

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 between the City and County of San Francisco Municipal Transportation Agency (SFMTA) and the Real Estate Division of the City and County of San Francisco General Services Agency (RED) for interim management and the transfer of jurisdiction of Unity Plaza from SFMTA to RED.

SUMMARY:

- In July 2015, the SFMTA Board of Directors authorized the Director of Transportation to execute a contract for the construction of Unity Plaza.
- Construction commenced in September 2015 and will be completed in October 2016.
- Unity Plaza will provide an enhanced pedestrian connection to transit, City College, and the Ocean Avenue commercial district. It will also provide a public space for limited recreation and neighborhood serving activities.
- RED has expressed an interest in assuming jurisdiction of Unity Plaza for the City's Plaza Program pursuant to Chapter 94 of the San Francisco Administrative Code.
- The proposed MOU provides for RED's interim management of Unity Plaza and the terms for any jurisdictional transfer of Unity Plaza from SFMTA to RED.

ENCLOSURES:

1. SFMTAB Resolution
2. Memorandum of Understanding (MOU) with Real Estate Division (RED)
3. Balboa Park Station Area Plan Final Environmental Impact Report
 - a. http://default.sfplanning.org/MEA/2004.1059E_Balboa_FEIR_Pt1.pdf
 - b. http://default.sfplanning.org/MEA/2004.1059E_Balboa_FEIR_Pt2.pdf
 - c. http://default.sfplanning.org/MEA/2004.1059E_Balboa_FEIR_Pt3.pdf
 - d. <http://sf-planning.org/Modules/ShowDocument.aspx?documentid=7748>

APPROVALS:


DATE

DIRECTOR



8/30/16

SECRETARY



8/30/16

ASSIGNED SFMTAB CALENDAR DATE: September 6, 2016

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PURPOSE

Authorizing the Director of Transportation to execute a Memorandum of Understanding (MOU) with the Real Estate Division (RED) for interim management and the transfer of jurisdiction of Unity Plaza from SFMTA to RED.

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 3.3: Allocate capital resources effectively.

Objective 3.4: Deliver services efficiently.

Objective 3.5: Reduce capital and operating structural deficits.

DESCRIPTION

Unity Plaza is located on the north side of Ocean Avenue, immediately west of the rebuilt City College Bus Terminal (the former Phelan Loop). This approximately 15,932 square foot plaza will provide an enhanced pedestrian connection to the bus terminal, the K Ingleside rail line on Ocean Avenue, City College of San Francisco, and the Ocean Avenue commercial district. Unity Plaza will also provide a valuable community amenity for the surrounding neighborhoods, as it is expected to be the location of neighborhood fairs, performances, and other activities such as a farmers' market.

In July 2015, the SFMTA Board of Directors authorized the Director of Transportation to execute a contract for the construction of Unity Plaza. Construction commenced in September, 2015 and will be completed in October, 2016.

SFMTA and RED have been in discussions since 2015 about management of Unity Plaza. RED has agreed to manage and accept jurisdiction of Unity Plaza following the guidelines and prerequisites of the City's Plaza Program, which include rezoning the site and selecting a management steward. Construction of Unity Plaza will be completed before these intermediate steps are completed. To allow immediate public use of Unity Plaza, RED agrees to temporarily manage Unity Plaza while it fulfills the prerequisites of the Plaza Program before requesting the Board of Supervisors to approve the transfer of jurisdiction of Unity Plaza to RED.

The proposed MOU provides the terms and conditions for RED's interim management of Unity Plaza, the future transfer of jurisdiction to RED under the Plaza Program, and the continuing rights and responsibilities of SFMTA and RED after any jurisdictional transfer. Therefore, the MOU provides a two-step process: (1) an initial period during which SFMTA retains jurisdiction of Unity Plaza but RED maintains and manages it followed by (2) a jurisdictional transfer of Unity Plaza to RED after RED has fulfilled the requirements of the Plaza Program.

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The initial, interim management period allows Unity Plaza to open in a timely fashion following construction completion and excuses SFMTA from assuming responsibility for operating and maintaining Unity Plaza during this period. To protect SFMTA's interests, the MOU includes the following provisions during this interim period:

- RED must maintain Unity Plaza and keep it in a state of good repair.
- RED will be responsible for claims or damage that arise from the management or use of Unity Plaza by RED or its contractors.

If the Board of Supervisors approves the jurisdictional transfer and accepts Unity Plaza into the Plaza Program, then jurisdiction and sole responsibility for Unity Plaza will transfer immediately to RED. Unity Plaza will be transferred at no cost to RED, due to the on-going cost associated with maintaining and repairing Unity Plaza.

