

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), dated as of April 18, 2014, is 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 City and County of San Francisco ("City") owns, under SFMTA's jurisdiction, that certain property (the "Upper Yard") comprised of approximately 30,750 square feet and depicted in the attached Exhibit A.

B. On November 6, 2012, the SFMTA Board of Directors unanimously passed Resolution No. 137-12 supporting the sale of the Upper Yard in principle and directing the SFMTA Director of Transportation to work with partner agencies to advance such sale.

C. MOH is interested in acquiring jurisdiction of the Upper Yard if it determines the Upper Yard could be an appropriate site for affordable housing, and SFMTA and MOH wish to enter into this MOU to set forth their agreement with regards to the potential transfer of jurisdiction of the Upper Yard from SFMTA to MOHCD (the "Jurisdictional Transfer").

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

1. Due Diligence Investigations. A "MOHCD Contractor" shall mean any party (including City's Department of Public Works) engaged by MOH to investigate the Upper Yard during the term of this MOU. SFMTA agrees to allow MOHCD Contractors to investigate the condition of the Upper Yard; provided, however, that any such investigations on the Upper Yard shall not unreasonably interfere with SFMTA's use of the Upper Yard and shall be performed pursuant to written agreements between such MOHCD Contractor and SFMTA in a form reasonably acceptable to SFMTA. Such investigations shall be subject to the requirements set forth below.

(a) Claims. If any MOHCD Contractor investigation or entry on the Upper Yard results in any demands, claims, proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses") arising from (i) the release of hazardous materials in, on, about, under, or from the Upper Yard, (ii) the exacerbation of any hazardous materials existing in, on, about, or under the Upper Yard as of the Effective Date (as defined below), (iii) a regulatory agency with jurisdiction requiring the remediation or investigation of the release, or threatened release, of any hazardous materials in, on, about, under, or from the Upper Yard, (iv) any damage to, or disturbance or destruction of, the Upper Yard or any other property (including personal property, fixtures, and equipment), or (v) any injury or death to any person, and SFMTA is not fully reimbursed for such Losses by the MOHCD Contractor or its insurer, MOHCD shall pay for such unreimbursed Losses. The foregoing obligation shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions on, in, under or about the Upper Yard; provided, however,

that SFMTA shall have no obligation to remediate any such pre-existing environmental conditions. In no event shall SFMTA funds be used to pay for any Losses, except to the extent a Loss results from the willful misconduct or gross negligence of a SFMTA employee and any SFMTA invitee, agent, or contractor other than a MOHCD Contractor.

(b) Legal Fees for Access Agreements. If MOHCD requests SFMTA to allow a MOHCD Contractor to access the Upper Yard to conduct any investigation prior to the Transfer Date, MOHCD shall reimburse SFMTA for the City Attorney fees in preparing the access agreement for such investigation. Following the Transfer Date, MOHCD shall be responsible for entering into any access agreements for such Contractor investigations at its sole cost.

(c) Approval Notice. If MOHCD accepts the condition of the Upper Yard, MOHCD shall deliver written notice of such determination to SFMTA (the "**Approval Notice**"). If MOHCD does not accept the condition of the Upper Yard, MOHCD shall have the right to terminate this MOU by delivering written notice of such termination to SFMTA (the "**Disapproval Notice**"). If MOHCD does not deliver an Approval Notice or a Disapproval Notice to SFMTA within the ninety (90) day period immediately following the full execution of this MOU ("**Effective Date**"), SFMTA shall have the right to terminate this MOU by delivering written notice of such termination to MOHCD.

If either party terminates this MOU pursuant to this subsection and MOHCD has delivered the Deposit (as defined in Section 2) to SFMTA prior to such termination, within forty-five (45) days following the delivery of any such termination notice to SFMTA or MOHCD, SFMTA shall return the Deposit to MOHCD. SFMTA shall have no responsibility for paying MOHCD any interest earned on the Deposit.

## 2. Transfer Fee.

(a) Amount. SFMTA is acquiring, at its sole cost, an appraisal of the fair market value of the Upper Yard from a licensed appraiser. Following its receipt of such appraisal, SFMTA shall notify MOHCD of the fair market value of the Upper Yard established in such appraisal (the "**Appraised FMV**"). If SFMTA and MOHCD mutually agree to the Appraised FMV or to a different fair market value in writing, such amount shall be the "**Transfer Fee**".

If SFMTA and MOHCD do not mutually agree to the Transfer Fee within thirty (30) days of the Effective Date, either SFMTA or MOHCD shall have the right to terminate this MOU by delivering written notice of such termination to the other party. If either party terminates this MOU pursuant to this subsection and MOHCD has delivered the Deposit to SFMTA prior to such termination, within forty-five (45) days following the delivery of any such termination notice to SFMTA or MOHCD, SFMTA shall return the Deposit to MOHCD. SFMTA shall have no responsibility for paying MOHCD any interest earned on the Deposit.

