forth in the Agreement negotiated between the parties.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 6, 2012.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**AGREEMENT REGARDING DESIGN, CONSTRUCTION, AND INSPECTION OF A
NEW SIGNAL SYSTEM AT MASONIC AVENUE AND EWING TERRACE AND A
MODIFIED SIGNAL AT MASONIC AVENUE AND O'FARRELL STREET**

This agreement is made this _____ day of _____, 2012 (the "Agreement"), in San Francisco, California, between the City and County of San Francisco, a municipal corporation ("City"), by and through its Municipal Transportation Agency ("SFMTA"), and KLA Geary LLC, a Delaware limited liability corporation ("KLA").

RECITALS

A. KLA owns certain commercial property located at 2675 Geary Boulevard in San Francisco (the "Property"), more fully depicted in Exhibit A. KLA is in lease negotiations with Target Corporation ("Target"), which intends to open a retail store at the Property in July of 2013.

B. KLA and the SFMTA agree that installation of a new traffic signal system at the intersection of Masonic Avenue and Ewing Terrace (the "New Signal System"), and modifications ("Modifications") of the existing traffic signals at the intersection of Masonic Avenue and O'Farrell Street (the "Existing Signal System"), will improve traffic circulation in the vicinity of the Property for the benefit of Target's customers and its neighbors. Accordingly, KLA is willing to fund the design of the New Signal System and the Modifications, and, upon execution of a lease with Target, provide SFMTA with the costs of the construction and inspection of the New Signal System and the Modifications, as provided for in this Agreement. SFMTA is willing to undertake the design, construction and inspection of the New Signal system and the Modifications.

C. The parties wish to set out their respective duties and obligations with respect to the New Signal System and the Modifications in this Agreement, which shall be subject to approval of the SFMTA Board of Directors.

AGREEMENT

1. Term. The Agreement shall commence as of _____, 2012 and terminate upon approval by the City's Traffic Engineer of both the New Signal System and the Modifications of the existing signal system, or as otherwise specified herein.

2. Project

2.1. Description of Project. The project consists of the design, construction, inspection and approval of a traffic signal system at the intersection of Masonic Avenue and Ewing Terrace in San Francisco, and design, construction, inspection and approval of modifications to the existing traffic signal at the intersection of Masonic Avenue and O'Farrell Streets in San Francisco (the "Project"). The Project shall maintain the existing left-turn lane from southbound Masonic Avenue to eastbound O'Farrell Street and install an actuated, protected left-turn signal. The Project shall be limited to design, construction and inspection of signal improvements and signal equipment only. With the exception of disability access improvements, the Project shall not include other improvements to sidewalks, roads, crosswalks, landscaping, or changes to roadway

configurations. Such improvements, if any, shall remain the sole responsibility of the SFMTA.

2.2. Costs for Project. KLA agrees to bear all costs related to the Project, up to a maximum of Five Hundred Thousand Dollars (\$500,000), including but not limited to the costs of design, construction, and inspection, as further clarified in this Agreement.

2.2.1. Costs of Design. To cover SFMTA's estimated cost of designing the New Signal System and the Modifications, KLA will deposit with the SFMTA the amount of Seventy-Five Thousand Dollars (\$75,000) within thirty (30) days of approval of this Agreement by the SFMTA Board of Directors.

2.2.2. Construction and Inspection. To cover SFMTA's estimated costs of constructing and inspecting the Project, which construction shall be performed by City's contractor and inspected by the SFMTA. KLA shall deposit with the SFMTA the amount of Four Hundred Twenty Five Thousand Dollars (\$425,000) ("Construction Deposit"). The Construction Deposit shall be due according to the following schedule: (a) to fund the Modifications, a deposit of \$125,000 ("Modifications Deposit") shall be paid within thirty (30) days of the execution of a lease between Target and KLA, but in no event later than July 1, 2012; (b) to fund the New Signal System, a deposit of \$300,000 ("New Signal Deposit") shall be paid no later than July 1, 2012. SFMTA shall not authorize construction to proceed, and KLA shall not be liable for costs associated with construction commenced, prior to the receipt of the relevant portion of the Construction Deposit.

2.2.3. Refund of Unexpended Balances. In the event that SFMTA's total costs for design, construction, and inspection of the New Signal System and the Modifications (the "Project Costs") are less than \$500,000, SFMTA shall refund the unexpended balance to KLA within thirty (30) days of Project completion. SFMTA shall provide KLA with documentation of all Project Costs.

2.2.4. Maintenance and Operation Costs. KLA shall not be liable for the costs of maintaining, electrifying, operating or replacing the New Signal System or the Existing Signal System, or repairing any construction defects.

2.3. City Responsibilities. SFMTA agrees to the following tasks:

2.3.1. To prepare plans and specifications for the construction/installation of the New Signal System and the Modifications.

2.3.2. To provide copies of existing estimates, bids, progress payments and invoices for the construction work, upon request by KLA.

2.3.3. To manage the construction of the New Signal System and the Modifications by its contractor.

2.3.4. To perform construction inspection during installation of the New Signal System and the Modifications.

2.3.5. To accept for operation both the New Signal System and the Modifications.

2.3.6. Provided KLA deposits funds required by Section 2.2.2 above with the SFMTA on or before April 1, 2012, SFMTA shall use commercially reasonable efforts to ensure that the Modifications are constructed, inspected, approved, and fully operational on or before March 1, 2013.

