

THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a Memorandum of Understanding between the SFMTA and the Mayor's Office of Housing and Community Development (MOHCD) to establish the terms of a ground lease and agreement to develop a proposed affordable housing project with ground floor commercial use at 266 4th Street, and to memorialize the agencies' respective roles and responsibilities in the planning, review, design, construction, oversight, and public outreach for the Proposed Project.

SUMMARY:

- The City and County of San Francisco owns property located at 266 4th Street (the Property). The SFMTA has jurisdiction over the Property, as it was acquired with Federal Transit Administration (FTA) funds granted to construct the Central Subway Project Yerba Buena/Moscone Station. The station is currently under construction and will occupy a portion of the Property.
- SFMTA and MOHCD have identified the vacant portion of the Property as a potential site for an affordable housing development (the Proposed Project) under the City's Public Land for Housing program. The Proposed Project as currently envisioned, subject to appropriate environmental review, will be a 100 percent affordable housing development with ground floor commercial space.
- The SFMTA desires to enter into a Memorandum of Understanding (MOU) with MOHCD to facilitate further planning, financing, development, and (conditioned upon environmental review and further approvals) construction of the Proposed Project.
- The MOU addresses basic terms and conditions of the Project development, the agencies' respective responsibilities, SFMTA jurisdiction over the Property, FTA requirements, and the Transfer Fee that the SFMTA will receive if the Property is developed.

ENCLOSURES:

1. SFMTAB Resolution
2. Memorandum of Understanding (MOU) with Mayor's Office of Housing and Community Development (MOHCD)

APPROVALS:

DATE

DIRECTOR _____ 2/10/17

SECRETARY R. Boomer _____ 2/10/17

ASSIGNED SFMTAB CALENDAR DATE: February 21, 2017

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PURPOSE

Authorizing the Director of Transportation to execute a Memorandum of Understanding between the SFMTA and the Mayor's Office of Housing and Community Development (MOHCD) to establish the terms of a ground lease and agreement to develop a proposed affordable housing project with ground floor commercial use at 266 4th Street, and to memorialize the agencies' respective roles and responsibilities in the planning, review, design, construction, oversight, and public outreach for the Proposed Project.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will meet the following goals and objectives of the SFMTA FY2013-18 Strategic Plan and Transit First Policy Principles:

Strategic Plan Goals/Objectives

Goal 2: Make transit, walking, bicycling, taxi, ridesharing & car-sharing the preferred means of travel

Objective 2.3: Increase use of all non-private auto modes.

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

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.3: Allocate capital resources effectively.

Objective 3.4: Deliver services efficiently.

Objective 3.5: Reduce capital and operating structural deficits.

Transit First Policy Principles

6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.

7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.

DESCRIPTION

266 4th Street is a 14,797 square foot parcel (the Property), located at the corner of 4th and Folsom streets in the Central South of Market (SoMa) Plan Area. The SFMTA has jurisdiction over the Property and is currently constructing the Central Subway's Yerba Buena/Moscone Station (the Station) on and under portions of the Property. The Station entrance or "headhouse" will occupy approximately 6,397 square feet of the Property, leaving approximately 8,400 square feet vacant and suitable for development.

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On April 20, 2010, the SFMTA Board of Directors authorized the Director of Transportation to acquire the parcel at 266 4th Street as part of the right of way for the construction of the Central Subway. The SFMTA took possession of the Property on July 7, 2012 through eminent domain. The SFMTA and the property owner were unable to reach an agreement over the fair market value of the property and the matter went to trial, with the jury returning a verdict in the amount of \$7,319,000 as compensation for the land plus \$27,454 in defendant's costs. On October 20, 2015 the SFMTA Board of Directors approved a settlement in the amount of \$730,000 to cover the former property owner's attorneys' fees.

Central Subway construction commenced in 2010 and is expected to be completed in 2019. The Yerba Buena/Moscone Station design allows for development of portions of the Property adjacent to the Station for other uses. Under current zoning the Property may accommodate a 130 foot building on the vacant, 8,400 square foot portion of the site.

A 2013 report prepared by consultant Parsons Brinkerhoff titled, "*The SFMTA's Real Estate and Facilities Vision for the 21st Century*," identified 266 4th Street as a potential site for transit-oriented development that could maximize the use of the Site and generate revenue to support the SFMTA's transit functions. The City also identified the Property as a potential project site for the City's Public Land for Housing Program (Housing Program). Established in 2014, the Housing Program seeks to maximize the use and public benefit of selected City-owned properties, while furthering the core missions of the department with jurisdiction over the subject properties. A principal focus of the Housing Program is to provide housing affordable to low- and moderate-income individuals and families.