The following key provisions in the MOU will govern RED's use and management of Unity Plaza both during the interim period and following any jurisdictional transfer:

- Because Unity Plaza has been funded in part by the Federal Transit Administration (FTA), the use of Unity Plaza must conform to FTA requirements, including the requirement that surplus funds generated by Unity Plaza be returned to SFMTA for transit purposes.
- In the event that Unity Plaza is no longer used for its permitted use, jurisdiction will automatically revert to SFMTA.
- RED will be entirely responsible for the cost of maintaining and operating Unity Plaza.
- RED will cooperate with and grant access to SFMTA if SFMTA reasonably needs to access Unity Plaza for emergency transit purposes.

Construction of Unity Plaza will be completed in October 2016, with RED's interim management commencing at that time. The jurisdictional transfer and Plaza Program legislation are expected to go before the Board of Supervisors at the beginning of 2017, but the MOU allows for up to two one-year extensions to the interim period in case the process takes longer.

STAKEHOLDER ENGAGEMENT

In 2009, the Balboa Park Station Area Plan was adopted by the City's Board of Supervisors. The Plan was the culmination of a ten year Better Neighborhoods Planning Process with multiple community meetings led by the San Francisco Planning Department. The development of a new public open space at the City College Bus Terminal was specifically identified as a goal within the Balboa Park Station Area Plan.

Following adoption of the Plan, SFMTA and the Mayor's Office of Economic and Workforce Development held a number of community meetings to provide information and receive community input on the public plaza design. The concept of a public plaza at this location was universally supported at these meetings. SFMTA also formed a Community Advisory Committee to provide further community feedback. This committee is currently active and met quarterly to

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assist the SFMTA project team with specific design elements, which have been incorporated into the Unity Plaza design.

Since the start of construction, SFMTA has provided notices to businesses in the vicinity of Unity Plaza and has met with adjacent residents and City College to apprise them of construction progress. Community Advisory Committee meetings have also been a venue for periodic construction updates.

ALTERNATIVES CONSIDERED

Staff examined the possibility of maintaining SFMTA control and management responsibility for Unity Plaza but rejected this alternative due to staff resources and the ongoing maintenance costs.

Staff also examined the possibility of maintaining jurisdiction over Unity Plaza while delegating management and control to RED but rejected this alternative for two reasons. First, separating jurisdiction of and management of Unity Plaza would cause greater ambiguity about ultimate responsibility for Unity Plaza. A jurisdictional transfer clearly assigns this responsibility to RED. Second, the Plaza Program requires that RED have jurisdiction over Unity Plaza, and staff was reluctant to request that the Board of Supervisors amend this Plaza Program requirement.

FUNDING IMPACT

Approval of this MOU would avoid a financial liability to SFMTA by transferring responsibility for maintenance and operations of Unity Plaza to RED. Although SFMTA will still be responsible for causing its contractor to complete its post-construction landscaping maintenance for one year and repairing any damage caused by SFMTA or its contractors, RED will be entirely responsible for the other costs of operating, maintaining, and repairing Unity Plaza.

ENVIRONMENTAL REVIEW

The San Francisco Planning Department fully analyzed the Unity Plaza project in the programmatic Balboa Park Station Area Plan Final Environmental Impact Report (EIR), which was certified by the Planning Commission on December 4, 2008. On April 4, 2013, the Planning Department determined that the "Phelan Loop Plaza" required no further analysis under the California Environmental Quality Act (CEQA).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

The Board of Supervisors must approve the Transfer Legislation.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute an MOU to allow for the interim management of Unity Plaza by RED and facilitate a transfer of jurisdiction of Unity Plaza from SFMTA to RED if the transfer conditions in the MOU are satisfied.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On December 4, 2008 after a duly noticed public meeting, the Planning Commission certified the Final Environmental Impact Report (Final EIR) for the Balboa Park Station Area Plan (file number 2004.1059E) by Motion No. 17774 and found that the Final EIR reflected the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, contains no significant revisions to the Draft EIR, and the content of the report and the procedures through which the Final EIR was prepared, publicized and reviewed comply with the provisions of the California Environmental Quality Act (CEQA) (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (14 Cal. Code Regs. Sections 15000 et seq.) and Chapter 31 of the San Francisco Administrative Code; and,

WHEREAS, At the same hearing during which the Planning Commission certified the Final EIR, the Planning Commission adopted CEQA Findings with respect to the approval of the proposed Balboa Park Station Area Plan Amendments and other actions in Motion No. 17775 and adopted the Balboa Park Station Area Plan Amendments in Resolution No. 17776. The Final EIR, the CEQA Findings adopted by the Planning Commission with respect to the approval of the Balboa Park Station Area Plan Amendments, including a mitigation monitoring and reporting program and a statement of overriding considerations are on file with the Secretary of the Planning Commission; and,

WHEREAS, The concept of a public plaza on Ocean Avenue adjacent to the Phelan Bus Loop is consistent with the Balboa Park Station Area Plan; and,

WHEREAS, On April 4, 2013, the San Francisco Planning Department determined that work to construct the plaza was analyzed in the Final EIR and that no further environmental analysis of the project was required; and,