2.3.7. To make commercially reasonable efforts to control costs.

2.3.8. To refund to KLA any amount of the advance deposits required by Sections 2.2.1 and 2.2.2 exceeding SFMTA's actual Project Costs.

Default; Remedies.

2.4. 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.

2.5. Default of KLA. On and after any default on the part of KLA that is not cured within the time period specified in Section 3.1, SFMTA will have the right to terminate this Agreement; provided, however, that before SFMTA shall have the right to terminate this Agreement, SFMTA shall send a second default notice to KLA informing KLA that SFMTA intends to terminate this Agreement if the default is not cured within an additional five (5) days. In the event of a default, SFMTA's sole remedies shall be limited to recovery of actual Project Costs incurred, and if construction has commenced, to recover of the funds necessary to complete construction, not to exceed \$425,000.

2.6. Default of City. On and after any default on the part of SFMTA with respect to any obligation of SFMTA under Section 2.3 that is not cured within the time period specified in Section 3.1, KLA's sole remedy is to seek a refund of any and all monies paid to or deposited with SFMTA for such work; provided, however, that before KLA shall have the right to seek a refund of any and all monies paid to or deposited with SFMTA for such work, KLA shall send a second default notice to SFMTA informing SFMTA that KLA intends to terminate this Agreement if the default is not cured within an additional five (5) days.. KLA agrees that it will not be entitled to other damages or any equitable relief for any uncured default on the part of SFMTA. KLA's rights to terminate this Agreement are set forth in Section 5, below.

2.7. 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.

2.8. Attorney's Fees. If either Party commences an action against the others to enforce any of the terms hereof or because of the breach by either Party of any of the terms hereof, the losing or defaulting Party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. "Prevailing party" shall mean the party who is entitled under applicable laws to recover its costs whether or not suit proceeds to final judgment.

3. Modification of Agreement. The City and KLA 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.

4. Termination.

4.1. Prior to Construction. Prior to the commencement of construction, which occurs when the construction contract is awarded and certified, either party may terminate this Agreement upon thirty (30) days written notice to the other. In the event of termination by the City, City shall return all funds deposited by KLA as of the date of termination and shall have no right to deduct any Project Costs from such deposits. In the event of termination by KLA, the City shall deduct from the Design Deposit all design costs incurred up to the day of termination, up to a maximum of \$75,000, and return any unused funds to KLA within thirty (30) days.

4.2. Mid-Construction. Once construction has commenced, neither party shall have the right to cancel its obligations with respect to the Project, which shall be completed by City and funded by KLA as set forth in this Agreement.

4.3. KLA's duty to fund the New Signal System shall terminate if City has not commenced construction of the New Signal System on or before December 31, 2012. In the event that KLA's obligations to fund the New Signal System are terminated pursuant to this section, City shall refund all unused portions of the New Signal Deposit within thirty (30) days after the above referenced date.

5. 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:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103-4737
Attn: City Traffic Engineer
Fax: (415) 701-4735

To KLA:

KLA Geary LLC
c/o Balboa Retail Advisors, LLC
1401 Ocean Avenue, Suite 350
Santa Monica, CA 90401
Attn: Adam Miller
Fax: (310) 496-4131

KLA Geary, LLC
c/o Lubert Adler Mgmt., Inc.
2929 Arch St.
Philadelphia, PA 19104
Attn: Mr. Gerald A. Ronan
Fax: (215) 972-2246

With a copy to:

Reuben & Junius, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Daniel Frattin
Fax: (415) 399-9480

6. Audit and Inspection of Records. Each party agrees to maintain and make available to the other party during business hours accurate business records, accurate books and accurate accounting records directly relating to its respective activities and duties under this Agreement, including bids and estimates for construction. Each party will permit the other party to audit, examine and make copies of such books and records, and to audit all invoices, materials, payrolls, records, personnel and other data pertaining to this Agreement to verify or review the quantity, quality, and progress of the work, reimbursable costs, estimates of cost for fixed rates, including those applicable to proposed changes, and for any other reasonable purposes. The parties shall maintain such data and records in an accessible location and condition during the term of this Agreement and for three years thereafter. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon each party by this Section.

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

8. 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,, provided however that KLA may, in its sole discretion and without City's consent, assign this Agreement to any entity acquiring fee title to the Property.

9. Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY OR KLA BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL OR CONSEQUENTIAL 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.

10. 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.

11. 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.

12. 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 4.

13. Compliance with Laws. Target shall keep itself 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.

14. 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.

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
MUNICIPAL TRANSPORTATION AGENCY

KLA Geary LLC

By

By

Edward D. Reiskin
Director of Transportation

Gerald A. Ronan
Vice President

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Mariam Morley
Deputy City Attorney

AUTHORIZED BY:

San Francisco Municipal Transportation
Agency
Board of Directors
Resolution No: _____
Adopted: 2/22/12
Attest:

Secretary, SFMTA Board of Directors

EXHIBIT A