The SFMTA and MOHCD developed the proposed MOU with discussions that began in 2015 exploring the feasibility of an affordable housing development on the Property. The MOU establishes the framework, roles, responsibilities, and terms that will guide the development of the vacant area of the Property as a mixed-use, 100 percent affordable housing development with ground floor commercial space (the Proposed Project), conditioned up review under the California Environmental Quality Act (CEQA), and approval of the Proposed Project design.

The MOU addresses the following:

- Establishes a Transfer Fee equivalent to the Fair Market Value of the Site (\$9,720,000) that MOHCD will pay the SFMTA. The SFMTA will receive \$3,000,000 upon execution of the MOU, and it will receive the remaining funds at the Proposed Project financial closing.
- Outlines the respective roles and responsibilities of the SFMTA and MOHCD for public outreach; selection and contracting with an affordable housing developer; payment of predevelopment costs; Project design, entitlements, and environmental review; and construction oversight. MOHCD, as the subject matter expert in affordable housing, will assume the principal role on these and other tasks, but the SFMTA will retain approval authority over certain aspects of the Proposed Project to ensure that the Agency's interests are protected. The SFMTA will have final approval over the Proposed Project

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design and construction techniques to ensure that the Proposed Project will not damage the Yerba Buena/Moscone Station or interfere with its operations. MOHCD and the developer will be responsible for all costs associated with the Project, with the exception of costs incurred by the SFMTA to review the Proposed Project design and construction.

- Ensures that the Proposed Project meets SFMTA's transit oriented development policies and goals. The Proposed Project will have no on-site parking; the SFMTA will provide guidance on the transportation demand management measures that the Proposed Project must meet.
- Confirms that the SFMTA serve as the Proposed Project's liaison to the FTA. As a financial partner to the Central Subway Project, the FTA will have some review and oversight authority, consistent with FTA Joint Development requirements.
- Ensures that the SFMTA will retain jurisdiction over the Property and development site. The SFMTA will lease the development site for a minimum term of 65 years to the Proposed Project's developer.
- Affirms that any development agreement will hold the developer liable for any damage to the Station or impairment of its transit functions caused by the Proposed Project.
- Establishes that the MOU does not limit the discretion of the SFMTA or MOHCD to review and consider the Proposed Project and 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 Ground Lease or the Proposed Project.

STAKEHOLDER ENGAGEMENT

In January of 2016, the SFMTA and MOHCD presented the development concept for the Proposed Project at 266 4th Street to the SFMTA Board Policy and Governance Committee. In advance of that meeting, the SFMTA, MOHCD, and the Office of Economic and Workforce Development (OEWD) reached out to stakeholders active in the Central SoMa community, affordable housing advocates, Supervisor Kim (representing District Six), and the Mayor's Office. There is strong support for the concept of a 100 percent affordable housing development on the Site (although one stakeholder expressed support for senior housing, rather than family housing). If the Proposed Project is approved, the SFMTA will rely on MOHCD's guidance in determining the optimal market and unit mix.

In advance of this meeting of the SFMTA Board of Directors, SFMTA and MOHCD again reached out to community and housing stakeholders to inform them of the Proposed Project's status. MOHCD and SFMTA will continue to engage with the community and stakeholders as Proposed Project plans are further developed. Any selected developer will also be required to

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implement a robust community outreach strategy to ensure that community input informs the planning and design of the Proposed Project. The developer will be selected through a competitive RFP process, and developers' proposed outreach strategies will be one of the selection criteria.

ALTERNATIVES CONSIDERED

Staff completed a feasibility study in January 2015 that examined residential, office, and hotel as possible uses for the Site that would financially benefit the SFMTA and meet other City policy goals. Of the three, the hotel use was projected to generate moderately greater land value for the SFMTA, while the projected land values for residential and office uses were nearly identical. Because of the acute affordable housing shortage in San Francisco, staff focused on a 100 percent affordable housing concept for the Site. Discussions with MOHCD indicated that the Proposed Project could be designed to develop affordable housing and also provide a reasonable financial return to the SFMTA. As a result, the Proposed Project includes affordable housing with ground floor commercial.

FUNDING IMPACT

Under the proposed MOU, the SFMTA will receive a Transfer Fee from MOHCD equivalent to the fair market value of the portion of the Property to be developed, based on an appraisal completed in 2016. The \$9,720,000 Fee would be broken into two payments - an initial deposit of \$3,000,000 following execution of the MOU and a second payment of \$6,720,000 at the Proposed Project's financial closing (prior to the start of construction). Construction of the Proposed Project cannot commence until the Central Subway construction is completed. Based on the Central Subway Program's current construction schedule, staff estimates that the SFMTA would receive the second payment in 2019.

The SFMTA will be responsible for the cost of Proposed Project design review and construction review that it performs itself or that it contracts to outside engineers. All other development-related expenses will be the responsibility of MOHCD and/or the selected developer, as provided in the MOU.

