

FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING

THIS FIRST AMENDMENT (this "**Amendment**") is dated as of April 18, 2016, 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 SFMTA and MOHCD have entered into a Memorandum of Understanding, dated April 18, 2014 ("**MOU**"), whereby SFMTA agreed to transfer jurisdiction of the Upper Yard (as defined in the MOU) to MOHCD on the terms and conditions in the MOU.

B. MOHCD has delivered the Deposit (as defined in the MOU) to SFMTA, completed its due diligence investigation of the Upper Yard and wishes to acquire jurisdiction in the Upper Yard for an affordable housing development (the "**Development**"), but the size and design of the Development depend on MOHCD's ability to negotiate an agreement with the San Francisco Bay Area Rapid Transit District ("**BART**") for the Development to include the portion of BART property adjacent to the Upper Yard, as generally depicted on the attached Exhibit A ("**BART Property**").

C. SFMTA and MOHCD wish to extend the term of the MOU to give MOHCD more time to conclude its negotiations for the BART Property, procure a third party developer, conduct public outreach, secure entitlements and financing for the Development, complete the design of the Development, and commence construction.

D. SFMTA and MOHCD therefore desire to amend the MOU as set forth herein.

AGREEMENT

1. Definitions and Recitals. Terms not otherwise defined herein have the meanings set forth in the MOU. The Recitals set forth above are hereby incorporated into this Amendment by this reference.

2. Approval Notice. MOHCD has accepted the condition of the Upper Yard, and Section 1(c) of the MOU is deleted in its entirety.

3. Amount of Transfer Fee. Section 2(a) of the MOU is deleted in its entirety and replaced with the following language:

“(a) Amount. Under an appraisal prepared by David Tattersall & Company dated as of November 15, 2012, the Upper Yard was valued at \$6,150,000. Under an appraisal prepared by David Tattersall & Company dated as of March 25, 2014, the Upper Yard was valued at \$9,840,000. Based on such values, the parties agree that the Upper Yard jurisdictional transfer fee (the "**Transfer Fee**") shall be \$6,150,000.

Notwithstanding the foregoing, if the Transfer Date does not occur on or before the first anniversary of the full execution of this Amendment, the SFMTA shall have the right to propose revising the Transfer Fee to reflect the economic conditions that exist at the time of the Transfer Date. If MOHCD agrees to any such SFMTA revision to the Transfer Fee, the parties shall confirm the revised Transfer Fee in writing. If MOHCD does not agree to any proposed SFMTA revision to the Transfer Fee, MOHCD shall send written notice of its disagreement to the SFMTA within thirty (30) days of receiving the SFMTA's written notice of its proposed revision to the Transfer Fee. The SFMTA shall have the right to terminate the MOU by delivering written notice of such termination to MOHCD

within thirty (30) days of receiving any MOHCD notice that it will not agree to the SFMTA's proposed revision to the Transfer Fee. If the SFMTA terminates this MOU pursuant to this subsection, within forty-five (45) days following the delivery of any such termination notice to MOHCD, the SFMTA shall return the Deposit to MOHCD. SFMTA shall have no responsibility for paying MOHCD any interest earned on the Deposit."

4. Timing for Environmental and General Plan Review. The first sentence of Section 3 of the MOU is deleted in its entirety and replaced with the following language:

"Within the thirty (30) day period immediately following the later date (the "**Agreement Date**") to occur of MOHCD's completion of its negotiations for the BART Property and May 1, 2017, 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."

5. Term. Section 7 of the MOU is hereby deleted in its entirety and replaced with the following:

"Term. This term of this MOU shall commence on April 18, 2014, and terminate on the Possession Date, unless earlier terminated by either party pursuant to this MOU."

6. Cooperation; Costs. MOHCD, either alone or in coordination with a selected third party developer, will be responsible for all aspects, all phases, and all costs of developing and completing an affordable housing development at the Upper Yard, including but not limited to public outreach, securing entitlements, and securing the approval of the Board of Supervisors, as necessary. MOHCD also agrees to coordinate with SFMTA to incorporate any applicable Transportation Demand Management measures, such as limited on-site parking, into any development at the Upper Yard. Except as otherwise expressly set forth in the MOU, each party shall be solely responsible for the costs it incurs with respect to the MOU, this Amendment, and the inspection and development of the Upper Yard.

7. Terms of MOU. Except as expressly modified by this Amendment, all of the terms and conditions of the MOU shall remain unchanged.

8. Conflict of Terms. In the event that there is any conflict or inconsistency between the terms and conditions of the MOU and those of this Amendment, the terms of this Amendment shall control and govern.


9. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

SFMTA:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

By: 
Edward D. Reiskin
Director of Transportation

Date: 4.25.16

MOHCD:

MAYOR'S OFFICE OF HOUSING
AND COMMUNITY DEVELOPMENT

By: 
Olson Lee, Director

Date: April 18, 2016

EXHIBIT A

Depiction of Upper Yard and BART Property

(This depiction outlines the approximate boundaries)

© COPYRIGHT SAN FRANCISCO
CITY & COUNTY ASSESSOR 1988

LOTS MERGED
 LOTS 14/6, 14/15 INTO LOT 1 - 1943
 " 10 " " " 1 - 1948
 " 10/12 " " " 8 - 1948



6973

SAN MIGUEL CITY BLK. 3

REVISED 1961	
1	'88
2	'64
3	'87
4	'66
5	'69
6	'70
7	'71
8	'72