WHEREAS, On July 7, 2015, the SFMTA Board of Directors approved a contract for the construction of a public plaza on Ocean Avenue adjacent to the City College Bus Terminal (Unity Plaza), reviewed and considered the Final EIR, adopted mitigation measures, the CEQA Findings, the Mitigation Monitoring and Reporting Plan, and the Statement of Overriding Considerations under Resolution No. 15-104; and,

WHEREAS, A copy of the CEQA documents are on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference; and,

WHEREAS, Construction of Unity Plaza commenced in September, 2015 and is scheduled to be completed in October, 2016; and,

WHEREAS, SFMTA staff has explored various alternatives for managing, maintaining, and operating Unity Plaza and has determined that the Real Estate Division of the City and County of San Francisco General Services Agency (RED) is better equipped to manage Unity Plaza following construction completion with minimal risk and cost to SFMTA; and,

WHEREAS, SFMTA and RED staff have negotiated the terms of a Memorandum of Understanding (MOU) for RED's interim management of Unity Plaza and a jurisdictional transfer of Unity Plaza from SFMTA to RED if the MOU transfer conditions are met; and,

WHEREAS, The jurisdictional transfer MOU will assist SFMTA in meeting the objectives of Goal No. 3 of the SFMTA Strategic Plan (Improve the environment and quality of life in San Francisco); now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Memorandum of Understanding (MOU) with the Real Estate Division of the City and County of San Francisco General Services Agency (RED) to allow for the interim management of Unity Plaza by RED and facilitate a transfer of jurisdiction of Unity Plaza from SFMTA to RED if the transfer conditions in the MOU are satisfied.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 6, 2016.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated for reference purposes only as of _____, 2016, is between the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the City and County of San Francisco General Services Agency, through its Real Estate Division ("**RED**").

RECITALS

A. The City and County of San Francisco ("**City**"), through the SFMTA, owns certain property comprised of approximately 15,932 square feet on a portion of Assessor's Parcel Number 3180-194 and near the intersection of Ocean and Phelan Avenues, San Francisco, as further depicted in the attached **Exhibit A** (the "**Site**"). The Site is formerly part of a SFMTA bus loop and is adjacent to the SFMTA's new bus terminal, as further depicted in the attached **Exhibit B** (the "**Bus Terminal**").

B. The SFMTA is developing the Site, commonly referred to as "Unity Plaza", into a multi-use pedestrian plaza by installing the improvements generally described in the attached **Exhibit C** at the Site (the "**Approved Improvements**") and fully described in Contract No. 1283 between Bauman Landscape & Construction, Inc. ("**Contractor**") and the SFMTA, dated as of July 13, 2015 (the "**Construction Contract**").

C. The SFMTA is installing the Approved Improvements so the Site can serve as a "gateway to transit" that provides unimpeded access to the Bus Terminal by providing a path of travel through the Site to the Bus Terminal that meets applicable governmental accessibility requirements (a "**Path of Travel**").

D. On substantial completion of construction of the Approved Improvements, the SFMTA and RED wish to provide for RED's operation and maintenance of the Site as a public plaza that provides a Path of Travel at all times (the "**Permitted Use**") for the Interim Period (as defined in Section 2), as well as the potential transfer of jurisdiction of the Site from the SFMTA to RED for the Permitted Use, all on the terms of this MOU.

E. If RED takes jurisdiction of the Site, it intends to ask the Board of Supervisors to place the Site in the San Francisco Plaza Program (the "**Plaza Program**") established under San Francisco Administrative Code, Chapter 94. The Site's height and bulk designation under the City's Planning Code is 55-X and 65-A, and the SFMTA acknowledges that such designation may be revised to OS (Open Space) if it is placed in the City's Plaza Program.

F. The SFMTA and RED understand and acknowledge that RED will incur substantial costs in maintaining and operating the Site for the Permitted Use, but RED is willing to maintain the Site during the Interim Period at its sole cost and the SFMTA is willing to transfer jurisdiction of the Site to RED pursuant to this MOU for no value.

G. The Director of Property has determined the current fair market value of the Site is the same as or less than the reasonable and necessary costs to maintain and operate Unity Plaza.

H. The SFMTA and RED agree to the initial management and transfer of jurisdiction of the Site on the terms and conditions set forth in this MOU.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are incorporated herein by this reference.
2. Completion Date; Interim Period; Term.

(a) The "**Completion Date**" shall be the date that each of the following is satisfied: (i) the SFMTA Construction Contract Project Manager determines in writing that the Approved Improvements are substantially completed in compliance with the Construction Contract, all related regulatory approvals, and applicable law, and the Director of Property agrees in writing that work has been sufficiently completed for purposes of the jurisdictional transfer; and (ii) the Approved Improvements are safe for public use, as determined by the SFMTA Construction Contract Project Manager and the Director of Property.

