

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 13-028

WHEREAS, RCS-Brotherhood Way LLC, a limited liability corporation (RCS) owns certain residential property located at 700 Brotherhood Way and intends to build residential units at the Property in October of 2013; and,

WHEREAS, RCS and the SFMTA agree that installation of a new traffic signal (“New Signal”) on Brotherhood Way will improve traffic circulation in the vicinity of the Property for the benefit of the new residential units and its neighbors; and,

WHEREAS, Accordingly, RCS is willing to fund the design of the New Signal, and, provide SFMTA with the costs of the construction engineering and inspection of the New Signal, under the terms and conditions set forth in the Agreement negotiated between the parties; and,

WHEREAS, SFMTA is willing to undertake the design, construction engineering and inspection and maintenance of the New Signal; and, now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute an agreement with RCS Brotherhood Way LLC to accept a gift of \$233,000 to fund the design, construction engineering and inspection, procurement of traffic signal hardware and maintenance for a new traffic signal at 700 Brotherhood Way.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 5, 2013.

R. Pozzner

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT REGARDING DESIGN, CONSTRUCTION, INSPECTION AND MAINTENANCE OF A NEW TRAFFIC SIGNAL AT 700 BROTHERHOOD WAY

This agreement is made this _____ day of February, 2013 (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 RCS-Brotherhood Way, LLC, a Colorado limited liability company ("Developer").

RECITALS

- A.** Developer intends to develop a certain residential project located at 700 Brotherhood Way (AKA 800 Brotherhood Way), Assessor's Block 7331, Lot 005 in San Francisco, which is more fully depicted in Exhibit A (the "Development").
- B.** The Development includes a new access driveway to the Development and a new traffic signal at the intersection of the access driveway and Brotherhood Way (the "Traffic Signal"). The Conditional Use Authorization for the Development (Case No. 2003.0536CR, Planning Commission Motion No. 17022), Conditions of Approval, Condition 9 Transportation, requires Developer to pay for the costs of synchronizing the Traffic Signal with the two adjacent traffic signals along Brotherhood Way at Chumasero Drive and at the Brandeis Hillel School access road, as more fully depicted in Exhibit B. The Developer is willing to perform the construction of the Traffic Signal, and to provide SFMTA with the costs for design (including synchronization), construction inspection, support, procurement of the traffic signal controller and cabinet, and maintenance and operation of the Traffic Signal.
- C.** The parties wish to set out their respective duties and obligations with respect to the construction, design (including synchronization), construction inspection and support, and maintenance and operation of the Traffic Signal.
- D.** The Agreement is subject to approval of the SFMTA Board of Directors.

AGREEMENT

1. Term. The Agreement shall commence as of February __, 2013 and terminate upon approval and acceptance by the City's Traffic Engineer of the Traffic Signal, or as otherwise provided herein.

2. Project

2.1. Description of Project. The scope of this Agreement consists of the design (including synchronization), construction, construction inspection and support, approval and maintenance and operation of the Traffic Signal (the "Project"). The Traffic Signal shall become the property of the SFMTA upon completion of construction by Developer and acceptance by the City for maintenance.

2.2. Costs of Project. Developer agrees to bear all costs related to the Project as further specified herein.

2.3. Costs of Design. To cover the costs that SFMTA estimates it will incur in designing the Traffic Signal, Developer shall give SFMTA an advance deposit in the amount of

Sixty Thousand Dollars (\$60,000) within ten (10) days of the approval of this Agreement by the SFMTA Board. SFMTA shall provide Developer a reasonably detailed statement evidencing the actual design costs (“Actual Design Costs”) within thirty (30) business days of completion of the design work. If the amount of the advance deposit is inadequate to cover SFMTA’s Actual Design Costs, Developer shall reimburse SFMTA for any additional costs incurred within thirty (30) days of SFMTA’s request for additional funds. Likewise, if the amount of the advance deposit exceeds SFMTA’s Actual Design Costs, SFMTA shall reimburse the Developer the unused portion of the advance deposit within ninety (90) business days of the completion of the design work.