(b) Payment. On or before April 30, 2014, MOHCD shall deliver Two Million Five Hundred Dollars (\$2,500,000) (the "**Deposit**") as its good faith deposit for the ~~Jurisdictional Transfer~~. If the parties elect to request the City's Mayor to recommend the Jurisdictional Transfer for the Transfer Fee, and the City's Board of Supervisors approves of the Jurisdictional Transfer, the Deposit shall be deemed SFMTA's sole property and MOHCD shall deliver an amount equal to the Transfer Fee, less the Deposit, to SFMTA on or before the Jurisdictional

Transfer becomes effective (the "**Transfer Date**").

3. Environmental Review and General Plan Conformity. Within the thirty (30) day period immediately following the later date (the "**Agreement Date**") to occur of SFMTA's receipt of the Approval Notice and the parties' mutual agreement to the Transfer Fee, 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. If such review is required before such approval, MOHCD shall request the City's Planning Department to perform such review at MOHCD's sole cost.

4. Jurisdictional Transfer Legislation. Within the thirty (30) day period immediately following the later date to occur of the Agreement Date and the date that City's Planning Department issues a general plan conformance finding and completes its environmental review pursuant to Section 3, if applicable, SFMTA shall submit to the City's Administrative Services Department, Real Estate Division ("**RED**") all materials necessary to enable RED to request the Mayor's recommendation of the Jurisdictional Transfer to the Board of Supervisors. The parties shall each pay one-half (1/2) of any costs charged by RED and the City Attorney's Office to seek and effect the Jurisdictional Transfer, including the cost to submit legislation for approval of the Jurisdictional Transfer ("**Transfer Legislation**").

If the Board of Supervisors does not adopt the Transfer Legislation, this MOU shall automatically terminate on the date the Board of Supervisors rejects the Transfer Legislation; provided, however, that if MOHCD has delivered the Deposit to SFMTA prior to such time, within forty-five (45) days following the Board of Supervisor's disapproval of the Transfer Legislation, SFMTA shall return the Deposit to MOH. SFMTA shall have no responsibility for paying MOH any interest earned on the Deposit.

5. Use of Upper Yard. If the Transfer Date occurs, SFMTA shall have the right to continue using the Upper Yard for no fee until MOHCD reasonably needs possession of the Upper Yard to commence the construction of any affordable housing. In such event, MOHCD shall provide SFMTA with no less than thirty (30) days prior written notice of the date it requires physical possession to commence the development of a housing development on the Upper Yard (the "**Possession Date**").

SFMTA shall vacate the Upper Yard on or before the Possession Date and leave it in substantially the same condition as it was in as of the Effective Date. During the period between the Effective Date and the earlier to occur of the termination of this MOU and the Possession Date, SFMTA shall not, without first obtaining MOHCD's prior written approval, take any of the following actions: (i) construct any improvements on the Upper Yard, (ii) encumber, lien, transfer, grant, lease or license all or any part of the Upper Yard, or enter into any contract affecting the Upper Yard, except for contracts that are terminable on thirty days notice or less or approved by MOHCD in writing, or (iii) cause or authorize any use of the Upper Yard for any non-City use.

SFMTA shall be responsible for paying for any Losses arising from SFMTA's use of the Upper Yard during the period between the Effective Date and the Possession Date (the "**Post-Transfer Period**"), including (i) the release of hazardous materials in, on, about, under, or from



by the SFMTA Director of Transportation or his or her designee, or by the SFMTA Board of Directors, if required.

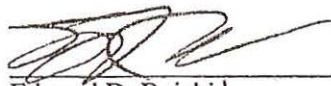
10. Cooperation. Subject to the terms and conditions of this MOU, SFMTA and MOHCD staff shall use reasonable efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this MOU as expeditiously as practicable, including, without limitation, performance 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). Notwithstanding anything to the contrary in this MOU, no party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the actions described in this MOU or any future use of the Upper Yard, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Jurisdictional Transfer or any development of the Upper Yard for affordable housing. In addition to any conditions described in this MOU, the parties' obligations are expressly subject to the receipt of all legally required approvals following environmental review.

11. Miscellaneous. (a) This MOU may be amended or modified only by a writing signed by the SFMTA Director of Transportation, or his or her designee, and the Director of MOHCD. (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.

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

SFMTA:

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By:   
Edward D. Reiskin  
Director of Transportation


Date: 4.18.14

San Francisco Municipal Transportation Agency

Board of Directors

Resolution No. 14-058


Adopted: April 15, 2014

Attest:  


Secretary, SFMTA Board of Directors

MOH:

MAYOR'S OFFICE OF HOUSING  
AND COMMUNITY DEVELOPMENT

By:   
Olson Lee, Director

Date: 4.18.14

**EXHIBIT A**

**Depiction of Upper Yard**

**(This depiction outlines the approximate boundaries of the Property)**