ENVIRONMENTAL REVIEW

On January 24, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the 266 4th Street Memorandum of Understanding is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b), because the MOU would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The MOU is therefore not subject to CEQA review.

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item and the proposed MOU.

The FTA has completed a preliminary review of the Proposed Project development concept and has not expressed any concerns or suggested changes. After a developer has been selected and a more detailed development plan has been finalized, the Proposed Project must then secure final FTA approval.

The Proposed Project must go through the typical entitlement and environmental review processes. The SFMTA and MOHCD will negotiate lease and development agreement terms with the selected developer. The ground lease for the Property and agreement to develop the Proposed Project will be subject to Board of Supervisors' approval.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute a Memorandum of Understanding between SFMTA and MOHCD to establish the terms of a ground lease and agreement to develop a proposed affordable housing project with ground floor commercial use at 266 4th Street, and to memorialize the agencies' respective roles and responsibilities in the planning, review, design, construction, oversight, and public outreach for the Proposed Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On April 20, 2010, the SFMTA Board of Directors authorized the acquisition of the property at 266 4th Street (the Property) so that the Yerba Buena/Moscone Station serving the Central Subway Project may be constructed there; and,

WHEREAS, The Station will occupy a portion of the Property, while the remainder will remain vacant and is suitable for development; and,

WHEREAS, “The SFMTA’s Real Estate and Facilities Vision for the 21st Century,” an extensive report on properties under SFMTA jurisdiction, issued in February 2013, concluded that a portion of the Property is a candidate site for transit oriented development; and,

WHEREAS, The Property was identified as an initial site for the Public Land for Housing Program, a program established by the City and County of San Francisco in 2014 to maximize the use and public benefit of publicly owned properties; and,

WHEREAS, SFMTA staff explored various alternatives for developing the vacant area of the Property site and determined that an affordable housing development in partnership with the Mayor’s Office of Housing and Community Development (MOHCD) represents the best use of the site with minimal risk and cost to the SFMTA (“the Proposed Project”); and,

WHEREAS, The Central Subway Project and the acquisition of the site are funded in large part by the Federal Transit Administration (FTA) of the U.S. Department of Transportation, whose regulations require that the SFMTA retain jurisdiction over the entire Property, including the portion to be developed; and,

WHEREAS, On January 24, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the 266 4th Street Memorandum of Understanding is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b), because the MOU would not result in direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and,

WHEREAS, SFMTA and MOHCD staff have negotiated the terms of a Memorandum of Understanding (MOU) whereby MOHCD will oversee the development of the Proposed Project as an affordable housing development with ground floor commercial use, and the SFMTA will review the design and construction of the Proposed Project to ensure the development does not damage the Yerba Buena/Moscone Station or impede its transit functions; and,

WHEREAS, The MOU does not limit the SFMTA or MOHCD's discretion to fully review and consider the Proposed Project and 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 Ground Lease or the Proposed Project; and

WHEREAS, The development of the Proposed Project as memorialized in the MOU will assist the SFMTA in meeting the objectives of SFMTA Strategic Plan Goal No. 2 (Make transit, walking, bicycling, taxi, ridesharing and car-sharing the preferred means of travel) and Goal No. 3 (Improve the environment and quality of life in San Francisco); now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a Memorandum of Understanding between the SFMTA and the Mayor's Office of Housing and Community Development to establish the terms of a ground lease and agreement to develop a proposed affordable housing project with ground floor commercial use at 266 4th Street, and to memorialize the agencies' respective roles and responsibilities in the planning, review, design, construction, oversight, and public outreach for the Proposed Project.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 21, 2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated as of _____, 2016 (the "**Effective Date**"), is by and between the San Francisco Municipal Transportation Agency ("**SFMTA**") and the Mayor's Office of Housing and Community Development ("**MOHCD**").

RECITALS

A. The City and County of San Francisco, a municipal corporation (the "**City**"), owns certain real property located at 266 4th Street, as more particularly described in the attached Exhibit A (the "**Property**"). The Property is located in the Central SOMA Planning Area, which is currently undergoing environmental review and plan refinement. SFMTA has jurisdiction of the Site and is currently constructing the Central Subway's Yerba Buena/Moscone Station (the "**Station**") at 4th and Folsom Streets, on and under portions of the Site. The Station is one of four new stations currently under construction as part of the Central Subway Project, a 1.7-mile extension of SFMTA's T Third light rail line (the "**Central Subway Project**").

