

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.3**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Requesting authorization for 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.

**SUMMARY:**

- RCS Brotherhood Way, a Limited Liability Corporation (RCS), owns residential property located at 700 Brotherhood Way, and will be constructing up to 182 residential units on the property in the summer of 2013.
- RCS will install a new traffic signal as part of its construction project, and RCS has offered to give a gift of \$233,000 to SFMTA to fund the costs to SFMTA of design (including synchronization with existing, adjacent traffic signals), construction engineering and inspection, procurement of traffic signal hardware, and maintenance.
- The signal will improve traffic circulation in the vicinity of the Property for the benefit of the development.
- RCS and the SFMTA have negotiated an agreement that sets forth the process for completion of the signal system and payment of the costs of its design, construction engineering and inspection, and maintenance.
- At the completion of design, RCS will fund the installation of the new traffic signal and will hire a contractor to construct the traffic signal.
- The new traffic signal will be synchronized with the existing, adjacent traffic signals on Brotherhood Way.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ 2/19/13

SECRETARY \_\_\_\_\_ 2/19/13

**ASSIGNED SFMTAB CALENDAR DATE:** March 5, 2013

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### **PURPOSE**

Requesting authorization for 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.

### **GOAL**

On January 3, 2012, the SFMTA Board of Directors approved a new SFMTA Strategic Plan for Fiscal Years 2013-2018. The Strategic Plan includes four overarching goals that shape how the SFMTA focuses its attention, resources, and staff. The SFMTA will further the goals of the Strategic Plan through the award and execution of this contract. The goals included in the strategic plan include:

Goal 1: Create a safer transportation experience for everyone

### **DESCRIPTION**

RCS, a limited liability corporation, owns residential property located at 700 Brotherhood Way and intends to build up to 182 residential units on the property in July 2013.

To improve traffic circulation in the vicinity of this property, RCS will construct a new traffic signal at 700 Brotherhood Way. The Planning Commission has required RCS to pay the cost of synchronizing the new traffic signal with two existing, adjacent traffic signals on Brotherhood Way, and RCS has offered to provide SFMTA \$233,000 to design the traffic signal, including synchronization, provide construction engineering and inspection services to RCS's contractor, and maintain the traffic signal. City staff, including the Transportation Advisory Staff Committee, has reviewed these proposals and do not have objections to the new traffic signal or the synchronization.

SFMTA staff will perform the design work with support from the Department of Public Works (DPW) staff and complete a traffic signal design by June 2013. RCS intends to hire a contractor to build the traffic signal. SFMTA and DPW staff will provide engineering and inspection services during construction.

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 RCS will fund the 30 year maintenance costs attributed to the traffic signal as an upfront cost. The average annual maintenance cost is \$3,000 per year or \$90,000 for the entire 30-year period. The agreement between the parties is consistent with previous agreements involving privately-funded traffic signals in the City.

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There have been other traffic signals installed on public streets that were constructed with private funds, most recently on 3<sup>rd</sup> 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.

### **ALTERNATIVES CONSIDERED**

Given limited public funds and several other locations citywide in need of signalization, it would be unlikely that the new traffic signal 700 Brotherhood Way would be funded by the SFMTA for several years. STOP signs were considered but are not appropriate on a major arterial street like Brotherhood Way.

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

### **FUNDING IMPACT**

RCS has agreed to provide funding to SFMTA for actual costs of the design, construction engineering and inspection of the new signal up to a total of \$143,000. If the actual costs of the design, construction and inspection are lower than \$143,000, SFMTA will refund RCS the amount in excess of the actual costs. In addition, RCS will fund the 30-year maintenance costs for the new signal in the amount of \$90,000. Staff commits to working with the developer closely and report regularly on costs incurred on the project.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney Office has reviewed this report. No additional approvals are required.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize 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.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

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.

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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

described in Paragraph 2.3. The plans and specifications shall be prepared and approved by a licensed design professional with expertise in traffic system control design.

**3.2.** To perform construction inspection, procure the traffic signal controller and cabinet, and provide construction support during installation of the Project by Developer's licensed contractor, and issue a certificate of completion to Developer upon satisfactory installation of the Project and acceptance by the City.

**3.3.** Upon issuance of a certificate of completion, to accept, maintain and keep in operation the Traffic Signal for its useful life, as determined by the City.

**3.4.** To reimburse Developer for any costs or liabilities it incurs due to errors or omission in the plans or specifications for the Project provided by SFMTA.

#### **4. Default; Remedies.**

**4.1 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.

**4.2 Default of Developer.** If Developer is making a good faith attempt at cure, then SFMTA shall give the Developer an additional twenty (20) days to cure the default. On and after any default on the part of Developer that is not cured within the time period specified in Section 4.1, or within any additional time allowed by SFMTA under this Section 4.2, SFMTA will have the right to exercise all legal and equitable remedies, including, without limitation, the right to terminate this Agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**4.3 Default of City.** On and after any default on the part of SFMTA with respect to any obligation of SFMTA under Section 3 that is not cured within the time period specified in Section 4.1, Developer's sole remedy is to seek a refund of any and all monies paid to or deposited with SFMTA for such work. Developer agrees that it will not be entitled to other damages or any equitable relief for any uncured default on the part of SFMTA. Developer's rights to terminate this Agreement are set forth in Section 5, below.

**5. 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.

**6. Modification of Agreement.** The City and Developer 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.

**7. 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:                      Municipal Transportation Agency  
   1 South Van Ness Avenue, 7<sup>th</sup> floor

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

RCS BROTHERHOOD WAY, LLC,  
A Colorado limited liability company

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

By \_\_\_\_\_

By \_\_\_\_\_  
Edward Reiskin  
Director of Transportation

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