

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 Settlement Agreement and Release of Claims with Hogan & Vest Inc., in an amount not to exceed \$111,240, as total compensation for the value of the loss of goodwill and the non-moveable fixtures and equipment of Hogan & Vest resulting from the condemnation of the Property at 933-949 Stockton Street, San Francisco; and rescinding Resolution No. 13-188, adopted by Board of Directors on July 16, 2013.

SUMMARY:

- The SFMTA filed an eminent domain action against Norman P. Chan Inc. to condemn a fee simple interest in the property at 933-949 Stockton Street, San Francisco (Property), for the public purpose of constructing the Central Subway Project and other improvements (Project).
- On January 10, 2012, the SFMTA acquired the Property for the Project and has relocated all residential and commercial tenants.
- Hogan and Vest (H&V) was one of the commercial tenants relocated from the Property as a result of the condemnation action and Property acquisition.
- Based on appraisals, the negotiated Settlement Agreement, which has been approved by H&V, provides just compensation to H&V for the value of the loss of goodwill and the non-moveable fixtures and equipment in the amount of \$111,240.

ENCLOSURES:

1. SFMTAB Resolution
2. Settlement Agreement and Release of Claims

APPROVALS:

DATE

DIRECTOR _____ 10/29/13

SECRETARY _____ 10/29/13

ASSIGNED SFMTAB CALENDAR DATE: November 5, 2013

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PURPOSE

This calendar item authorizes the Director of Transportation to execute a Settlement Agreement and Release of Claims between the City and Hogan & Vest Inc. for the value of its loss of goodwill and non-moveable fixtures and equipment (F&E), in the total amount of \$111,240.

GOAL

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

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

Objective 3.3: Allocate capital resources effectively

Objective 3.5: Reduce capital and operating structural deficits

DESCRIPTION

On January 10, 2012, SFMTA acquired the Property at 933-949 Stockton Street pursuant to the filing of an eminent domain action for the public purpose of constructing the Central Subway Project and other improvements. Since that date, SFMTA has relocated all former Chinatown Property building tenants and has provided them with certain relocation benefits as required by the federal Uniform Relocation Act and/or State law.

Hogan and Vest, one of the commercial tenants at the Property, has suffered a loss of goodwill as a result of the relocation and, under the proposed Settlement Agreement, will receive just compensation in the amount of \$100,000 to mitigate the goodwill loss. In addition, H&V is entitled to \$11,240 for the value of its non-moveable F&E that remained on the Property. These amounts were based on appraisals commissioned by the SFMTA.

The settlement amount of \$111,240 is a revised amount from the settlement previously adopted under SFMTA Board of Directors Resolution No. 13-188 on July 16, 2013. That Resolution authorized the settlement for compensation for fixtures and equipment and loss of goodwill at \$110,340. Subsequent to this approval, it was determined that the alarm system left on the Property, which was not included in the prior list of F&E, had belonged to H&V; therefore, the City must compensate H&V the fair market value in use for that additional item, valued by the City's appraiser at \$900. The revised amount of \$111,240 reflects the addition of the alarm system. This authorization rescinds Resolution No. 13-188.

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

ALTERNATIVES CONSIDERED

This is a negotiated settlement. In order to avoid the burden and expense of further litigation, no other alternatives have been considered.

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FUNDING IMPACT

The just compensation payment of \$100,000 for loss of goodwill is derived from local operating funds. The payment of \$11,240 for non-moveable F&E will come from Central Subway grant funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Authorize execution of the Agreement and payment of the settlement amount of \$111,240.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The City and County of San Francisco ("City") has filed an eminent domain action against Norman P. Chan Inc. ("Property Owner") to condemn a fee simple interest in the property at 933-949 Stockton Street, San Francisco, Assessor's Parcel No. Block 0211, Lot 001 (the "Property"), for the public purpose of constructing the Central Subway Project and other improvements; and

WHEREAS, As part of the condemnation of the Property, it has been necessary to relocate residential and commercial tenants of the Property; and

WHEREAS, Under State law, the SFMTA is required to provide just compensation to business owners for any loss of goodwill suffered as a result of such a relocation; and

WHEREAS, According to an appraisal that the SFMTA has commissioned, one of the commercial tenants at the Property, Hogan & Vest Inc., which owns and operates Hogan & Vest., will suffer a loss of goodwill as a result of the relocation of Hogan & Vest; and

WHEREAS, Under federal law, the SFMTA is required to provide just compensation for fixtures and equipment that are unable to be moved from the Property; and

WHEREAS, The SFMTA has also had an appraisal performed on the value of the non-moveable fixtures and equipment in Hogan & Vest; and

WHEREAS, On July 16, 2013, the SFMTA Board of Directors adopted Resolution No. 13-188, which authorized payment to Hogan & Vest of \$110,340 for loss of goodwill and non-moveable fixtures and equipment; and

WHEREAS, Subsequent to the adoption of Resolution No. 13-188, the City discovered that another item of equipment (an alarm system) acquired by the City had belonged to Hogan & Vest, and was valued at \$900; and

WHEREAS, Based on the appraisals, the parties have agreed on a value of \$100,000 for the loss of goodwill, and a value of \$11,240 for the non-moveable fixtures and equipment; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors rescinds its Resolution No. 13-188; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute a Settlement Agreement and Release of Claims with Hogan & Vest Inc., in an amount not to exceed \$111,240, as total compensation for the value of the loss of goodwill and the non-moveable fixtures and equipment of Hogan & Vest resulting from the condemnation of the Property at 933-949 Stockton Street, San Francisco.