B. The Property has been identified as an initial pilot site for the City's Public Land for Housing program, which is designed to maximize the use and opportunities for public benefit of selected City-owned properties while ensuring that City departments that have jurisdiction over the properties can further their core missions. A principal focus of the Public Land for Housing program is to provide housing affordable to low- and moderate-income individuals and families. SFMTA desires to make a portion of the Site available to MOHCD so that MOHCD can facilitate the financing, development, and construction of a mixed-use, 100 percent affordable housing project with ground floor retail space (the "**Project**") on the portion of the Site more particularly described in the attached Exhibit B (the "**Site**").

C. The Central Subway Project is funded in part by the Federal Transit Administration ("**FTA**") of the U.S. Department of Transportation, and the Site was purchased with Central Subway Project funds. As a financial partner to the Central Subway Project, the FTA will review any proposed use of the Site in accordance with its Joint Development requirements, as outlined in FTA Circular C 7050.1A attached hereto as Exhibit C (the "**Circular**"). Due to the nature of the concurrent use of the Site for the Project and the Station, the SFMTA will retain jurisdiction of the Site and will review and will have authority to approve or require changes to the design, construction, and use of the Site for the Project, as more particularly described below

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Ground Lease Fee. The SFMTA acquired an appraisal of the fair market value of the Site from David Tattersall & Company, an MAI licensed appraiser approved by MOHCD, dated February 13, 2016 in the amount of Nine Million, Seven Hundred Twenty Thousand

Dollars (\$9,720,000) (the “**Ground Lease Fee**”). MOHCD will pay the SFMTA the Ground Lease Fee as compensation for its use of the Site for the Project. No later than 45 days after the Effective Date, MOHCD will pay to the SFMTA Three Million Dollars (\$3,000,000) as a deposit on the Ground Lease Fee (the “**Deposit**”). Upon the closing of the construction loan for the Project, MOHCD will pay to the SFMTA the remainder of the Ground Lease Fee.

3. Retained Rights. Subject to the prior approval of MOHCD and the affordable housing developer of the Project, and provided that such installation does not interfere with the Project design or function, the SFMTA will have the right to install equipment for transit/transportation safety, operations, and communications purposes within the air space above the Site not occupied by the Project.

4. Project Collaboration; SFMTA Review. In order for the Site to be successfully utilized both for the Station and the Project, it is vitally important that MOHCD and the SFMTA collaborate effectively, and that the SFMTA review and have authority to approve or require changes to the design, construction requirements, and use of the Site. In furtherance of such goals, MOHCD and SFMTA will each designate a Project Manager for the Project who will serve as the points of contact for communications relating to the Project and will be primarily responsible for obtaining the review, comments and approvals of their respective agency relating to the matters described in this MOU. While MOHCD will have overall responsibility for all aspects of Project development, MOHCD and the SFMTA will have the following responsibilities, and the SFMTA will have the following input with regard to each of the Project aspects described below:

a. Community Engagement. MOHCD will be solely responsible for community engagement and building community support relating to the Project. MOHCD will notify the SFMTA in advance of any public meeting regarding the Project, and MOHCD and the SFMTA will collaborate to provide timely information to the public.

b. Affordable Housing Development Plan. MOHCD will be primarily responsible for coordinating a draft conceptual plan with the selected developer for the affordable housing development for the Project. MOHCD will consult with and obtain SFMTA approval prior to the release to the public of plans, any Requests for Proposals or Requests for Qualifications for development of the Project, or any other Project development documents.

c. Team Selection. Representatives from MOHCD and the SFMTA will be part of any selection committee that determines all or any portion of the eventual development team for the Project.

d. Project Costs. MOHCD will assume all development costs associated with the Project. MOHCD will assume Project costs after the Effective Date, including those of the Planning Department (subject to MOHCD approval). The SFMTA will not be responsible for any development costs of the Project other than its own staff time and any costs directly associated with SFMTA Project consultation, advice and review, including any third-party design or construction reviews directed by the SFMTA.

e. Design; Contract Approvals. MOHCD and the SFMTA will work collaboratively on design review and engineering to ensure compatibility with the Station and the transit functions of the Site. MOHCD will obtain SFMTA approval of the Project developer’s contracts, including significant amendments, with its architect, engineer, and general contractor to ensure compatibility with and protection of the Station. The SFMTA will not be responsible for and will not have any liability arising from the designs or the construction of the improvements or any contract for the design or construction of the improvements. MOHCD will consult with and obtain SFMTA concurrence prior to final approval of any design and

construction documents relating to the Project. The SFMTA will approve or provide comments and requests for changes within 15 business days of receipt of each request for review, unless another period is agreed in writing.

f. Transportation Demand Management Standards. MOHCD will prohibit on-site parking as part of any development, and that prohibition will be express in any ground lease, development agreement or other contract affecting the use of the Site. MOHCD will ensure that the Project complies with the SFMTA's transportation demand management (TDM) standards and best practices in transit-oriented design. Exhibit D provides a non-exclusive list of potential TDM measures that may be incorporated into the Project.

