



**DPW Order No: 186981**

**Public Works Order No: 186981**

**Recommending approval of and transmitting to the Board of Supervisors a resolution to approve the Second Amendment to the Agreement for Maintenance of State Highways in San Francisco between the City and County of San Francisco and the State of California Department of Transportation (Caltrans) and to authorize San Francisco Public Works to execute such Second Amendment.**

Edwin M. Lee  
Mayor

Mohammed Nuru  
Director

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By this Order, the Public Works Director recommends that the Board of Supervisors approve the second amendment (“Second Amendment” or “Amendment No. 2”) to the Agreement for Maintenance of State Highways in San Francisco by and between the City and County of San Francisco and the State of California Department of Transportation, executed on July 2, 2009 and amended by Amendment No. 1 on October 27, 2011 (“Maintenance Agreement”), and transmits to the Board of Supervisors a resolution that would approve and authorize the Director to execute the Second Amendment.

The Second Amendment would amend the Maintenance Agreement to reflect Caltrans’ authorization of the City’s construction and use of auxiliary water supply system (“AWSS”), water, and sewer trench facilities compliant with City standards (the “City Trench Details”), which are not identical to Caltrans standard slurry cement backfill requirements for water, sewer, and AWSS facilities (the “State Trench Details”) on specified State Highways located in San Francisco, subject to the City’s maintenance, repair, and reconstruction responsibilities and the City’s agreement to defend and indemnify Caltrans regarding failures, defects, or conditions of roadway infrastructure resulting from the construction and use of the City Trench Details. In addition, the Second Amendment would address City’s operation and/or maintenance of additional facilities located on Caltrans right-of-way as specified below.

1. Authorization of City Trench Details

Public Works has determined it cannot adopt the State Trench Details due to concerns that the specified material is not compatible with the City’s maintenance programs and servicing of new connections. The State Trench Details would cost utility companies more to perform maintenance and service new connections and would cause more disruption to the public due to longer lane closures needed to remove and replace slurry concrete.

The Second Amendment would amend the Maintenance Agreement to reflect that Caltrans has permitted the City to construct and use the City Trench Details on specified routes including portions of Caltrans right-of-way on Van Ness Avenue, Lombard Street, and 19th Avenue, as specified on Caltrans Encroachment Permit No. 04-18-N-OP-0969 and the plans and specifications for projects EA 04-3A270, EA 04-4J790, and EA 04-0G350.

2. Agreement to Indemnify Caltrans

The Second Amendment would also address the allocation of liability and costs related to such trench facilities among the City and Caltrans. The Maintenance Agreement currently provides indemnification of the Parties as specified below.

Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work expressly conferred upon CITY by this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work expressly conferred upon CITY by this Agreement.

(Maintenance Agreement, Para. X, at page 2.)

Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work expressly conferred upon STATE by this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work expressly conferred upon STATE by this Agreement.

(Maintenance Agreement, Para. XI, at page 3.)

As specified in the Second Amendment excerpts below, the Second Amendment would include new provisions indemnifying the State and holding the State harmless for failures, defects, damage, and conditions resulting from the construction and use of the City Trench Details, and new provisions specifying the City's responsibility for performing maintenance, repair, and reconstruction of portions of certain state highways, as may be required as a result of the City Trench Details.

[XV(B).]

Notwithstanding any other provision of this Agreement, the CITY shall be responsible for performing the maintenance

and repair of SPECIFIED STATE ROUTES for all failures or defects of the roadway infrastructure resulting from the construction and use of the CITY Trench Details (Exhibit C). STATE shall provide reimbursements for routine maintenance of SPECIFIED STATE ROUTES as provided for in Exhibit A, but shall not reimburse CITY for maintenance and repair of conditions resulting from the construction and use of the CITY Trench Details.

#### XVI.

Notwithstanding any other provision of this Agreement, the CITY shall be solely responsible for all costs for the reconstruction of SPECIFIED STATE ROUTES for all failures or defects resulting from the construction and use of the CITY Trench Details, attached as Exhibit C, including but not limited to sinkholes, failure of compacted soils, and structural failure of the roadway resulting from the construction and use of the CITY Trench Details.

#### XVII.

CITY shall fully defend, indemnify, and save harmless, STATE its officers, directors, agents, and employees for any injury, claim, damage, or liability occurring as the result of any condition or defect of SPECIFIED STATE ROUTES, resulting from the construction and use of the CITY Trench Details (Exhibit C), including but not limited to, failures of the compacted soils, sinkholes, potholes, cracking, and structural failure of the roadway resulting from the construction and use of the CITY Trench Details. It is understood by and between CITY and STATE that the CITY's duty to defend, indemnify and save harmless under this section extends to any injury, claim, damage, or liability whether said injury, claim, damage, or liability is alleged to have been caused by a failure to maintain or a failure of design and construction.

(Second Amendment, page no. 3b.)

### 3. City's Operation and/or Maintenance of Additional Facilities

#### a. M-Ocean View Track Replacement Project

The City's M-Ocean View Track Replacement Project at 19th Avenue and Rossmoor Drive ("M-Ocean View Track Replacement Project") includes the installation of new traffic signals for the Rossmoor Drive approach onto 19th Avenue in order to provide a Transit Signal Priority System, improve safety and reliability, and prevent drivers from blocking the trackway. The M-Ocean View Track Replacement Project includes the installation of intrusion treatments (i.e., speed bumps, red painted areas) to deter people

from driving into specific areas around the M-Ocean line crossing at 19th Avenue, to alert drivers, and to keep the trackway clear.

The Second Amendment would address the City's maintenance of certain electrical equipment, low profile speed bumps, steel bollards, pedestrian barrier rail, signage, and red concrete installed as part of the M-Ocean View Track Replacement Project.

a. HAWK System

The City and Caltrans have installed the High-Intensity Activated Crosswalk pedestrian beacon system (the "HAWK System") on Sloat Boulevard (State Route 35) at Forest View Drive, 23rd Avenue, 36th Avenue, Constanso Way, El Mirasol Place, 26th Avenue, and 21st Avenue; and San Jose Avenue (State Route 82) at Goethe Street and Rice Street to enhance pedestrian safety. The Second Amendment would address the City's maintenance and operation of certain electrical equipment that constitutes the HAWK System at the specified locations.

The following is hereby transmitted for consideration by the Board of Supervisors:

1. Proposed Board Resolution on the Second Amendment to the Delegated Maintenance Agreement
2. Second Amendment to the Delegated Maintenance Agreement with Exhibits
3. Maintenance Agreement, as amended by Amendment No. 1

It is recommended that the Board of Supervisors approve the Second Amendment and adopt this resolution.

Mohammed Nuru

Director

7/24/2018

7/24/2018

X 

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Thomas, John  
Approver 2  
Signed by: Thomas, John

X Mohammed Nuru

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Nuru, Mohammed  
Approver 3  
Signed by: Nuru, Mohammed