

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Mayor's Office of Housing and Community Development (MOHCD) for a jurisdictional transfer of property from SFMTA to MOHCD for an affordable housing project.

SUMMARY:

- The City and County of San Francisco owns, under SFMTA's jurisdiction, property at the corner of Geneva Avenue and San Jose Avenue, commonly referred to as the Upper Yard (Property) and comprised of approximately 30,750 square feet.
- On November 6, 2012, the SFMTA Board of Directors unanimously passed Resolution No. 137-12, supporting the sale of the Property in principle and directing the Director of Transportation to work with partner agencies to advance such a sale.
- This MOU provides for the transfer of jurisdiction of the Property to MOHCD if MOHCD determines the condition of the Property is suitable for an affordable housing development, if MOHCD and SFMTA agree on the jurisdictional transfer fee (to be determined through a combination of a third-party appraisal of the Property's fair market value and discussions and agreements between SFMTA, BART and MOH) and if the City's Board of Supervisors approves the transfer.
- If the jurisdictional transfer occurs, SFMTA can continue using the Property at no cost until the second anniversary of the execution of the MOU or any earlier date that MOHCD needs possession to commence the construction of an affordable housing project on the Property.

ENCLOSURES:

1. SFMTAB Resolution
2. Memorandum of Understanding

APPROVALS:

DATE

DIRECTOR _____

4/7/14

SECRETARY _____

4/7/14

ASSIGNED SFMTAB CALENDAR DATE: April 15, 2014

PAGE 2.

PURPOSE

Authorizing the Director of Transportation to execute a Memorandum of Understanding (MOU), between the San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Mayor's Office of Housing and Community Development (MOHCD) to transfer jurisdiction of SFMTA's Upper Yard (Property) to MOHCD for an affordable housing project (Jurisdictional Transfer).

GOAL

This item will meet the following goals and objectives of the SFMTA FY2013-18 Strategic Plan:

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.3: Allocate capital resources effectively

Objective 3.5: Reduce capital and operating structural deficits

DESCRIPTION

The Property is a narrow, approximately 0.7-acre parcel located at the corner of Geneva Avenue and San Jose Avenue and straddling San Francisco's Excelsior and Ingleside Districts. The Property is adjacent to the 280 freeway and is immediately across from SFMTA's Green Division and Cameron Beach Yard. The Property is also adjacent to BART's Balboa Park Station and near several Muni transit lines, including the J, K, and M light rail lines and the 29, 43 and 54 bus lines. Due to its location, the Property is ideally located for future transit oriented development. Historically, the Property was used as a layover yard for SFMTA's light rail vehicles, but it is currently used only for SFMTA employee parking. The SFMTA Real Estate and Facilities Vision for the 21st Century report (Vision Report) concluded that the Property is no longer needed to physically support SFMTA activities and can be characterized as surplus and available for private development. It is the only SFMTA site that was completely considered as surplus to SFMTA physical needs in the Vision Report.

Bay Area Rapid Transit (BART) owns an approximately 1.0-acre parcel that abuts the Property (BART Parcel), which BART utilizes as the entrance plaza to its Balboa Park BART station and as a "Kiss & Ride" area. A private driveway on the BART Parcel serves the Kiss & Ride area and runs along the BART Parcel boundary with the Property. The Vision Report recommended combining the BART Parcel and the Property to support a single development project. To that end, the SFMTA has facilitated discussions between MOHCD and BART in an effort to create a robust Transit Oriented Development project that improves the transit, pedestrian, housing and economic development experience in the surrounding area.

PAGE 3.

Such a future project at the Property would conform to the recommendations in the Balboa Park Station Area Plan (Plan) adopted by the San Francisco Board of Supervisors in 2009. The Plan encourages developing a housing project on the Property, which is zoned as “NCT-2” (Neighborhood Commercial Transit-2). BART’s Balboa Park Station Comprehensive Plan (September 2002) also suggests combining the Property and the BART Parcel for the development of a single residential project. Residential development at the Property has support from key neighborhood interests, elected and appointed officials, BART staff, and city staff.

Deposit, Transfer Fee, and MOU Term

The MOU describes the conditions to the Jurisdictional Transfer. First, MOHCD needs to timely confirm that the condition of the Property is suitable for a housing project. Second, MOHCD and SFMTA need to timely agree on the transfer fee for the Jurisdictional Transfer (Transfer Fee), which is to be determined through a combination of a third-party appraisal of the Property’s fair market value and discussions and agreements between SFMTA, BART and MOH. Third, the City’s Board of Supervisors needs to approve the Jurisdictional Transfer. If all of these conditions are satisfied, the Jurisdictional Transfer will be finalized. MOHCD and SFMTA shall equally share the fees charged by City’s Administrative Services Department, Real Estate Division (RED) in preparing and submitting the Jurisdictional Transfer legislation to the City’s Board of Supervisors.