(b) The "**Interim Period**" shall mean the period between the Completion Date and the earlier to occur of the Anniversary Date (defined as follows) and the transfer of jurisdiction of the Site from SFMTA to RED (the "**Transfer**"). The "**Anniversary Date**" shall be the first anniversary of the Completion Date; provided, however, that if the Transfer has not occurred on or before the first anniversary of the Completion Date, the SFMTA may extend the Anniversary Date to the second anniversary of the Completion Date by delivering written notice of such extension to RED before the first anniversary of the Completion Date. If the Transfer has not occurred on or before the first or second anniversary of the Completion Date and the SFMTA timely delivered written notice to RED to extend the Anniversary Date to the second anniversary of the Completion Date, SFMTA may further extend such rescheduled Anniversary Date to the third anniversary of the Completion Date by delivering written notice of such extension to RED before the second anniversary of the Completion Date.

(c) If the Transfer occurs on or before the first anniversary of the Completion Date, this MOU shall continue until the SFMTA obtains jurisdiction of the Site (if at all) pursuant to Section 10. If the Transfer does not occur on or before the first anniversary of the Completion Date, this MOU shall terminate on the earlier to occur of the first anniversary of the Completion Date and the date specified in Section 5(b). Notwithstanding anything to the contrary in the foregoing sentence, if either party defaults in its obligations under this MOU during the Interim Period and fails to cure such default within 60 days of receiving notice of such default from the other party (or if such default cannot be reasonably cured within such 60-day period, if such defaulting party fails to commence its cure of such default within such 60-day period and diligently pursue such cure to completion), the non-defaulting party may terminate this MOU by

delivering written notice of such termination to the other party during the Interim Period.

3. SFMTA Operational Responsibilities. The SFMTA agrees to take the following actions with respect to the Site at its sole cost during the Interim Period and after any Transfer:

(a) Cause the Contractor to complete construction of the Approved Improvements in compliance with the Construction Contract, applicable law, and all necessary regulatory approvals. Such regulatory approvals shall include, but not be limited to, any approvals needed from the City's Director of Public Works, the San Francisco Public Utilities Commission ("SFPUC"), the City's Arts Commission, and the Mayor's Office of Disability.

(b) Provide RED with a hard copy and digital copy of the final as-builts for the Approved Improvements, the Pull Boxes (as defined in Section 5), and the Connecting Cables (as defined in Section 5) promptly after receiving such materials from the Contractor.

(c) Manage the Contractor's and its subcontractors' performance of any punch-list items, repairs or replacements to the Approved Improvements, and landscaping maintenance obligations under the Construction Contract. RED acknowledges the Construction Contract requires Contractor to perform landscaping maintenance at the Site for one year after the Completion Date.

4. RED Operational Responsibilities.

(a) Following the Completion Date, RED agrees to take the following actions with respect to the Site at its sole cost and responsibility during the Interim Period and after any Transfer:

(i) Include the Site in the pool of City's self-insured properties or obtain any third party insurance for the Site recommended by the City's Risk Manager.

(ii) Operate the Site for the Permitted Use and provide a Path of Travel at all times. If the Site is included in the City's Plaza Program, RED shall comply with the requirements of Chapter 94 of the City's Administrative Code in soliciting a steward for the Site and manage such steward's license agreement for the operation, maintenance and repair of the Site for the Permitted Use.

(iii) All proceeds generated from the use of the Site shall only be used to operate, maintain and repair the Site. If the use of the Site generates more proceeds than needed for such operation, maintenance and repair ("**Excess Proceeds**"), RED shall promptly transfer the Excess Proceeds to the SFMTA to be used for FTA-defined eligible capital and operating transit expenses.

(iv) Within 60 days of SFMTA's request, which shall not occur more than once every twelve (12) months, RED shall complete and deliver to the SFMTA a certification as to the uses of the Site in the form attached as **Exhibit D**.

(v) RED will cooperate with and grant access to the Site to the SFMTA if the SFMTA reasonably needs such access for transit purposes in the event of an emergency.

(b) In addition to RED's responsibilities under the forgoing subsection (a), the following actions with respect to the Site at its sole cost and responsibility during the Interim Period:

(i) Maintain the Site in a state of good condition and repair.

(ii) Use reasonable efforts to negotiate the form of the RED-SFPUC MOU (as defined in Section 8(b)) with SFPUC within the 120 day period immediately following the Completion Date.

(iii) Use reasonable efforts, at its sole cost, to cause the height and bulk designation of the Site to be rezoned to OS (Open Space), select a proposed Site steward pursuant to the Plaza Program requirements, and negotiate a steward license agreement within the 120 day period immediately following the Completion Date.

(iv) RED shall have the right to enter into agreements to allow third parties to use any portion of the Site for the Permitted Use, such as farmers markets, provided that RED obtains SFMTA's prior written consent to such agreements.