g. Construction Oversight. MOHCD and the SFMTA will work collaboratively on construction oversight and will participate collaboratively at construction meetings to ensure that there are no conflicts with Station construction, improvements, maintenance, repair, or transit operations. MOHCD will maintain on-going communications with the SFMTA to inform the SFMTA of construction progress and any construction-related submittals, notifications, proposed change orders, proposed value engineering changes, schedule delays, or other significant issues affecting the construction of the Project. In order to ensure compatibility of the structural systems between the housing project and the Station, the SFMTA will review and approve or request changes to any proposed change order and proposed value engineering related to such compatibility of the structural systems, and any proposed change orders that have a value of Seventy-Five Thousand Dollars (\$75,000) or more. The SFMTA will approve or provide comments and requests for changes within 15 business days of receipt of each request for review, unless another period is agreed in writing.

h. FTA Requirements; Joint Development Agreement. The SFMTA will work collaboratively with MOHCD to formulate a joint development agreement ("Development Agreement") in accordance with FTA guidelines prior to the execution of a ground lease of the Site with the Project developer (the "**Ground Lease**"). The SFMTA will advise MOHCD and the selected developer of any FTA requirements for the Project, including, but not limited to, the joint development requirements described in the Circular. At all phases of the development process, the SFMTA will function as the liaison to the FTA to ensure that the Project complies with FTA's joint development requirements. The SFMTA will work with MOHCD and/or the developer to correct any issues or make any changes that are strictly necessary to comply with FTA requirements, with which MOHCD and the developer will comply. As the ground lessor of the Site, the City, acting through the SFMTA, will retain satisfactory continuing control of the Site in accordance with the Circular and any other FTA guidelines.

i. Liability; Insurance. The Project developer will be responsible for any damage to the facilities or functioning of the Station associated with the design, construction, and operation of the Project. The developer may transfer that risk to its Project designers and construction contractor(s), provided that the SFMTA confirms that the developer has sufficient assets and insurance to bear those risks. Due to the nature of the joint use of the Site as a subway station and an affordable housing development, the City will impose stringent general liability and insurance requirements on the Project developer. In consultation with the City's Risk Manager, the SFMTA will work with MOHCD to identify and evaluate the types and amounts of insurance to be required of the developer and/or its designers and contractors. The SFMTA and MOHCD will work with the City's Risk Manager to determine how that insurance may be obtained. The Request for Proposals and/or Request for Qualifications for the Project shall identify insurance and indemnification requirements.

j. Ground Lease Provisions. The SFMTA will review the terms of the Ground Lease, including, but not limited to, insurance requirements, indemnification clauses, maintenance agreements, and construction staging. MOHCD and the SFMTA agree that the

Ground Lease will be based upon MOHCD's standard ground lease, which the SFMTA has reviewed. Points that may differ from MOHCD's standard ground lease that must be addressed in the Ground Lease are attached as Exhibit D. The Ground Lease will have a minimum term of sixty-five (65) years. The ground lessor of the Site will be the City, acting by and through the SFMTA, and the SFMTA will retain continuing jurisdiction of the Site. MOHCD will have responsibility for managing the Ground Lease, the Project and the Site. The SFMTA and MOHCD will both approve the Ground Lease on behalf of the City.

k. Site Control. MOHCD, in coordination with the SFMTA, will generate an option to ground lease agreement with the selected developer as an acceptable form of site control sufficient for private financing and competitive State and Federal funds for which the Project may be eligible. The SFMTA will approve and execute the option to ground lease agreement.

l. Project Loan Documents. The SFMTA will review all predevelopment, construction, and permanent loan documents prior to their execution. MOHCD will evaluate, underwrite, and execute such documents with the selected developer and ensure that they protect the interests of both agencies.

m. Entitlements and Board of Supervisors Approval. MOHCD, through the selected developer, will be responsible for securing entitlements and any required Board of Supervisors' approvals for the Project. MOHCD and the SFMTA will work collaboratively with the developer to ensure adequate environmental review is performed as required by the California Environmental Quality Act and the National Environmental Policy Act. MOHCD will request a determination from the Planning Department of the applicable Board of Supervisors review of the Project with regard to environmental review and conformance with the General Plan.