On or before April 30, 2014, MOHCD will deliver \$2,500,000 (Deposit) as its good faith deposit for the Jurisdictional Transfer. If all of the conditions to the Jurisdictional Transfer are not satisfied, SFMTA will return the Deposit to MOHCD and the parties will terminate the MOU. If all of the conditions to the Jurisdictional Transfer are satisfied, MOHCD will deliver the Transfer Fee, less the Deposit, to the SFMTA on or before the date the Jurisdictional Transfer becomes effective (Transfer Date). After the Transfer Date, the SFMTA will have the right to use the Property, for no fee, until the 2-year anniversary of the execution of the MOU or any earlier date that MOHCD needs possession for the construction of an affordable housing project on the Property.

ALTERNATIVES CONSIDERED

The alternative to the Jurisdictional Transfer for the Transfer Fee would be to continue to operate the Property as an underutilized employee parking lot or other SFMTA use without realizing the highest and best use of the Property, benefitting the surrounding community, or fulfilling the City’s affordable housing and economic development goals. Approving the execution of the MOU also advances the principle of selling the Property in coordination with other public agencies set forth in Resolution No. 137-12, adopted unanimously by the SFMTA’s Board of Directors.

PAGE 4.

FUNDING IMPACT

SFMTA does not physically need the Property for its activities, and thus the Property could be declared surplus for the purposes described herein. Therefore, unlike other SFMTA properties where SFMTA needs to replace aging SFMTA transit facilities, the SFMTA's primary objectives in disposing of the Property is facilitating the development of a future Transit Oriented Development project with affordable housing and generating revenues to serve SFMTA's transit needs. There is no significant adverse funding impact on SFMTA operating budget pursuant to this action. It has been estimated that the fair market value of the Property could range on an order of magnitude between \$5,000,000 and \$9,000,000, dependent on product type, market demand and timing.

The City Attorney's Office has reviewed this Calendar Item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This action will require the RED to request the Mayor's recommendation of the Jurisdictional Transfer to the Board of Supervisors for approval and to submit legislation for the Jurisdictional Transfer to the Board of Supervisors. The City's Planning Department will also need to determine if the Jurisdictional Transfer requires a general plan conformance or environmental review before the City's Board of Supervisors considers the Jurisdictional Transfer legislation. MOHCD will be responsible for obtaining the Planning Department determinations and the SFMTA and MOHCD will equally share RED's costs in preparing and submitting the Jurisdictional Transfer legislation.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute the MOU to provide for the future redevelopment of the Property and generate revenues to fund other SFMTA activities.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The City and County of San Francisco owns, under SFMTA's jurisdiction, property at the corner of Geneva Avenue and San Jose Avenue commonly referred to as the Upper Yard and as Assessor's Block 6973, Lot 039 (Property); and

WHEREAS, On November 6, 2012, the SFMTA Board of Directors unanimously passed Resolution No. 137-12, supporting the sale of the Property in principle and directing the SFMTA Director of Transportation to work with partner agencies to advance such a sale; and

WHEREAS, The SFMTA and Mayor's Office of Housing and Community Development (MOHCD) wish to enter into a Memorandum of Understanding (MOU) for the potential transfer of jurisdiction of the Property to MOHCD (Jurisdictional Transfer); and

WHEREAS, The fee for the Jurisdictional Transfer (Transfer Fee) is to be based on the appraised fair market value of the Property and negotiations between BART, SFMTA and MOH, which would be paid to SFMTA on or before the Jurisdictional Transfer becomes effective; and

WHEREAS, Unless terminated earlier by SFMTA or MOHCD, the MOU will terminate on the second anniversary of its execution or the earlier date that MOHCD needs possession of the Property to commence the development of a housing project on the Property; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Memorandum of Understanding between the San Francisco Municipal Transportation Agency and the San Francisco Mayor's Office of Housing and Community Development for the jurisdictional transfer of SFMTA's Upper Yard (Assessor's Block 6973, Lot 039) to MOHCD for the development of an affordable housing project.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 15, 2014.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated as of _____, 2014, is by and among the City and County of San Francisco Municipal Transportation Agency ("**SFMTA**"), and the City and County of San Francisco Mayor's Office of Housing and Community Development ("**MOHCD**").

RECITALS

A. The City and County of San Francisco ("**City**") owns, under SFMTA's jurisdiction, that certain property (the "**Upper Yard**") comprised of approximately 30,750 square feet and depicted in the attached Exhibit A.