5. Transfer of Jurisdiction.

(a) Within 120 days of RED's negotiation of the final form of the RED-SFPUC MOU and the completion of its obligations under Section 4(b)(iii), RED shall submit legislation to the Board of Supervisors to obtain approval of the jurisdictional transfer of the Site from the SFMTA to RED for the Permitted Use, to place the Site in the Plaza Program, and to authorize the execution of a stewardship license agreement with the selected steward (the "**Transfer Legislation**"). RED shall obtain the SFMTA's prior approval to the form of the submitted Transfer Legislation.

(b) If the Board of Supervisors does not approve the Transfer Legislation, this MOU shall automatically terminate on the sixtieth (60th) day immediately following such disapproval.

(c) If the Transfer Legislation is adopted by the Board of Supervisors and Mayor, then the Transfer shall occur on the effective date of the Transfer Legislation (the "**Transfer Date**"). Following the Transfer Date, RED shall prepare, execute and file all applicable documentation to effect and memorialize the Transfer and the SFMTA's rights and interest pursuant to Section 6 and Section 10 below.

6. Transfer of Possession; Reserved Pull Boxes. Upon the Transfer Date, RED shall acquire possession of the Site subject to the SFMTA's right to maintain, use, repair and replace two (2) subsurface pull boxes (the "**Pull Boxes**") on the Site in the general locations depicted on the attached **Exhibit A**, together with underground cables connecting the Pull Boxes to the Bus Terminal (the "**Connecting Cables**") and subject to SFMTA's emergency access rights pursuant

to Section 4(a)(v). The Pull Boxes will have a concrete cover at ground surface and are expected to be approximately 25" by 15.5". The SFMTA shall obtain RED's prior written approval to relocate any of the Pull Boxes or the Connecting Cables on the Site, which approval shall not be unreasonably withheld or conditioned.

Except in the event of an emergency, following the Completion Date, the SFMTA and its contractors shall only enter the Site to inspect, maintain, repair or replace the Pull Boxes or the Connecting Cables (the "**Pull Box Activities**") at the times approved by RED in advance. To request such non-emergency entry, the SFMTA shall provide RED with written notice of the scope and dates of the proposed Pull Box Activities, together with any related plans or drawings. If the proposed entry dates would conflict with a planned activity at the Site, RED shall promptly notify the SFMTA of such conflict and provide alternative times for the proposed Pull Box Activities, and the parties shall cooperate in good faith to mutually select suitable dates for the proposed Pull Box Activities. The SFMTA shall use reasonable efforts to conduct, and to cause its contractors to conduct, the Pull Box Activities on the Site in a safe and reasonable manner that avoids, to the extent reasonably possible, any damage to public health and safety and minimizes interference with the Permitted Use, taking into account the scope of work to be performed. If any of the Pull Box Activities damage the Site or its improvements, the SFMTA shall cause such damage to be repaired and such damaged portion of the Site or its improvements restored to its prior condition upon completion of the Pull Box Activities at no cost to RED.

7. Liability.

(a) The SFMTA agrees it will be and is responsible for any damage to any SFPUC pipelines within, under, in, or at the Site caused by the design, construction, and installation of the Approved Improvements, or any other activity of the SFMTA or any agent, employee, or contractor of the SFMTA, under, in and at Site prior to the Transfer. Except as described in the foregoing sentence, RED agrees that the SFMTA shall have no responsibility for any damage to such pipelines after the Completion Date unless caused by the design, construction, installation of the Approved Improvements or acts of the SFMTA or any of its agents, employees, or contractors (including the Contractor) at the Site after the Completion Date.

(b) Following the Completion Date, RED shall be responsible for any claims, losses or damages to the extent they arise from the operation or maintenance of the Site by RED or any of its contractors, including any Site steward, and SFMTA shall be fully responsible for any claims, losses or damages to the extent they arise from the activities at the Site by SFMTA or any of its contractors, including the Contractor.

8. Site Agreements.

(a) The SFMTA is negotiating the terms and conditions of a Memorandum of Understanding with SFPUC with respect to the SFMTA's obligations to maintain stormwater measures installed as part of the Approved Improvements (the "**Stormwater MOU**"). If SFPUC, the SFMTA, and RED agree to the terms of the Stormwater MOU, and SFPUC and the SFMTA enter into the Stormwater MOU, RED shall comply with and perform the SFMTA's obligations under the Stormwater MOU and following the Transfer Date, RED agrees to assume

and comply with all of the SFMTA's obligations under the Stormwater MOU at all times that RED has jurisdiction of the Site.

(b) The Site and adjacent City property is subject to the terms and conditions of a Memorandum of Understanding dated as of February 13, 2007, and between the SFMTA and SFPUC, as amended by a First Amendment to Memorandum of Understanding dated as of _____, 2016 (as amended, the "**Pipeline MOU**"), with respect to SFPUC's pipeline rights to the portion of the Site depicted on the attached Exhibit B. During the Interim Period, RED shall comply with and perform the SFMTA's obligations under the Pipeline MOU to the extent they apply to the Site. The Pipeline MOU will terminate as to the Site on the Transfer Date. Prior to the Transfer, RED shall use reasonable efforts to negotiate the terms of a memorandum of understanding with respect to SFPUC's and RED's rights and obligations regarding the SFPUC Pipelines (the "**RED-SFPUC MOU**"), which shall become effective as of the Transfer Date.