5. Access to the Site and Due Diligence Investigations. This MOU does not confer upon MOHCD or any contractor retained by MOHCD permission to access the Site. As of the Effective Date, the Site is an active construction site. The SFMTA has delegated control of the Site to Tutor Perini Corporation, the contractor that is constructing the Station. Any access to the Site granted by the SFMTA to MOHCD or any contractor will be pursuant to an access agreement between MOHCD or the contractor and the SFMTA (and, as may be required, Tutor Perini Corporation) outlining the conditions for accessing the Site. All design documents for the Station are Sensitive Security Information (SSI) and are protected from disclosure under federal law.¹ Access to the Station design documents will be strictly controlled and allowed only on a need-to-know basis. Any potential or selected developer, contractor, engineering firm or person that seeks access to the Station design documents must execute a confidentiality agreement with the SFMTA promising to maintain the security of those documents and accepting liability for harm arising from the unauthorized disclosure of those documents.

6. Central Subway Construction Activity. Neither this MOU, nor any activities related to the development of the Site, shall hinder or impair SFMTA's on-going construction of the Station and related infrastructure at the Site or use of the constructed Station for its intended purposes. The SFMTA remains solely responsible for managing construction activity and the construction budget for all construction at the Site related to the Central Subway Project.

7. Term. The term of this MOU shall commence on the Effective Date and terminate upon termination of the Ground Lease, provided that if the Ground Lease has not been executed

¹ For these purposes, SSI may be defined as any information or record the disclosure of which may be detrimental to transportation safety. See 49 CFR Sections 15.5 and 1520.5.

by the third anniversary of the Effective Date, then either party may terminate this MOU upon 30 days' written notice to the other. In addition, if MOHCD and the SFMTA agree that the Project is infeasible for any reason at any time prior to execution of the Ground Lease, then either party may terminate this MOU upon written notice to the other. If this MOU is terminated without an executed Ground Lease and if MOHCD has delivered the Ground Lease Fee (or the Deposit) to the SFMTA prior to such termination, the SFMTA shall return the Ground Lease Fee (or the Deposit) in full to MOHCD within forty-five (45) days following termination. The SFMTA shall have no responsibility for paying MOHCD any interest earned on the Ground Lease Fee or the Deposit.

8. Notices. All notices, demands, consents or approvals that are or may be required to be given by either party to the other under this MOU shall be in writing and shall be deemed to have been fully given when delivered in person, and addressed as follows:

If to the SFMTA: Municipal Transportation Agency
1 South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Attn: Rafe Rabalais

If to MOHCD: Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Mara Blitzer, Director of Housing Development

or such other address that a party may from time to time designate by notice to the other parties given pursuant to the provisions of this Section.

9. Authority. All matters requiring MOHCD's approval shall be approved by the Director of MOHCD or his or her designee. All matters requiring SFMTA's approval shall be approved by SFMTA's Director of Transportation or his or her designee, or by the SFMTA Board of Directors, if required.

10. Cooperation; Additional Environmental Review. The SFMTA and MOHCD acknowledge and agree that the Project is in the initial conceptual and planning stages only. 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 further develop the Project, including design and feasibility studies, and to conduct any further environmental review and studies 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, 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 review and consider the proposed project and 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 Ground Lease or the Project. 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 due diligence.

11. Miscellaneous. (a) This MOU may be amended or modified only by a document signed by the SFMTA's Director of Transportation, or his or her designee and the Director of MOHCD, or his or her designee, and if required, the SFMTA Board of Directors. (b) No waiver by any party of any of the provisions of this MOU shall be effective unless in writing and signed by the party's 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.

<p>SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY</p> <p>By: _____ Edward D. Reiskin Director of Transportation</p> <p>Date: _____</p> <p>APPROVED BY:</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest: _____ Secretary, SFMTA Board of Directors</p>	<p>MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT</p> <p>By: _____ Olson Lee, Director</p> <p>Date: _____</p>
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EXHIBIT A
PROPERTY DESCRIPTION