B. On November 6, 2012, the SFMTA Board of Directors unanimously passed Resolution No. 137-12 supporting the sale of the Upper Yard in principle and directing the SFMTA Director of Transportation to work with partner agencies to advance such sale.

C. MOH is interested in acquiring jurisdiction of the Upper Yard if it determines the Upper Yard could be an appropriate site for affordable housing, and SFMTA and MOH wish to enter into this MOU to set forth their agreement with regards to the potential transfer of jurisdiction of the Upper Yard from SFMTA to MOHCD (the "**Jurisdictional Transfer**").

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Due Diligence Investigations. A "**MOHCD Contractor**" shall mean any party (including City's Department of Public Works) engaged by MOH to investigate the Upper Yard during the term of this MOU. SFMTA agrees to allow MOHCD Contractors to investigate the condition of the Upper Yard; provided, however, that any such investigations on the Upper Yard shall not unreasonably interfere with SFMTA's use of the Upper Yard and shall be performed pursuant to written agreements between such MOHCD Contractor and SFMTA in a form reasonably acceptable to SFMTA. Such investigations shall be subject to the requirements set forth below.

(a) Claims. If any MOHCD Contractor investigation or entry on the Upper Yard results in any demands, claims, proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "**Losses**") arising from (i) the release of hazardous materials in, on, about, under, or from the Upper Yard, (ii) the exacerbation of any hazardous materials existing in, on, about, or under the Upper Yard as of the Effective Date (as defined below), (iii) a regulatory agency with jurisdiction requiring the remediation or investigation of the release, or threatened release, of any hazardous materials in, on, about, under, or from the Upper Yard, (iv) any damage to, or disturbance or destruction of, the Upper Yard or any other property (including personal property, fixtures, and equipment), or (v) any injury or death to any person, and SFMTA is not fully reimbursed for such Losses by the MOHCD Contractor or its insurer, MOHCD shall pay for such unreimbursed Losses. The foregoing obligation shall not include any claims resulting from the discovery or disclosure of

pre-existing environmental conditions on, in, under or about the Upper Yard; provided, however, that SFMTA shall have no obligation to remediate any such pre-existing environmental conditions. In no event shall SFMTA funds be used to pay for any Losses, except to the extent a Loss results from the willful misconduct or gross negligence of a SFMTA employee and any SFMTA invitee, agent, or contractor other than a MOHCD Contractor.

(b) Legal Fees for Access Agreements. If MOHCD requests SFMTA to allow a MOHCD Contractor to access the Upper Yard to conduct any investigation prior to the Transfer Date, MOHCD shall reimburse SFMTA for the City Attorney fees in preparing the access agreement for such investigation. Following the Transfer Date, MOHCD shall be responsible for entering into any access agreements for such Contractor investigations at its sole cost.

(c) Approval Notice. If MOHCD accepts the condition of the Upper Yard, MOHCD shall deliver written notice of such determination to SFMTA (the "**Approval Notice**"). If MOHCD does not accept the condition of the Upper Yard, MOHCD shall have the right to terminate this MOU by delivering written notice of such termination to SFMTA (the "**Disapproval Notice**"). If MOHCD does not deliver an Approval Notice or a Disapproval Notice to SFMTA within the ninety (90) day period immediately following the full execution of this MOU ("**Effective Date**"), SFMTA shall have the right to terminate this MOU by delivering written notice of such termination to MOHCD.

If either party terminates this MOU pursuant to this subsection and MOHCD has delivered the Deposit (as defined in Section 2) to SFMTA prior to such termination, within forty-five (45) days following the delivery of any such termination notice to SFMTA or MOHCD, SFMTA shall return the Deposit to MOHCD. SFMTA shall have no responsibility for paying MOHCD any interest earned on the Deposit.

2. Transfer Fee.

(a) Amount. SFMTA is acquiring, at its sole cost, an appraisal of the fair market value of the Upper Yard from a licensed appraiser. Following its receipt of such appraisal, SFMTA shall notify MOHCD of the fair market value of the Upper Yard established in such appraisal (the "**Appraised FMV**"). If SFMTA and MOHCD mutually agree to the Appraised FMV or to a different fair market value in writing, such amount shall be the "**Transfer Fee**".

If SFMTA and MOHCD do not mutually agree to the Transfer Fee within thirty (30) days of the Effective Date, either SFMTA or MOHCD shall have the right to terminate this MOU by delivering written notice of such termination to the other party. If either party terminates this MOU pursuant to this subsection and MOHCD has delivered the Deposit to SFMTA prior to such termination, within forty-five (45) days following the delivery of any such termination notice to SFMTA or MOHCD, SFMTA shall return the Deposit to MOHCD. SFMTA shall have no responsibility for paying MOHCD any interest earned on the Deposit.