(c) The Site is subject to the terms and conditions of a Memorandum of Understanding between the SFMTA and the Mayor's Office of Housing ("**MOH**") and dated as of April 23, 2013 ("**Access MOU**"), which provides for pedestrian ingress and egress over the portion of the Site depicted in Exhibit B and described in Exhibit C to the Access MOU (the "**Access Area**") to and from the parcel that is immediately to the west of the Site, commonly known as APN 3180-005 and under MOH's jurisdiction ("**Housing Parcel**"), which grants MOH and the Housing Parcel Parties (as defined in the Access MOU) the right to use the Access Area for pedestrian ingress and egress and requires MOH to maintain, or to cause the Housing Parcel Parties to maintain, the Access Area in a good, clean, sanitary and operable condition at all times. MOH has entered into a ground lease for the Housing Parcel with 1100 Ocean Avenue Limited Partnership ("**Housing Tenant**"), which requires the Housing Tenant to perform such maintenance obligations for the Access Area. During the Interim Period, RED shall comply with and perform the SFMTA's obligations under the Access MOU and following the Transfer Date, RED agrees to assume and comply with all of the SFMTA's obligations under the Access MOU at all times that RED has jurisdiction of the Site. The retail tenant of the Housing Parcel has requested a permit to place removable tables and chairs on the Access Area during its hours of operation. If such retail tenant, the SFMTA, and RED agree to the terms of such permit, RED agrees to be responsible for City's rights and obligations under such permit during the Interim Period and after any Transfer.

9. Maintenance of City College Trees. Under the Construction Contract, Contractor installed two palm trees on City College property immediately to the north of the Site, as depicted on the attached Exhibit B and will maintain such trees during the one year period immediately following the Completion Date. The SFMTA, at its sole cost, is in negotiations with City College to obtain a revocable permit to enter the City College property to maintain such trees. If City College, the SFMTA, and RED agree to the terms of such revocable permit, RED agrees to be responsible for City's rights and obligations under such revocable permit during the Interim Period and after any Transfer; provided, however, that the SFMTA shall be responsible for causing Contractor to perform its Contract maintenance responsibilities with respect to such trees.

10. Reversionary Jurisdictional Transfer. The Approved Improvements are being constructed, in part, with funds from the U.S. Department of Transportation's Federal Transit Administration ("FTA"). To comply with the FTA funding requirements, RED may only use the Site for the Permitted Use and the SFMTA must use any Excess Proceeds for FTA-defined eligible capital and operating transit expenses. The grant application for the FTA funds specified they would be used to construct a new public plaza that would provide space for public events and connect pedestrians and transit riders to the Bus Terminal, nearby housing developments, City College, and the Ocean Avenue neighborhood commercial district. The grant application also stated that the Site would be a community amenity for such uses as neighborhood fairs, performances and farmers' markets. RED and the SFMTA agree that use of the Site for plaza events is a Permitted Use as long as a Path of Travel is available at all times.

If RED or the City takes any action to change the use of the Site in the future to some use other than the Permitted Use, and the SFMTA determines such use is not consistent with its transportation mission (which shall be determined in the SFMTA's sole discretion), jurisdiction of the Site shall automatically return to the SFMTA. If jurisdiction of the Site reverts to the SFMTA pursuant to this Section, RED shall return the Site to the same condition it was in immediately prior to the jurisdictional transfer of the Site from the SFMTA to RED, subject to normal wear and tear; provided, however, that if it is not practicable or economically viable to restore the Site to such condition, RED shall perform the restoration work that is practicable and economically viable and otherwise cause the Site to be at the grade it was in immediately prior to the jurisdictional transfer of the Site from the SFMTA to RED, with concrete paving in good condition, adequate lighting in a good working condition, an electrical and stormwater management infrastructure in a good working condition, and either the original play structure that was part of the Approved Improvements, or a similar replacement play structure, in good working condition.

10. Notices. All notices, demands, consents or approvals which are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been given when delivered in person or sent by United States Postal Service, postage prepaid, or reputable commercial courier, and addressed as follows:

If to RED:	Real Estate Division Office of the Director 25 Van Ness, Suite 400 San Francisco, CA 94102 Attn: Director of Property
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If to the SFMTA:	San Francisco Municipal Transportation Agency Strategic Real Estate 1 South Van Ness, 7 th Floor San Francisco, California 94103 Attn: Director of Transportation
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or such other address that a party may from time to time designate by notice to the other party given pursuant to the provisions of this Section.