2.4. Costs of Construction. Developer agrees to construct and install the Traffic Signal at its sole cost and expense, in accordance with the plans and specifications provided by SFMTA, and subject to final construction inspection and acceptance by the City. Developer shall designate a contractor licensed in California to perform the traffic signal construction and installation, which contractor may be the same or different than the contractor Developer has or will retain to construct the Development.

2.5. Costs of Construction Inspection, Procurement and Support . To cover SFMTA’s costs of construction inspection, construction support, and procurement of the traffic signal controller and cabinet, Developer shall give SFMTA an advance deposit in the amount of Eighty-three Thousand Dollars (\$83,000) within ten (10) days of issuance of the Excavation Permit for the Traffic Signal by the Department of Public Works. SFMTA will provide Developer a reasonably detailed statement evidencing the actual construction inspection, procurement, and support costs (“Actual Construction Support Costs”) upon acceptance of the Traffic Signal by the City. If the amount of the advance deposit is inadequate to cover SFMTA’s Actual Construction Support Costs, Developer shall reimburse SFMTA for any additional costs incurred by the SFMTA within thirty (30) days of such request. Likewise, if the amount of the advance deposit exceeds SFMTA’s Actual Supports Costs, SFMTA shall reimburse the Developer the unused portion of the advance deposit within sixty (60) days of acceptance of the Traffic Signal by the City.

2.6. Maintenance and Operation Costs. To cover the costs of maintenance and electrification of the Traffic Signal for its useful life, Developer agrees to pay to SFMTA the amount of Ninety Thousand Dollars (\$90,000) within five (5) days after construction is completed, and before the Traffic Signal is accepted by the City. Once the Traffic Signal is accepted by the City, the Developer shall have no further responsibility or obligation for the Traffic Signal.

2.7. Audit Rights Pertaining to Actual Costs. Developer shall be entitled to audit SFMTA’s records related to its Actual Design Costs and Actual Construction Support Costs (collectively, “Actual Costs”) in the manner and subject to the terms and conditions set forth below by notice given within ninety (90) days following SFMTA’s delivery of the statements described in paragraphs 2.3 and 2.5 above (the “Statement of Costs”). SFMTA agrees to maintain and make available to Developer during business hours accurate business records, accurate books and accurate accounting records directly relating to its Actual Costs and other activities under this Agreement. SFMTA permits Developer to audit, examine and make excerpts and transcripts from such books and records, and to audit, verify and review all invoices, materials, payrolls, records, personnel and other data pertaining to its Actual Costs. SFMTA shall maintain such data and records in an accessible location and condition during the term of this Agreement and for three years thereafter.

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

3.1. To prepare final plans and specifications for the construction/installation of the Traffic Signal no later than one hundred and twenty (120) days after receipt of the deposit

San Francisco, CA 94103-4737
Attn: City Traffic Engineer
Fax: (415) 701-4735

To Developer: RCS Brotherhood Way, LLC
Attn: Sharon K. Eshima

8. Agreement Binding on Successors. This Agreement shall be binding on the heirs, successors and assigns of Developer, including the Homeowners Association that will be formed for the Development.

9. Assignment. The services to be performed by the parties are personal in character and this Agreement and any duties, liabilities or obligations hereunder may be assigned or delegated by either party as long first approved by written instrument executed and approved as required by applicable City law, provided however that Developer may, in its sole discretion and without City's consent, assign this Agreement AND all rights, obligations and liabilities to any entity, or individuals acquiring or succeeding to fee title to the Development. Any assignment under this Paragraph shall be deemed to fully delegate the rights, liabilities and obligations of the assignor to the assignee and to terminate the rights, liabilities and obligations of the assignor.

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

11. 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.

12. 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.

13. 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 6.

14. Compliance with Laws. Developer 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.

15. 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.

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

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

CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

RCS BROTHERHOOD WAY, LLC,
A Colorado limited liability company

By _____
Edward Reiskin
Director of Transportation

By _____
Sharon K. Eshima
Its: Manager

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Mariam Morley
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____
Adopted: _____

Attest: _____
Secretary, SFMTA Board of Directors