(b) Payment. On or before April 30, 2014, MOHCD shall deliver Two Million Five Hundred Dollars (\$2,500,000) (the "**Deposit**") as its good faith deposit for the Jurisdictional Transfer. If the parties elect to request the City's Mayor to recommend the Jurisdictional Transfer for the Transfer Fee, and the City's Board of Supervisors approves of the Jurisdictional Transfer, the Deposit shall be deemed SFMTA's sole property and MOHCD shall deliver an

amount equal to the Transfer Fee, less the Deposit, to SFMTA on or before the Jurisdictional Transfer becomes effective (the "**Transfer Date**").

3. Environmental Review and General Plan Conformity. Within the thirty (30) day period immediately following the later date (the "**Agreement Date**") to occur of SFMTA's receipt of the Approval Notice and the parties' mutual agreement to the Transfer Fee, MOHCD shall request City's Planning Department to determine if the Jurisdictional Transfer will require a general plan conformance finding or environmental review before the City's Board of Supervisors approves of the Jurisdictional Transfer. If such review is required before such approval, MOHCD shall request the City's Planning Department to perform such review at MOHCD's sole cost.

4. Jurisdictional Transfer Legislation. Within the thirty (30) day period immediately following the later date to occur of the Agreement Date and the date that City's Planning Department issues a general plan conformance finding and completes its environmental review pursuant to Section 3, if applicable, SFMTA shall submit to the City's Administrative Services Department, Real Estate Division ("**RED**") all materials necessary to enable RED to request the Mayor's recommendation of the Jurisdictional Transfer to the Board of Supervisors. The parties shall each pay one-half (1/2) of any costs charged by RED and the City Attorney's Office to seek and effect the Jurisdictional Transfer, including the cost to submit legislation for approval of the Jurisdictional Transfer ("**Transfer Legislation**").

If the Board of Supervisors does not adopt the Transfer Legislation, this MOU shall automatically terminate on the date the Board of Supervisors rejects the Transfer Legislation; provided, however, that if MOHCD has delivered the Deposit to SFMTA prior to such time, within forty-five (45) days following the Board of Supervisor's disapproval of the Transfer Legislation, SFMTA shall return the Deposit to MOH. SFMTA shall have no responsibility for paying MOH any interest earned on the Deposit.

5. Use of Upper Yard. If the Transfer Date occurs, SFMTA shall have the right to continue using the Upper Yard for no fee until MOHCD reasonably needs possession of the Upper Yard to commence the construction of any affordable housing. In such event, MOHCD shall provide SFMTA with no less than thirty (30) days prior written notice of the date it requires physical possession to commence the development of a housing development on the Upper Yard (the "**Possession Date**").

SFMTA shall vacate the Upper Yard on or before the Possession Date and leave it in substantially the same condition as it was in as of the Effective Date. During the period between the Effective Date and the earlier to occur of the termination of this MOU and the Possession Date, SFMTA shall not, without first obtaining MOHCD's prior written approval, take any of the following actions: (i) construct any improvements on the Upper Yard, (ii) encumber, lien, transfer, grant, lease or license all or any part of the Upper Yard, or enter into any contract affecting the Upper Yard, except for contracts that are terminable on thirty days notice or less or approved by MOHCD in writing, or (iii) cause or authorize any use of the Upper Yard for any non-City use.

SFMTA shall be responsible for paying for any Losses arising from SFMTA's use of the Upper Yard during the period between the Effective Date and the Possession Date (the "**Post-**

of MOHCD or his or her designee. All matters requiring SFMTA's approval shall be approved of by the SFMTA Director of Transportation or his or her designee, or by the SFMTA Board of Directors, if required.

10. Cooperation. Subject to the terms and conditions of this MOU, SFMTA and MOHCD staff shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance of further acts and the execution and delivery of any additional documents in form and content reasonably satisfactory to all parties (subject to any necessary approvals). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU or any future use of the Upper Yard, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Jurisdictional Transfer or any development of the Upper Yard for affordable housing. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.

11. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the SFMTA Director of Transportation, or his or her designee, and the Director of MOHCD. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by an authorized representative, and only to the extent expressly provided in such written waiver. (c) This MOU (including all exhibits) contains the entire understanding between the parties as of the date of this MOU, and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

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

SFMTA:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin
Director of Transportation

Date: _____

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

MOH:

MAYOR'S OFFICE OF HOUSING
AND COMMUNITY DEVELOPMENT

By: _____
Olson Lee, Director

Date: _____

EXHIBIT A

Depiction of Upper Yard

(This depiction outlines the approximate boundaries of the Property)