11. Cooperation. Subject to the terms and conditions of this MOU, staff of the parties to this MOU 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).

12. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the Director of RED, or his or her designee, and the SFMTA Director of Transportation, or his or her designee. (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. (d) Notwithstanding anything to the contrary set forth herein, no officer, director, or employee of RED or the SFMTA has the authority to bind his or her department to take any action to be performed by his or her department under this MOU unless and until the Board of Supervisors and Mayor approve of the Transfer. (e) All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

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

RED: REAL ESTATE DIVISION of the General Services Agency

By: _____
John Updike, Director

Date: _____

SFMTA: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Edward D. Reiskin
Director of Transportation

Date: _____

APPROVED BY:

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

EXHIBIT A

DEPICTION OF SITE

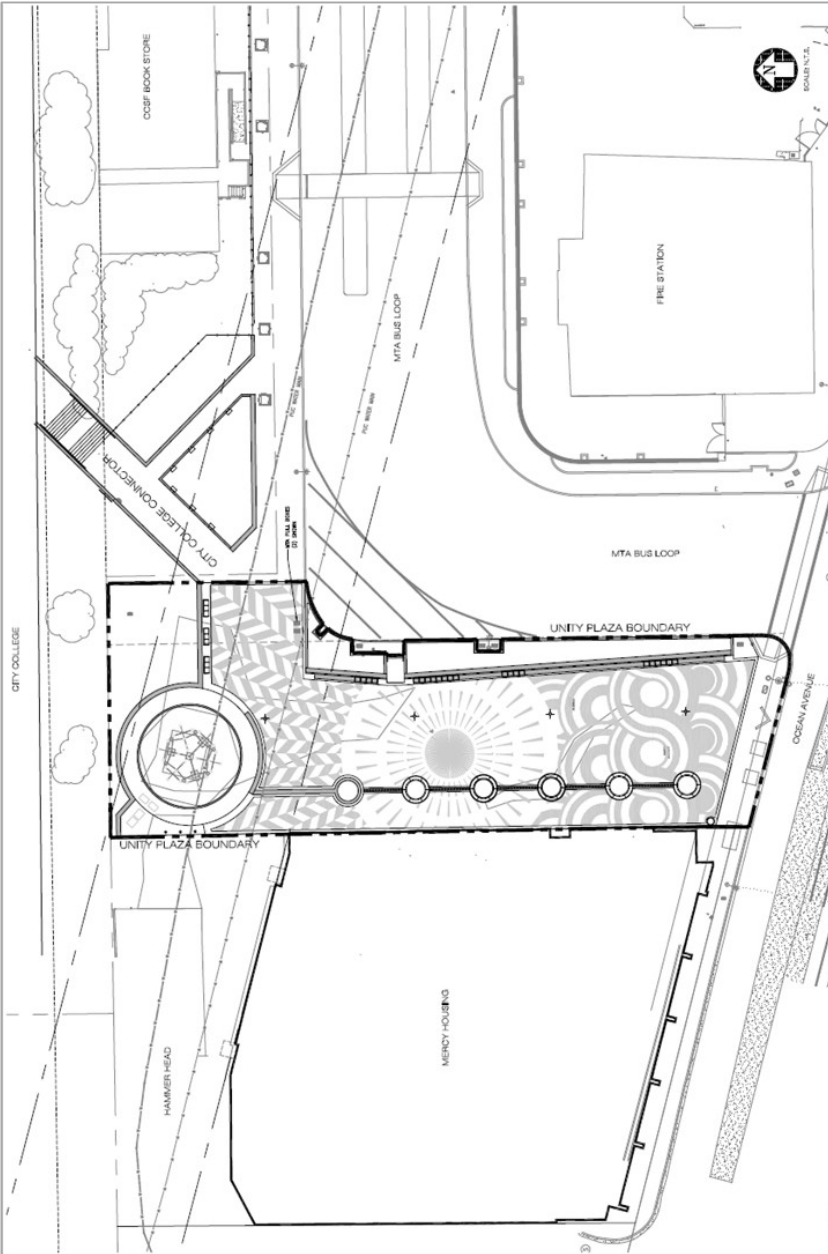


EXHIBIT B

DEPICTION OF SITE AND BUS TERMINAL

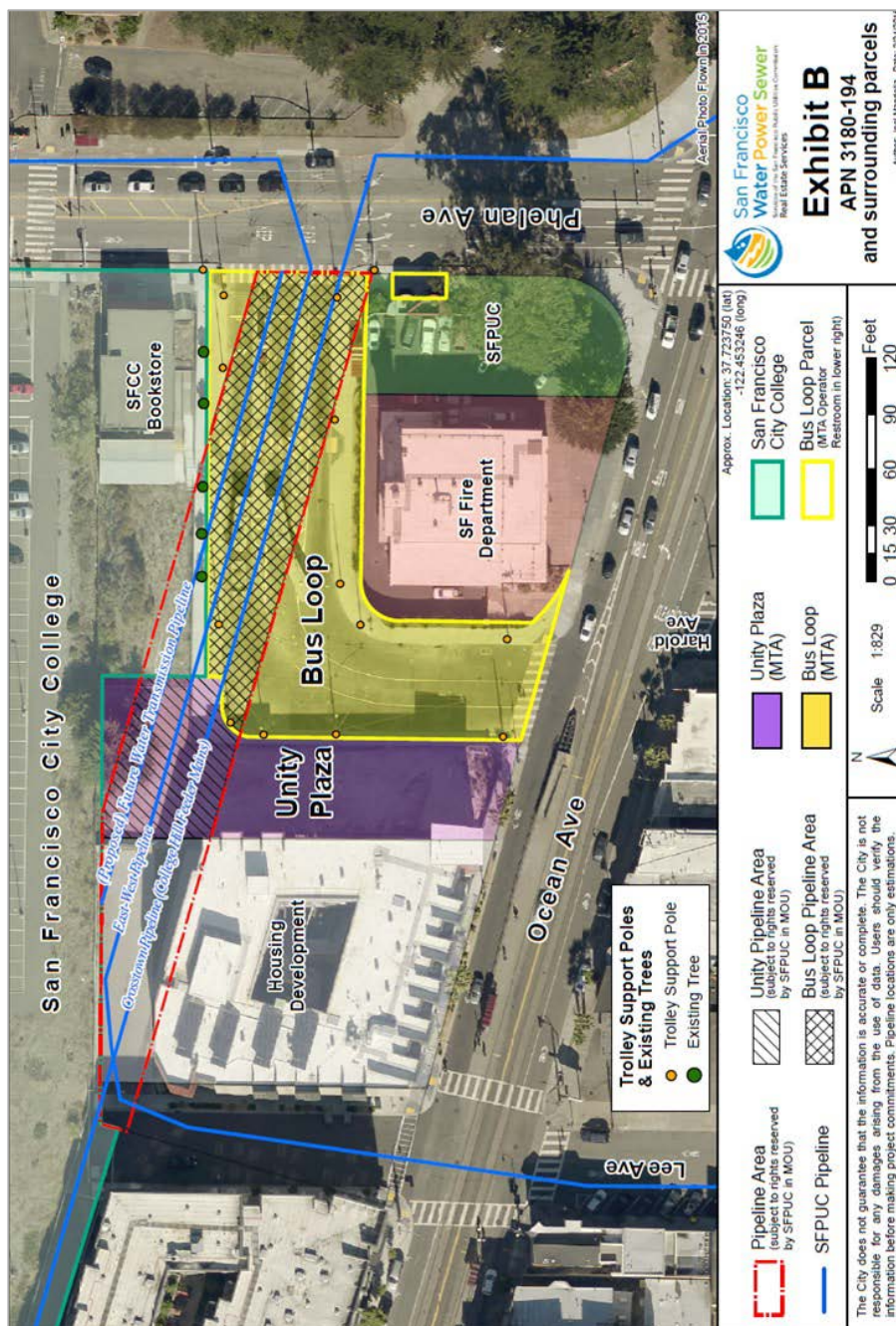


EXHIBIT C

APPROVED IMPROVEMENTS

Unity Plaza includes the following improvements:

- Asphalt paving
- Concrete curbs, walls, and planters
- Seating areas
- Fencing
- Trees and shrubs
- Poured-in-place integrally colored concrete paving
- Retractable bollards
- Climbing structure