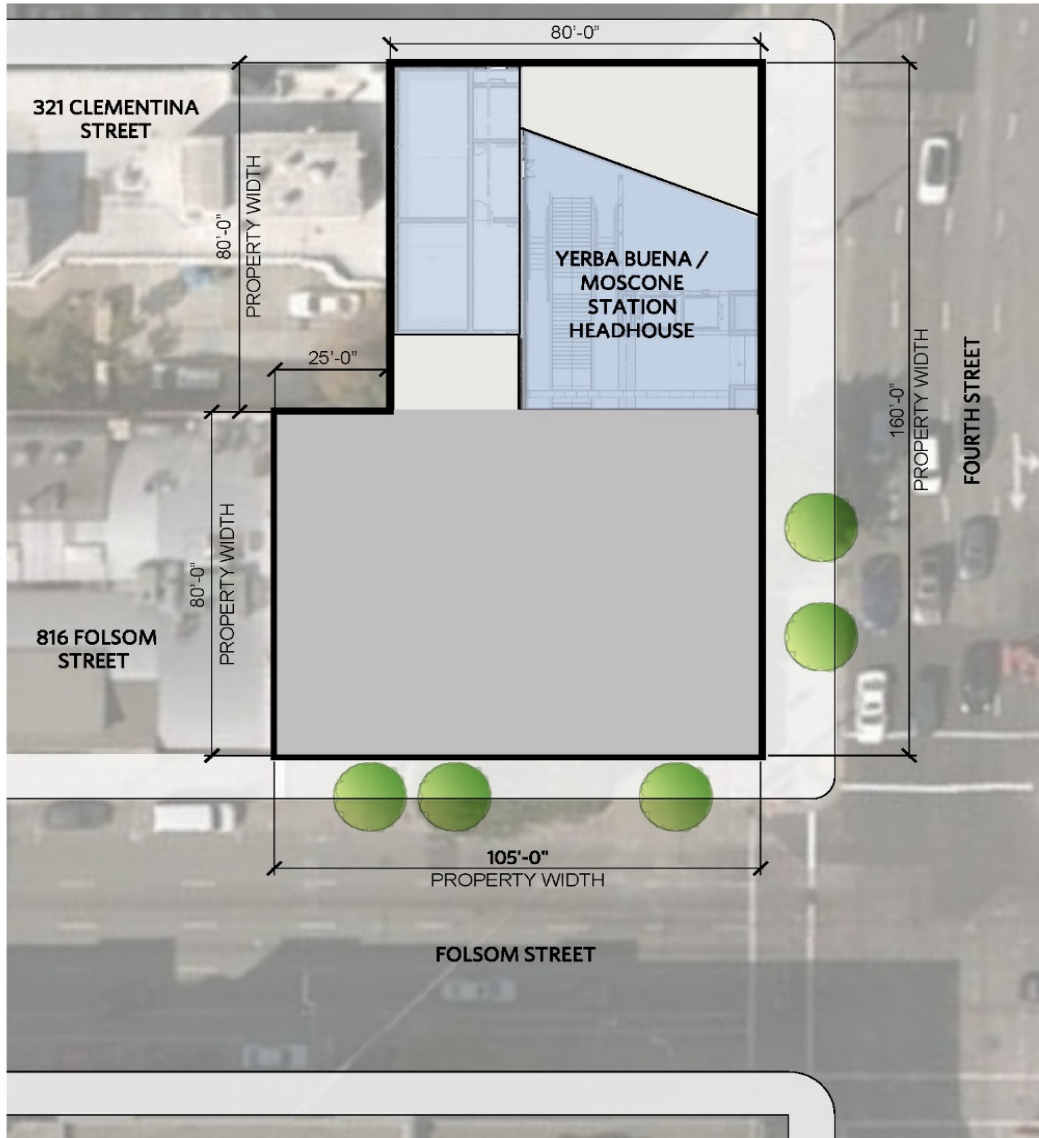


Exhibit A

PROPERTY DESCRIPTION



SCALE 1" = 30'-0"

MWA Architects | LePatner Project Solutions | Nibbi Brothers General Construction