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

Secretary, Municipal Transportation Agency Board

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into on November ____, 2013, by and between Hogan & Vest Inc. ("H&V"), and the City and County of San Francisco, by and through its Municipal Transportation Agency (the "City" or "SFMTA"). H&V and the SFMTA are referred to collectively as "the Parties."

I. RECITALS

A. On January 14, 2011, the City commenced an action in eminent domain in California Superior Court for the County of San Francisco, S.F. Superior Court No. CGC-11-507340, against Norman P. Chan, Inc. the owner of property located at 933-949 Stockton Street, San Francisco, California, Assessor's Parcel No. Block 0211, Lot 001 (the "Property").

B. The City has acquired the Property for the public purpose of constructing the Central Subway Project and other related improvements (the "Project"), which Project is funded with grants from the U.S. Department of Transportation.

C. As part of the City's acquisition of the Property, it has been necessary to relocate residential and commercial tenants at the Property.

D. H&V owned and operated Hogan & Vest at the Property and had to move from the Property as a result of the Project,

E. Under federal and state law, the SFMTA is required to provide just compensation to H&V for fixtures and equipment that cannot be moved from the Property.

F. Under state law, the SFMTA is required to compensate H&V for the loss of goodwill caused by the SFMTA's acquisition of the Property.

G. The SFMTA has commissioned an appraisal of H&V's fixtures and equipment and has analyzed H&V's loss of goodwill as a result of its relocation from the Property.

H. H&V and the SFMTA have negotiated a settlement regarding the compensation for fixtures and equipment and loss of goodwill.

I. On November 5, 2013, the SFMTA Board of Directors adopted Resolution No. 13-____, which authorized the settlement for compensation for fixtures and equipment and loss of goodwill.

NOW, THEREFORE, in order to avoid the burden and expense of further litigation and for good and valuable consideration, the receipt of which is hereby acknowledged, including the representations, warranties and covenants contained in this Agreement, the Parties to this Agreement agree as follows:

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning ascribed to them in this Section. All other terms shall be interpreted according to their plain and ordinary meaning.

"Agreement" means and refers to this Settlement Agreement and Release of Claims.

"Court" means and refers to the California Superior Court for the County of San Francisco.

"Operative Date" shall mean the date on which the City and H&V have fully executed and delivered this Agreement.

"The Property" shall mean the land and improvements located at 933-949 Stockton Street, San Francisco, California.

III. TERMS AND CONDITIONS

A. No Admission of Liability

By entering into this Agreement, no party is admitting the sufficiency of any claim, allegation, assertion, contention, demand or position raised in this matter or the sufficiency of any defense to any such claim, allegation, assertion, contention, demand or position raised in the matter. The entry into this Agreement is not and may not be used by any person or organization as an admission or evidence that the City or H&V has engaged in any practice that violates any law or regulation.

B. Entire Agreement

This Agreement contains the entire agreement between the Parties. This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter of this Agreement. The Parties hereto understand and agree that the terms of this Agreement supersede any prior discussions, understandings, or agreements between them related to the subject matter hereof. The Parties may agree to modify this Agreement. However, no modification will be binding on the Parties unless expressly provided for in this Agreement or made by writing signed by all Parties, and, if necessary, approved by the SFMTA Board of Directors in their sole and absolute discretion.

C. Authority

The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement and to bind parties on whose behalf they execute this Agreement, that the Agreement does not require court approval, and that it does

not conflict with or contravene the terms of any agreement, judgment or order binding or enforceable against the Parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

D. Voluntary Agreement

The Parties each acknowledge that they are entering into this Agreement freely, knowingly, voluntarily and with a full understanding of its terms. The Parties acknowledge that they have consulted with counsel of their own choosing concerning this Agreement and that they were given reasonable time to review and consider the terms of this Agreement.

E Construction

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The terms of this Agreement are the product of joint negotiations and shall not be construed as having been authored by one party rather than another. Any ambiguity shall not be construed against any Party. Where required by context, the plural includes the singular and the singular includes the plural. The headings in this Agreement are solely for convenience and will not be considered in its interpretation.

F. Severability

If any provision or provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and/or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

G. Counterparts

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

H. Controlling Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

J. Notices

Except as otherwise provided in this Agreement, all notifications, reports and communications to the Parties required under this Agreement shall be made in writing and shall be sufficient as hand-delivered or sent by first class mail to the following persons:

<p>For H&V</p> <p>Bernard Stalder Hogan & Vest Inc. 750 Pacific Ave. San Francisco, CA 94133</p>	<p>For the SFMTA:</p> <p>John Funghi, Program Director Central Subway Project 821 Howard St., 2nd floor San Francisco, CA 94103</p>
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Any party may change such persons and/or addresses by written notice to the other Parties, setting forth a new person and/or address for this purpose.