- Light poles and recessed wall lights
- Landscaping, irrigation, and drainage systems

EXHIBIT D

USE CERTIFICATION

[Date]

San Francisco Municipal Transportation Agency
Real Estate Services
1 South Van Ness, 7th Floor
San Francisco, California 94103
Attn: Director of Transportation

Re: Unity Plaza Certification

Dear _____:

The San Francisco Municipal Transportation Agency ("SFMTA"), and the City and County of San Francisco General Services Agency, through its Real Estate Division ("RED"), are parties to a Memorandum of Understanding dated for reference purposes as of May ____, 2016 (the "MOU"). As required under Section 5(d) of the MOU, this certification is to confirm the following:

(a) For the period between _____ [insert the Completion Date or the date of the previous certification] and the date of this certification (the "Certification Period"), the Site (as defined in the MOU) has been solely used for the Permitted Use (as defined in the MOU), and a Path of Travel (as defined in the MOU) has been available at the Site at all times;

(b) All proceeds from the use of the Site during the Certification Period have only been used to operate, maintain and repair the Site. [If there have been Excess Proceeds, add the following language: Such Certification Period proceeds have exceeded the Certification Period operation, maintenance and repair costs for the Site by \$_____ ("Excess Amount"). Within 90 days of the date of this certification, the Excess Amount will be transferred to the SFMTA for transit purposes.]

Sincerely,

Director of Property