EXHIBIT B
SITE DESCRIPTION

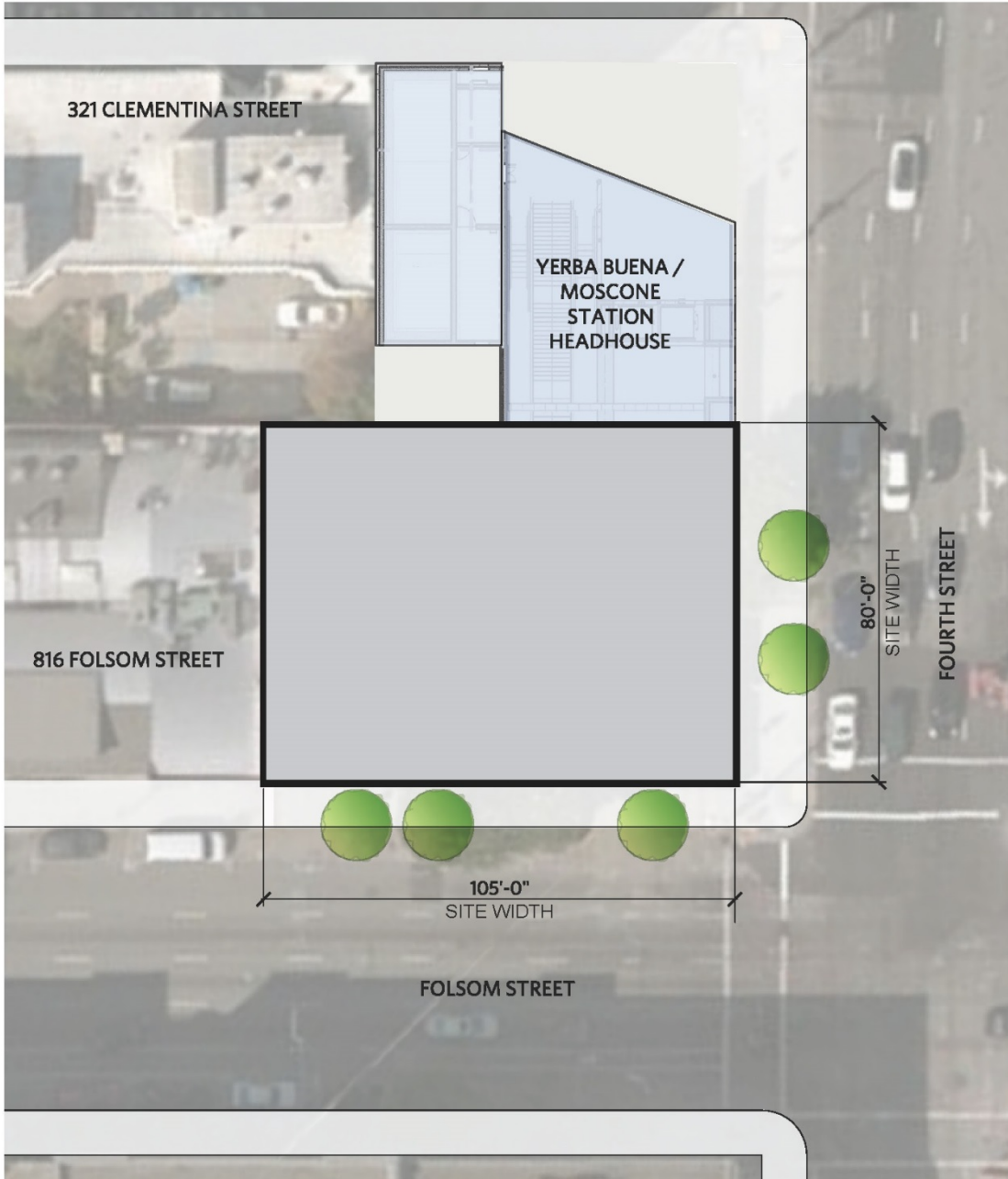


Exhibit B
SITE DESCRIPTION



SCALE 1" = 30'-0"

MWA Architects | LePatner Project Solutions | Nibbi Brothers General Construction

EXHIBIT C

FTA CIRCULAR C 7050.1A

FTA Circular C 7050.1A, released on August 25, 2014 and updated on December 29, 2016, provides Federal Transit Administration Guidance on Joint Development and may be found at:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA-161221-001%20Joint%20Development%20Circular.pdf>

EXHIBIT D

GROUND LEASE PROVISIONS

1. Subsurface rights for the ground leased premises (“Premises”) will be limited to what is necessary to meet the structural engineering requirements of the Project.
2. Tenant will bear all liability for the design and structural performance of the building, including foundation.
3. All FTA/Federal requirements will apply.
4. Transportation Demand Management measures approved by the SFMTA will apply.
5. Tenant will be responsible for any damage to the Central Subway Project infrastructure and interference with the functioning of the Station.
6. Any potential change in use from an affordable housing development with ground floor retail will be subject to the prior approval of SFMTA, with consideration given to the financial effect on the developer and tax credit investor.
7. Any sale, lease, or use of air rights above the Site will be subject to the prior written approval of SFMTA.
8. Emergency access rights to Station/Central Subway over Site not impeded.
9. Notification and approval of the SFMTA on construction related matters as required by the MOU.
10. SFMTA review and approval of temporary or permanent sidewalk use and utility connections.
11. Default provisions if Project activities impede or impair Station access or Central Subway Project.
12. Extraordinary insurance provisions relating to Project developer’s responsibility for any damage to the facilities or functioning of the Station or the Central Subway Project associated with the design, construction, and operation of the Project.
13. Tenant to indemnify City for third party claims for death, injury or property damage.

EXHIBIT E

POTENTIAL TRANSPORTATION DEMAND MANAGEMENT MEASURES

MOHCD will prohibit on-site parking as part of any development of the Site, and will ensure that the Project complies with SFMTA's transportation demand management ("TDM") standards. The SFMTA's TDM standards are specific to the characteristics of each project. SFMTA and MOHCD will incorporate appropriate TDM standards into the Request for Proposals or Request for Qualifications for the development of the Site and subsequently into the design of the Project.

In addition to the prohibition of on-site parking, possible TDM measures include, but are not limited to:

1. accommodations for car share parking and paratransit
2. storage space for grocery deliveries
3. assisting residents with transit pass and car share applications
4. providing real time transit data in the common areas of the Project
5. providing enhanced bicycle facilities for residents and visitors
6. providing ground floor commercial uses that reduce trip demands