IV. PAYMENTS

A. Fixtures and Equipment

In partial consideration of this Agreement, within 30 days from the date of this Agreement, the SFMTA shall pay to H&V \$11,240 for H&V's non-moveable fixtures and equipment at the Property (as listed in Exhibit A to this Agreement) in exchange for H&V's full release, waiver and discharge of any and all claims, demands, rights, and causes of action against the City for compensation for these fixtures and equipment listed in Exhibit A to this Agreement under 42 U.S.C. §§ 4601-4655, 49 C.F.R. § 24.301, California Code of Civil Procedure §§ 1263.205 – 1263-270, and Title 25, Admin. Code Sections 6000-6198.

H&V represents that it is the sole and lawful owner of the equipment listed in Exhibit A to this Agreement.

B. Goodwill

In partial consideration of this Agreement, within 30 days from the date of this Agreement, the SFMTA shall pay to H&V \$100,000 for the estimated loss in goodwill H&V will suffer due to the SFMTA's acquisition of the Property, in exchange for the full release, waiver and discharge from H&V of any and all claims, demands, rights, and causes of action against the City for compensation for any loss of goodwill under California Code of Civil Procedure §§ 1263.510 – 1263-530, and Title 25, Admin. Code Sections 6000-6198.

C. Attorney's Fees and Costs

Except as expressly stated in this Agreement, each Party agrees that it shall bear its own costs, expenses and attorney's fees incurred in or arising out of the investigation, prosecution or defense of this matter of any action commenced to enforce the provisions of this Agreement.

V. RELEASE

In return for the consideration provided for in this Agreement, H&V releases the City and County of San Francisco and its officers, boards, commissions, subdivisions, departments, directors, parents, subsidiaries, affiliates, successors, insurers, employees, attorneys, and agents ("Released Parties") from any and all claims, liabilities, obligations, demands, and actions, that were brought or could have been brought against the Released Parties for compensation for furniture and

equipment and goodwill or arising from the SFMTA's acquisition of the Property and this Agreement.

H&V understands and agrees that the release contained in this Section extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law are hereby expressly waived. Section 1542 of the California Civil Code, reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

_____ (Initials of H&V)

For Hogan & Vest Inc.: By: _____ Bernard Stalder	FOR SFMTA: By: _____ Edward D. Reiskin Director of Transportation
	Approved as to Form: DENNIS J. HERRERA, City Attorney By: _____ Robin M. Reitzes Deputy City Attorney

Exhibit A

Hogan & Vest Inc.'s Non-moveable Fixtures and Equipment

QTY	DESCRIPTION	COND	FMVIU
1	Alarm system, Bay Alarm, w/keypad, sensors, bell, and other throughout	B	900
1	Cupboard, 3 door, oak, 4x1x3' high	B	250
1	Item of Kitchen Cabinetry, including: Counter, w/base cabinetry, L-shaped, apprx. 12 lf, w/stainless steel sink	B-	1,200
1	Item of Signage, lettering, "Hogan & Vess," apprx. 24" avg.	C+	500
1	Item of Signage, lettering, "Real Estate Insurance," apprx. 12" high avg.	C	425
1	Item of Wood Shelving, built in, shop fabricated, plywood construction, 5 tier avg., 30 lf x24x72".	C	400
1	Medicine Cabinet, wall affixed, oak, w/glass, 18x3x2' high.	B-	150
1	Reception Counter, wood, w/laminate top, built-in, 10x2x4'.	C	700
1	Reception Counter, wood, w2/laminate top, built-in, 8x2x4'.	C	575
1	Restroom, w/vanity, mirror, towel dispenser, and water closet.	B	1,075
2	Security Gate, folding, accordion type, 8x10'.	C	700
1	Shelving Unit, built in, 5 tier, 2 bay, 10x1x7' high.	C	125
2	Shelving unit, heavy duty, 2x4 construction, plywood deck, 5 tier, 12x2x6' high.	C	350
1	Shelving Unit, heavy duty, 2x4 construction, plywood deck, 5 tier, 8x2x5' high.	C	175
3	Shelving Unit, heavy duty, 2x4 construction, plywood deck, 5 tier, 8x2x6' high.	A-	975
1	Shelving unit, wood, built in, 12x2x6' high.	D	25
1	Shelving Unit, wood, built in, 3 tier, 30x36x60" high.	C	45
1	Shelving Unit, wood, built in, 6 tier, 42x12x78" high.	C	70
1	Shelving Unit, wood, built in, 8x2x6' high.	D	25
1	Shelving unit, wood, built in, double-sided, 2x4 construction, 12x4x3' high.	C	200
1	Shelving Unit, wood, light duty, 4 tier, 20x2'x5' high.	C	225
1	Shelving Unit, wood, light duty, 4 tier, 24'x1'x5 high.	C	250
1	Sump Pump, est. 2hp.	C	600
2.	Water Heater, gas fired, Rheem, 10 gal. capacity.	A-	1,300
Total:			\$11,240